



Finance Administration

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AGENDA
Council Finance & Audit Committee
November 19, 2018
10:00 am - noon
CIC Room - City Hall

Approval of Minutes from the October 15th Council Finance Committee meeting.

- | | | |
|---------------------------------------|------------|---------------------------|
| 1. Airport Lease Review | 20 minutes | J. Licon |
| 2. GERP Review | 15 minutes | B. Dunn |
| 3. On-Bill Financing V3.0 | 30 minutes | J. Phelan
S. Carpenter |
| 4. Internet Sales Tax - Work Plan | 20 minutes | J. Poznanovic |
| 5. Financial Management Policy Review | 15 minutes | T. Storin |

Council Finance Committee
Agenda Planning Calendar 2018
RVSD 11/14/18 mnb

Nov 19th			
	Airport Lease Review	20 min	J. Licon
	GERP Review	15 min	B. Dunn
	On-Bill Financing V3.0	30 min	J. Phelan S. Carpenter
	Internet Sales Tax – Work Plan	20 min	J. Poznanovic
	Financial Management Policy Review	15 min	T. Storin

Dec 17th			
	Metro District Policy Updates	30 min	J. Birks
	Mall – Financial Review	30 min	J. Birks V. Shaw

Jan 28th			
	Child Care Incentive / Fee Waivers	30 min	R. Everette
	Utility Lab Building Partnership	30 min	C. Webb L. Smith

Feb 25th			
	Development Review Fee Update	40 min	T. Leeson
	2018 Rebate Results	20 min	J. Poznanovic

Future Council Finance Committee Topics:

- Revenue Contingency Plan Review



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Finance Committee Meeting Minutes
10/15/2018
10 am - noon
CIC Room - City Hall

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

Staff: Darin Atteberry, Jeff Mihelich, Mike Beckstead, John Duval, Terri Runyan, Tyler Marr, Laurie Kadrich, Lance Smith, Blaine Dunn, Jennifer Selenske, Zach Mozer, Randy Reuscher, Chad Crager, Andres Gavaldon, John Voss, Jo Cech, Tim McCollough

Others: Dale Adamy, R1ST.org, Kevin Jones and Ann Hutchinson, Chamber of Commerce
Jim Manire, Director Hilltop Securities

Meeting called to order at 10:03 am

Approval of Minutes from the September 17th Council Finance Committee Meeting. Ross Cuniff moved for approval. Mayor Troxell seconded the motion. Minutes were approved unanimously.

A. 2019 Utility Rate Adjustments

Lance Smith, Utilities Strategic Finance Director

EXECUTIVE SUMMARY

The revenue requirements to support the 2019-20 Biennial budget will require increasing monthly charges for electric service by 5.0% and stormwater service by 2.0% in each of those years.

The electric rate increase each year consists of two components. The first component of 1.4% is necessary to offset the increase in wholesale energy prices. The second component of 3.6% is needed to increase operating revenues sufficient to offset operating expenses so that reductions in reserves stop and funds can be set aside for future capital improvements.

The stormwater increase is intended to raise operating revenues modestly to increase the debt capacity of the Enterprise in anticipation of significant debt being needed to meet future capital improvements necessary to complete the initial buildout of the stormwater infrastructure. Similar, modest adjustments of less than 3% may be necessary over the coming decade depending on the timing and scale of the necessary capital investments.

From a residential customer's perspective, the net increase to their 4-service utility bill is expected to be \$3.76 per month, or 2.2% more than they are paying in 2018.

Fort Collins Utilities Average Residential Monthly Bill				
Utility	2018	2019	\$ Change	% Change
Electric	\$ 71.96	\$ 75.41	\$ 3.45	4.8%
Water	\$ 47.88	\$ 47.88	\$ -	0.0%
Wastewater	\$ 34.45	\$ 34.45	\$ -	0.0%
Stormwater	\$ 15.42	\$ 15.73	\$ 0.31	2.0%
Total Average Bill	\$ 169.71	\$ 173.47	\$ 3.76	2.2%

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does the Council Finance Committee support bringing the rate increases being proposed forward for consideration by the Mayor and City Council?

BACKGROUND/DISCUSSION

The 2016 Strategic Financial Plan for each utility was presented to this Committee through 3 meetings. The rate strategy that was developed as part of the Strategic Financial Plans provides for objective rate adjustments based on financial metrics. This strategy is included in the financial modeling for the plan and serves as the basis of the rate projections presented to Council since 2016.

Rate Strategy and Smoothing

The following criteria objectively determine when, why and how much rates should be adjusted to maintain the financial health of each utility:

1. Adjust electric rates sufficient to meet Platte River Power Authority wholesale rate adjustments.
2. If the previous 3 years have averaged negative operating income, raise rates next year to the lessor of 5% or the level sufficient to have offset the average operating loss.
3. If debt coverage is less than 2.0, increase rates the lessor of 5% and a level sufficient to raise the debt coverage ratio to 2.1 the next year.
4. If the Available Reserve fund balance is projected to be negative at the end of any year, increase rates the lessor of 5% and an amount sufficient to increase reserves to the minimum required reserve.
5. Add up all of the previous criteria driven rate adjustments and take the lessor of 5% and the sum as the recommended rate adjustment.

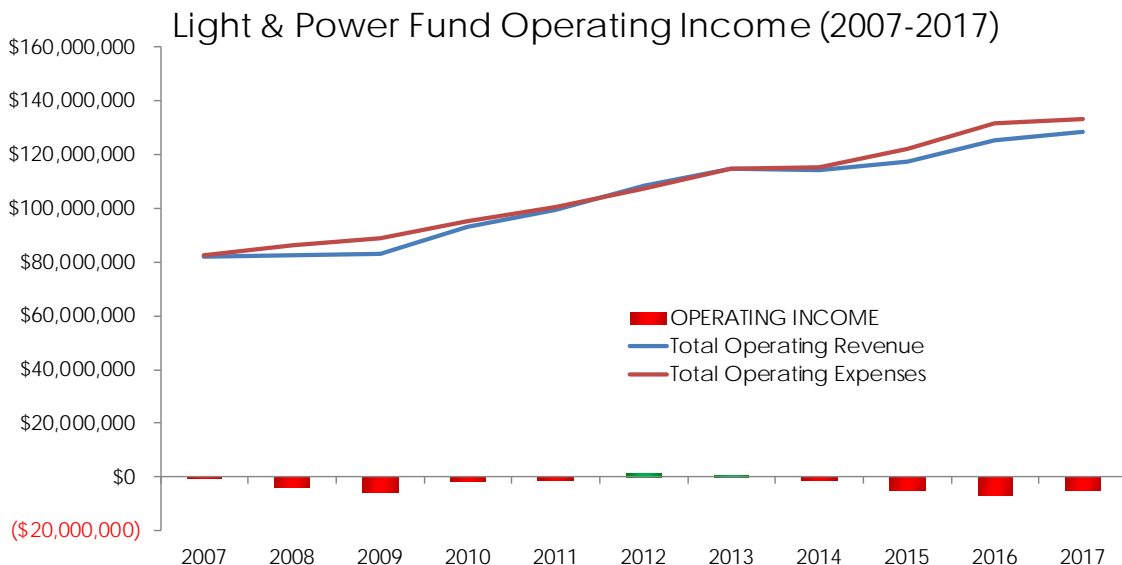
By limiting the annual increase to no more than 5.0% in any given utility, the average customer should not see an increase in their utility bill by more than 5% in one year. This constraint results in some smoothing of larger rate increases over 2 or more years. Moreover, because the total utility bill is considered, adjustments in one utility may be less than needed in order to smooth out the overall bill impact. In the 2017-18 Budget cycle, for example, water rates were adjusted up 5.0% in each year while wastewater rates were increased 3.0% each

year. Here the necessary electric rate increase is being smoothed out over the next 3 years. Also, because the water and wastewater rates are not being adjusted this budget cycle, it is being proposed to adjust stormwater rates in anticipation of significant debt issuances in the next decade.

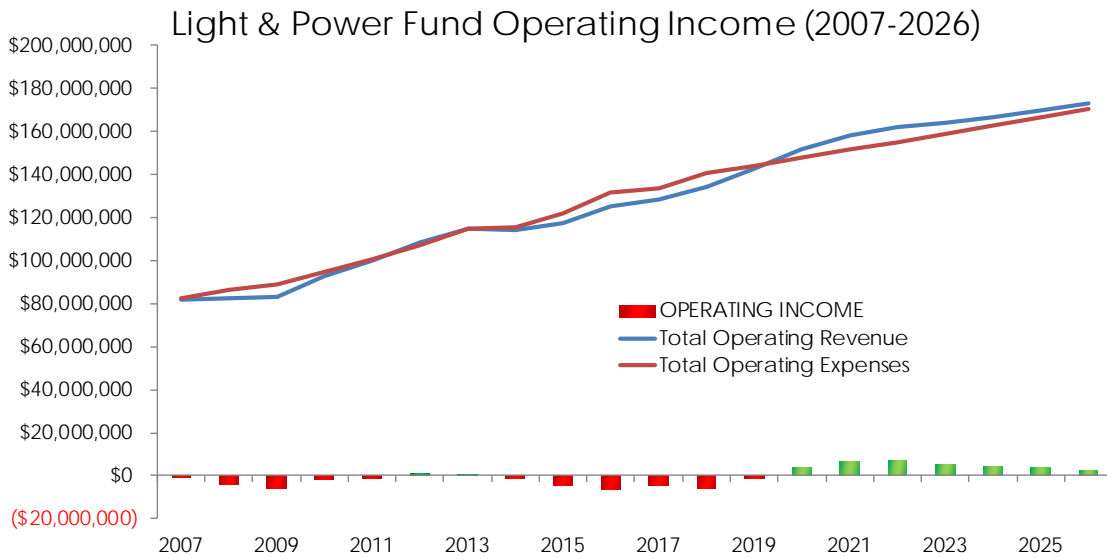
Electric Rate Increase

The ten-year rate forecast presented to this Committee last November included 5.0% rate increases in 2019 and 2020 followed by lesser increases in the subsequent years. That forecast served as the basis for the 2017 Strategic Financial Plan for the Light & Power Enterprise Fund and the subsequent revenue projections utilized in the development of the 2019-20 Budget cycle.

Looking at the operating income since 2007 shows that this Fund has utilized reserves to offset operating losses. While this was an intentional draw down of reserves based on previous City Council direction, over the last 3 Budgeting For Outcomes cycles (2013-2018) \$41.7M has been appropriated from Reserves. Some of these appropriations have been offset by unanticipated revenues due to strong development. The Reserve balance has decreased from a peak in 2014 of \$56.5M to \$31.6M at the end of 2017. In 2018, an additional \$8.3M has been appropriated from these Reserves for bond defeasance and capital investments. This is no longer sustainable, so it is necessary to increase operating income in the near term through these rate adjustments.



The 3.6% increases in 2019 and 2020 that generate additional revenue to remain within the distribution utility of the City will result in positive operating income being generated for this Enterprise.

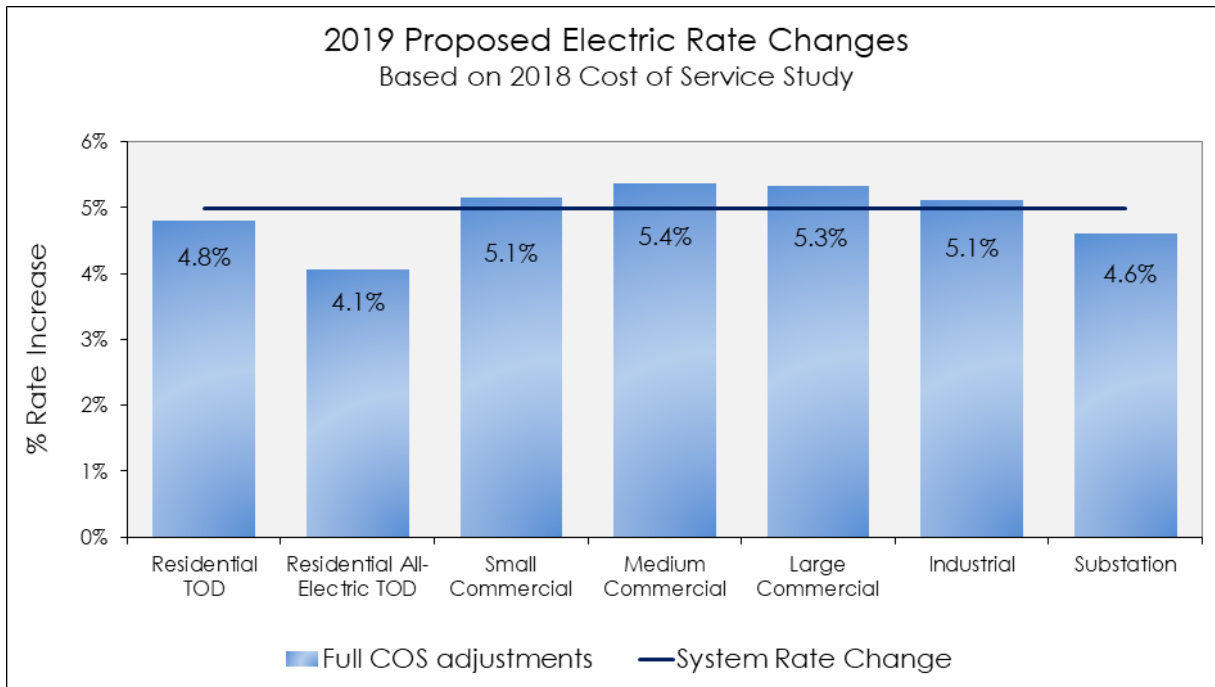


The table below summarizes the implementation of the rate strategy for the electric utility:

Criteria	2019	2020
1. PRPA wholesale energy costs	1.4%	1.4%
2. 3 yr ave. Operating Income < \$0	5.0%	3.0%
3. Debt Coverage Ratio < 2.0	-	-
4. Available Reserves less Capital Need < 0	-	-
Sum of Above	6.4%	4.4%
5. Lesser of 5.0% or the sum of above *	5.0%	5.0%

* Because of the limit in 2019 being met the 2020 increase is higher than it otherwise would have been.

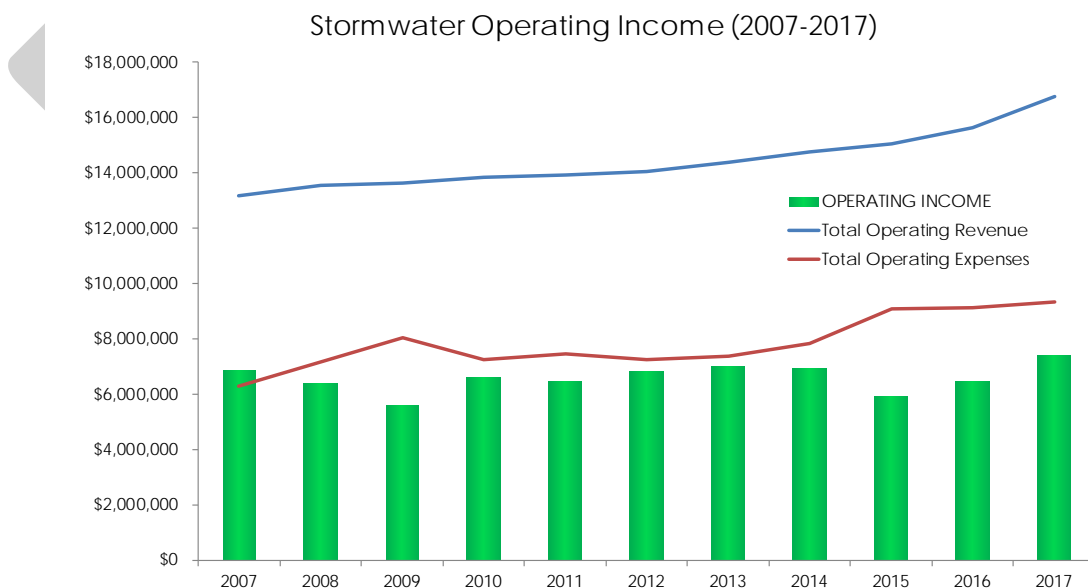
The electric cost-of-service (COS) model is updated every two years, with updates occurring over the summer of 2018. Only slight rate class adjustments are needed, with all classes within 1% or less of the average. The graph below shows the specific adjustments by rate class. These year-to-year adjustments are driven by various factors, with the main driver being changes in load factor calculations for individual rate classes, along with varying rate class customer growth and changes in average total consumption per customer.



Stormwater Rate Increase

The ten-year rate forecast presented to this Committee in February included rather modest rate increases in 2019 and 2020 followed by even smaller increases in the subsequent years. That forecast served as the basis for the revenue projections utilized in the development of the 2019-20 Budget cycle.

Looking at the operating income of this utility shows a healthy operating margin. This criterium is not expected to drive any rate increases over the next decade at least.



While staff has not completed prioritizing the latest iteration of the capital improvement plan for this utility, given the very significant amount of capital investment required to fully buildout the stormwater system throughout the whole community, there is expected to be a need to increase the debt capacity of this utility. A modest adjustment is being proposed here to help with smoothing any larger future increase that may be necessary as the capital improvements are prioritized.

Criteria	2019	2020
1. 3 yr ave. Operating Income < \$0	-	-
3. Debt Coverage Ratio < 2.0	-	-
4. Available Reserves less Capital Need < 0 *	2.0%	2.0%
Sum of Above	2.0%	2.0%
5. Lesser of 5.0% or the sum of above	2.0%	2.0%

* This is an estimate in lieu of the capital improvement plan being prioritized. It will be necessary to increase revenues to support the significant capital needs for this utility

The 2% stormwater increase for 2019 is intended to raise operating revenues modestly to increase the debt capacity of the Enterprise in anticipation of significant debt being needed to meet these future capital needs. Similar, modest adjustments of less than 3% may be necessary over the coming decade depending on the timing and scale of the necessary capital investments.

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Rate Increase	5%	0%	2.0%	2.0%	0-3%	0-3%	0-3%	0-3%	0-3%	0-3%	0-3%	0-3%
Debt Issuance			\$30-35M				\$25-30M				\$25-30M	

*\$272M of capital work is expected to be needed between 2019 and 2044.
\$70M of stream restoration work has also been identified here.

Discussion / Next Steps:

Smooth rate increases by limiting annual increases to no more than 5%

Ross Cuniff; We are still 1+ point behind with 5 and 5 increase over 2 years

Mike Beckstead; our costs with PRPA are going up 2% - to recover that cost we need to raise our rate by 1.4% because they are only 70 % of our operating expenses



Light & Power 10 Year Rate Forecast

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Rate Increase	3.45%	1.8%	5.0%	5.0%	2-3%	1-3%	1-3%	1-3%	1-3%	1-3%	1-3%	1-3%
Debt Issuance \$M	\$20.0											
\$165M of capital work is expected to be needed between 2017 and 2026 in addition to the current capital appropriations.												

ACTION ITEM: Darin Atteberry; you will need to provide some supplementary information on the 10-year rate forecast slide per comments in the LPT meeting this morning.

Mayor Troxell; Confirming that system upgrades part of this and that maintenance is on-going and that wasn't reflected when you showed the 2015 – infrastructure

Lance Smith; yes



Stormwater 10 Year Rate Forecast

	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
Rate Increase	5%	0%	2.0%	2.0%	0-3%	0-3%	0-3%	0-3%	0-3%	0-3%	0-3%	0-3%
Debt Issuance	\$30-35M			\$25-30M				\$25-30M				

*\$272M of capital work is expected to be needed between 2019 and **2044**.
\$70M of stream restoration work has also been identified here.

Stormwater Rate History - no rate adjustment since 2004 - there was a significant increase in the capital needs for Stormwater to build out the infrastructure. The CIP was increased to north of \$340M as we were looking to include stream restoration projects and update those costs. We are proposing a 2% increase to fund the capital investment to build out infrastructure

Average (median) residential customer uses 700 kilowatt hours per cycle - 4.8% increase for residential customers

ACTION ITEM: Ross Cunniff; would it be possible to run these numbers in quartiles or quintiles?

Mike Beckstead; to see the percent change to overall utility bills for different demographics / volume of usage on the overall utility bill.

Mayor Troxell; this includes energy and demand so how does that sort out with the rate increase?

Lance Smith: PRPA is proposing to increase energy and demand by 2% - we are proposing 4.8% increase to the fixed charge. We spoke to the Energy Board last week and they were supportive of the 5.63% rate increase as well as increasing it a bit more to fund some of the CIP initiatives. We are talking with the Water Board this week and with the Chamber on Friday.

Darin Atteberry; we are looking at variations of that CAP .63

We are looking at locally - if we were to take half of that and not do the 5% but do the 4.7% what would be the impact on deferred maintenance? We are looking to have that as early as by tomorrow night

Ross Cunniff; Budget format note; it is hard to find when in separate sections of the budget – include a Utility Net section might be helpful - Big line items – general which I assume was mostly staff / benefits. Is the delta there in utility operations?

Mike Beckstead; it should be

Ross Cunniff; Capital Improvement Plan -would be interesting to understand what we could defer longer to be able to cover that.

Mike Beckstead; we are looking at that

Lance Smith; I use the one-page summary which was in the packet. Fund Summaries- Electric and Stormwater –

Ross Cunniff; I am looking for a bit more regarding each of the offers unfunded / funded in priority order – I do support the 5% overall rate increase coming to Council. Question is how do we budget the revenues? To be determined

ACTION ITEM: Mike Beckstead; we will be sharing the list of what would be getting deferred to fit half of what was proposed for Climate Action and that will be included in tonight's or tomorrow's packet.

Lance Smith; no increases specific to CAP - there have been rate increases in 2010, 2011, 2013 and 2014 were to fund purchase of renewable energies - improve energy efficiencies in the community promoting distributed generation, solar, etc.

Mayor Troxell; Efficiency Works is a Platt River effort that is coordinated amongst the 4 cities working in those areas

Lance Smith; Platt River is taking 5% of their revenues and putting it into Efficiency Works. Platt River is adding about \$4M a year on top of our \$10M on renewables and promoting renewable energy.

Mayor Troxell; I am supportive with this direction

B. Infrastructure Financing

Blaine Dunn, Sr. Treasury Analyst

Jim Manire, Director, Hilltop Securities

SUBJECT FOR DISCUSSION

COPs Financing: I-25/Prospect Interchange & Police Training Facility

EXECUTIVE SUMMARY

City staff is seeking \$25.3M in financing through Certificates of Participation (COPs) for a January 2019 closing. These funds will be used for the City's portion of the I-25 Prospect interchange construction (\$17.1M) and the City's portion of the joint police training facility construction (\$8.17M).

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council Finance support proceeding to first reading on 12/4/18?

BACKGROUND/DISCUSSION

I-25/Prospect Interchange

The I-25/Prospect interchange is a joint project with CDOT. The total cost of the project is \$31M; \$24M for the interchange and \$7M for urban design. CDOT is paying \$12M (half the interchange cost) and the City, Timnath, and interchange property owners will fund the additional \$19M. Contributions from transportation capital expansion fees and rights of way totaling \$1.9M have already been made to the project. After these contributions the City will borrow the remaining \$17.1M.

Timnath and the interchange property owners will help support the \$19M local cost. Overall the City's portion of the cost after contributions from Timnath and property owners is anticipated to be \$8.25M. The City is borrowing the remaining amount needed of \$17.1M and will be paid back over time by Timnath and the property owners for their portion.

Police Training Facility Joint Venture

The Police Training Facility is a joint venture with the City of Fort Collins and the City of Loveland. The total cost of the facility will be \$18.5M. Both cities have agreed to split the constructions costs 50/50, making the City of Fort Collins' portion of the project \$9.25M. In the 2017/18 budget, Council appropriated \$1.08M for this project from General Fund Reserves. With this previous appropriation the City is seeking \$8.17M in financing for the remainder of our share of the construction costs.

Debt Structure

The City is seeking to borrow a total of \$25.6M, \$25.3M for the projects and \$300k in closing costs, with the COPs. The COPs will have a 20-year term and fixed interest rate. The City will make semiannual payments starting in June 2019 with the last payment occurring in December 2038. The average annual debt service is \$2,036,000.

Discussion / Next Steps;

Prospect I25 \$31M CDOT \$12M leaving City with \$19M

Estimated savings of \$7.5M by doing it at the same time as the I25 expansion

Darin Atteberry; these two items are in the recommended budget and both appear to have support to move forward but they are not final until Council approves the budget. We are doing the planning and finance work in advance so we can move forward should the Council decide to approve either project.

Mike Beckstead; The debt service is in the budget, but the capital cost is not

Mayor Troxell; I would like to put a marker in the ground about design and the cost for design. I was here during our last project at Harmony and I 25. We went to considerable efforts to design a sustainable and aesthetic interchange in partnership with Timnath. I would like to have the same considerate approach to design on this one.

Darin Atteberry; Bruce Hendee worked with PDT on a gateway master plan in the past - I assume that has been folded into this.

Mike Beckstead; the CDOT design is \$24M - we pay \$12M for the other half of the basic CDOT design plus we added \$7M to that for our design standards / specifications

ACTION ITEM: Darin Atteberry; It might be good to resurface that gateway document – they were renderings / concepts / drawings not standards. Chad Crager - can you help locate that?



Intersection Cost & Cost Share

- **Total Cost \$31M**
 - Includes \$7M for Urban Design
- **CDOT \$12M** - 50% of base design
- **City/Property Owners/Timnath \$19M**
 - FC = \$8.25M
 - Property Owners = \$8.25M
 - Timnath = \$2.5M
- **Current Estimate - Borrow \$17.1M**
 - \$19M less ROW & TCEF contribution

Partners Share Allocation (\$ in millions)				
	Total	FC	Property	Timnath
Overpass Cost	\$ 19.00	\$ 8.25	\$ 8.25	\$ 2.5
		43%	43%	13%
Less ROW Value			0.50	
TCEF		0.70	0.70	
Debt Obligation \$	17.1	\$7.55	\$ 7.05	\$ 2.5
% Share		44%	41%	15%
Borrow-Principle	\$ 17,100,000			
Term	20			
Interest*	3.67%			
Payment Share*	\$1,236,066	\$543,869	\$ 506,787	\$185,410

*Market rates as of 10/10/18; subject to change

Proposed Cost Share Timnath 13%, Property Owners 43%, COFC 43%

Mike Beckstead; Police Training Facility \$18.5M is the committed cost- that is the fixed number the team is working through - designed with a fixed amount in mind and delivering the scope and functionality that was

committed to by Council in March of 2017. They haven't reviewed this yet - this is going to Loveland Council tomorrow night - they wanted to hear what our Council Finance Committee thought about our proposal.

3 Debt Issuance Options

- 1) Negotiated Sale - this is what was used for Broadband bonds earlier this year - ideal for larger and more complex issuances
- 2) Private Placement - going directly to a bank and getting a rate and term - the advantage is that we can do this more expediently. We used this option with the refinancing of the Police Building in 2012 and we got a great rate with the help of Jim Manire.
- 3) Competitive Bid - was the method we selected for this debt issuance. Being able to leverage our AAA credit rating and good collateral for competitive bids.

Mike Beckstead; there is a software tool that Jim Manire and his team use which was also helpful for the parking garage behind the Elizabeth Hotel. For that project we watched the bids come in- real time - we had 12 or 13 bidders on that project - same methodology we plan we propose to use – the low but qualified bid is the one that gets selected

Blaine Dunn; COP collateral - we are proposing to use the 215 Mason Building and the Civic Center Parking Garage for this debt issuance. Both came of their current lease in June of 2018. These properties have minimal deed restrictions and criticality of service so cleaner to take to the market.

Mayor Troxell; the Civic Center Parking Garage - Police D1 pays rent to someone.

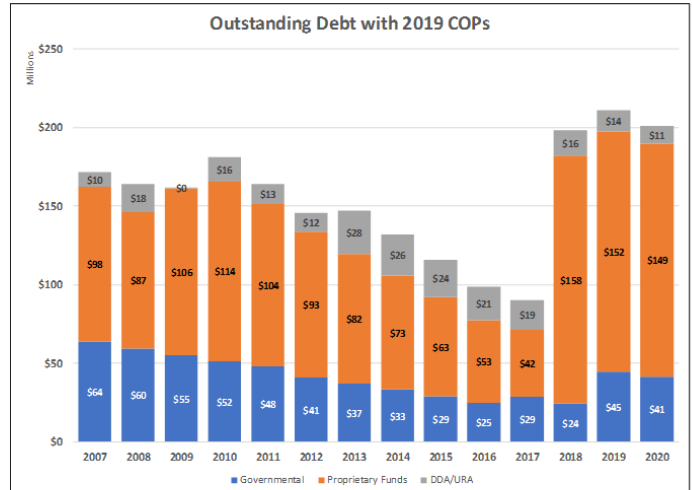
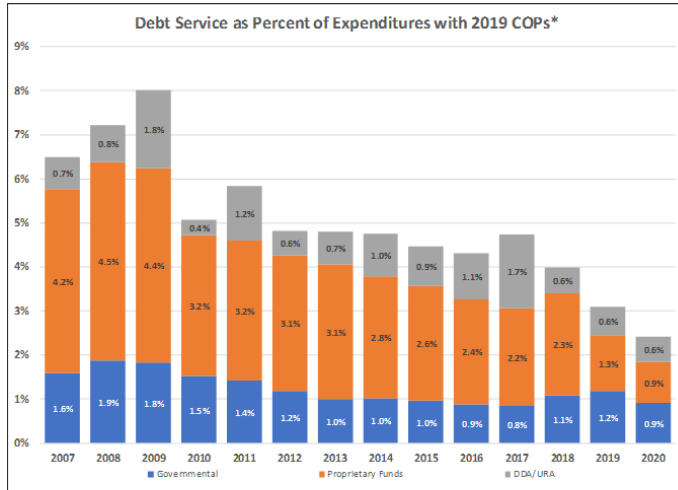
Darin Atteberry; lease payments are made to developer, JD Padilla. The 1st floor rental space (retail facing Mason Street) is considered separate and would be excluded from the collateral. Appraisal is for parking garage structure only.



- **20 Year Term**
- **Fixed interest rate**
- **Semiannual payments starting in June 2019**
- **Last payment December 2038**
- **Borrowing**
 - **Issue Costs*** \$.3M
 - **Project Amounts** **25.3M**
 - **Total** **\$ 25.6M**

*estimate subject to change

Outstanding Debt



*Debt service excludes capitalized interest for Broadband

ACTION ITEM: Darin Atteberry; trend line on the Debt Service as a Percent of Expenditure chart on left (above) - trending up in 2007, 2008 and 2009 - what was driving that? It would be helpful if we could add some foot notes describing the drivers for the changes. That is a normal cycle as these mature -reinvesting - if we are sharing this as we move forward with Council or the public - let's add that - we issue debt / pay it off / issue more debt / pay it off. Also, with our Capital Campaigns are billed as we go - they are not debt - important note to add - we are not issuing debt - this is a good practice to continue to respect and acknowledge.

Ross Cuniff; when we put General Fund reserves into addressing budget overruns - they end up impacting our debt service - we could be putting those reserves into these projects that are debt financed - make sure we understand that.

Mike Beckstead; Moody reaffirmed our AAA rating in the last 6-8 weeks - one of the things noted are both a healthy economy and our low debt service as a city - setting aside the enterprise funds - the trend we are on - pay as we go

Jim Manire; Moody's makes regular surveillance updates and checks on excellence ratings as part of their cycle - based on the general credit health of the City of Fort Collins - the COPs we expect to be at AA1

Mike Beckstead; we do not anticipate this new borrowing to have any impact on the Moody's rating
Total amount we are borrowing \$25.3M made up of \$17.1M for the Interchange and \$8.2 M for the Police Training Facility. First payment to CDOT will be due April 2019 - (broken into 3 payments of \$6.3M each; 1/3, 1/3, / 1/3)

Ross Cuniff; stock and bond markets are in flux - what is our contingency plan if bond rates change significantly?

Mike Beckstead; we don't have a contingency plan - we have a budgeted amount and we assume debt would be at 5% - it is unlikely the rates will move greater than the 1.2 %

Ken Summers; 5% is conservative - that gives you enough cushion to know it will not be greater than this -

ACTION ITEM; Ross Cunniff; we budgeted deb service at 5% in the budget - we would save \$200K per year if it comes in at 3.8% - that would be good to highlight to Council.

Darin Atteberry; if it comes in under 5% it would free up some on-going revenue.

Mike Beckstead; we structured 1/3 from one time for 2019 and then 2/3 in 2020 from ongoing if rates stayed flat and came in at 3.8% - that could be a contingency

Mayor Troxell; there are a number of things in this crossover space that won't be determined by 2nd Reading

Blaine Dunn; we will know this by the 2nd week of January

Other Business:

State Amendment 73 Revenue Impact

Mike Beckstead briefed Council Finance on the possible impacts of Amendment 73 if it passes on November 6th. Travis and I met with Steve Miller (County Assessor) last week to discuss de-Gallagherization - really a mill levy override. Could we (the city) do it? That is a conversation that is both legal and political. Not advocating that we take a position for or against - just sharing facts.

If Amendment 73 is passed - it will have an erosional impact to our property tax revenue - it will freeze 50% of the residential assessments for the school district which will cause the assessed rate for non-school district residential assessments to go down even lower to keep the overall 45/55 Gallagher intact. Fire districts would be impacted as assessed values (and thus property tax revenues) could potentially decrease despite actual increases in property values.

Meeting adjourned at 11:06 am

COUNCIL FINANCE COMMITTEE AGENDA ITEM SUMMARY

Staff: Jason Licon, Airport Director

Date: November 19, 2018

SUBJECT FOR DISCUSSION

Consideration of a land lease agreement between the Cities of Fort Collins, Loveland, and Discovery Air LLC

EXECUTIVE SUMMARY

Staff from the Airport and the Cities have negotiated a fifty-year lease with Discovery Air, LLC for the development of vacant Airport property. The proposed development will include corporate aircraft hangar facilities and associated office space, supporting infrastructure, which could also include a new fixed-base operation and a restaurant. The Lease is contingent on Lessee obtaining certain approvals for proposed development and financing, and provides the parties with opportunities to terminate the Lease if the proposed development is not feasible. It is due to the complexity and unique provisions of the Lease, the Commission is not authorized to approve and sign the Lease; rather, the two Cities must each approve the Lease in accordance with their respective Municipal Codes and Charters. The Northern Colorado Regional Airport Commission has reviewed and recommended the lease agreement for approval by the City Councils during their October 18, 2018 meeting with a vote of 7-0 in favor.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Staff requests feedback on the proposal as presented. Staff have programmed this item to be considered at the December 4, 2018 Fort Collins City Council Meeting. This item will also be considered for approval by the City of Loveland's City Council on November 20, 2018.

BACKGROUND/DISCUSSION

History

In 1964, the Cities of Fort Collins and Loveland requested that the federal government (FAA) purchase land and build a public airport, in exchange the Cities agreed to sponsor the operation and maintenance of the facilities. The Northern Colorado Regional Airport (FNL) is currently one of twelve commercially certified airports in the state of Colorado, supporting 100,000 aircraft take-off and landing operations annually, has 260 based aircraft, and serves as the test site for the innovative Remote Air Traffic Control Tower Project. The 2013 economic impact study conducted by the Colorado Department of Transportation Division of Aeronautics estimates that FNL contributes approximately \$129 million in output annually to the regional economy and supports 826 area jobs.

Current Policy

The Northern Colorado Regional Airport is a jointly owned and operated public facility shared by the Cities of Fort Collins and Loveland. In 2015 the Cities entered into an intergovernmental agreement (IGA) that formed the Northern Colorado Regional Airport Commission, which has delegated certain powers and authority to operate and maintain the Airport. The IGA provides the Airport Commission authority to enter into Airport property lease agreements on behalf of the Cities if such agreements are in a form that is generally approved by the City Manager and City Attorneys from each City. This lease agreement as negotiated is not in the standard form, therefore requiring approval by each City Council.

The Airport/Cities grant long-term land leases to private sector investors or builders who construct aviation support facilities. This is a standard process for publically owned airports and is in accordance with FAA regulations and grant assurances. The Airport's current standard lease term for land for the construction of aircraft hangars is forty years, consisting of an initial twenty-five year lease with three five-year extension options. At the end of the standard lease term, the lessee has the ability to renegotiate the lease agreement, or the improvements revert to the ownership of the Cities. The standard lease agreements also typically require some level of preliminary investment by the Cities for infrastructure to support private sector driven Airport construction. Pre-development costs include the construction or extensions of access roads, utilities, and aircraft taxiways. They have historically been funded using local municipal bonding resources or through federal and state grant funding, combined with local match dollars.

This proposal is considered a public-private partnership, which will be a catalyst for high quality development and tenants, and will provide the financial resources to enhance the Airport's future financial sustainability. The lease is additionally in line with the adopted Northern Colorado Regional Airport Commission strategic plan that identifies objectives including:

1. Actively encourage private and public investments at the Airport to ensure a strong economic platform for both on-airport development and complimentary and compatible land use within the surrounding Airport influence area.
2. A commitment to achieve and maintain a self-sustaining budget to operate a safe and efficient facility, manage assets, and support industry and economic development.

Proposal

The proposed lease agreement negotiated with Discovery Air LLC does not qualify as a standard lease that the Airport Commission can approve. This is due to the key differences with the standard lease format including the extended term of fifty years, the reduced rate to compensate for the developer's investment in infrastructure and the scale of the lease area compared to traditional single hangar building developments, and the potential for the formation of a metro district. The developer will be assuming all risk and upfront investment for this project, therefore staff is recommending a lower lease rate and extended lease term than what is standard. The following are details on the lease terms and rates:

- Lease area: 564,096 square feet
- Term: Initial two-year option period that will transition into a fifty (50) year lease
- Annual rate:

- Two year option: \$0.05 per square foot
 - Years 3-10 after option period: \$0.15 per square foot
 - Years 11-50 = \$0.25 per square foot plus inflation adjustments
- Value of the lease = \$4.9 million at 2.5% estimated inflation
 - Rates do not change based on project phasing or construction schedule
- Developer will relocate CO Fire Prevention & Control Air Tanker Base

Project Benefits

- No upfront cost to the Cities
- The lease conforms with FAA regulatory standards and grant assurances
- Fuel flowage from larger aircraft, for which this development is designed, could have an additional positive impact to the Airport's self-generated income and future financial sustainability
- The area could take 25 years to build out at the current Airport construction rate
- Potential to be a catalyst to attract additional development & businesses
- The project will enhance the Airport's economic impact & job creation
- Centennial Airport and other successful airports use similar models for large scale aeronautical land leasing
- Rates are comparable to current larger scale land leases
- Performance measures are included in the Lease agreement
 - Must have site development planning and associated approvals completed prior to the end of the option/entitlement period of 24 months
 - Requires horizontal infrastructure started within three years
 - Requires vertical infrastructure started within five years

ATTACHMENTS

1. Land Lease Agreement with Discovery Air LLC
2. Presentation

NORTHERN COLORADO REGIONAL AIRPORT GROUND LEASE AGREEMENT

CITIES OF LOVELAND AND FORT COLLINS, COLORADO,

AND

DISCOVERY AIR, LLC, A COLORADO LIMITED LIABILITY COMPANY

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LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT, made and entered into this _____ day of _____, 2018 (the “**Effective Date**”), is by and between the Cities of Fort Collins and Loveland, Colorado (the “**Cities**”) and Discovery Air, LLC, a Colorado limited liability company, hereinafter called “**Lessee**.”

WITNESSETH:

WHEREAS, the Cities own and operate an airport known as the Northern Colorado Regional Airport located in Larimer County, Colorado, including the real property upon which the same is located, (hereinafter, the “**Airport**”) pursuant to an Amended and Restated Intergovernmental Agreement for the Joint Operation of the Airport on January 22, 2015 (the “**IGA**”), whereby the Cities formed a commission known as the Northern Colorado Regional Airport Commission and delegated certain duties and responsibilities to such commission (the “**Commission**”). The IGA was amended on June 7, 2016; and

WHEREAS, the Cities and Lessee are mutually desirous of entering into this Lease Agreement (“**Agreement**”) for the use and occupancy of certain areas at the Airport for aeronautical activities; and

WHEREAS, the Cities desire to accommodate, promote and enhance general aviation at the Airport and Lessee desires to be assured of the Airport’s continued availability as a base for aircraft; and

WHEREAS, the Cities and Lessee have reached an understanding in principle, which envisions Lessee’s construction of a fixed-based operation (“**FBO**”) facility, hangar and office buildings, a restaurant, an overhead transportation system (commonly referred to as a gondola), an expanded tarmac, parking facilities, and various infrastructure related thereto, including such pavement and ramp areas as required by the Airport Minimum Standards for the Provision of Commercial Aeronautical Activities at the Airport, dated September 26, 2008, (the “**Minimum Standards**”), as they may be amended from time to time by the Cities (collectively, “**Improvements**”), the general layout of which is intended to be located within the preliminary site plan which is attached hereto as **Exhibit “B”**, which by this reference is made a part hereof; and

WHEREAS, the Lessee understands and acknowledges that Lessee’s planned Improvements are subject to approval by the City of Loveland through its development review process and to applicable provisions of the Loveland Municipal Code.

NOW, THEREFORE, in consideration of the premises and of the rents, covenants and conditions herein contained, the Cities do hereby lease to Lessee the area(s) of the Airport described in Article 2 hereof (the “**Leased Premises**”) on the terms and conditions hereinafter set forth.

ARTICLE 1: TERM; NEW LEASE; CONTINGENCIES

1.1 The term of this Agreement shall commence at 12:01 a.m. on the Effective Date and expire at 11:59 p.m. on the last day of the calendar month in which occurs the day immediately preceding the fiftieth (50th) anniversary of the Effective Date (hereinafter the “**Term**”), unless sooner terminated in accordance with the provisions hereof.

1.2 If Lessee desires to continue occupying the Leased Premises after the expiration of the Term, Lessee may request that the Cities grant a new lease agreement of no more than fifty (50) years. Such a request shall be made by Lessee in writing and delivered to the Cities not more than eighteen (18) months nor less than six (6) months prior to the expiration of the Term. In consideration of Lessee’s substantial capital investment in the Improvements and value created in the form of long-term lease arrangements for same, the Cities agree to negotiate in good faith with Lessee a new lease for the Leased Premises on the terms set forth in this Section

1.2 upon the expiration of the Term. If: (i) Lessee is not then in default under any provision of this Agreement beyond any and all applicable notice and cure periods; (ii) the Cities determine that the Improvements still have sufficient value to the Cities; and (iii) such a new lease would be consistent with the Airport's master plan then in effect and any and all federal rules, regulations, directives, guidelines or other obligations with respect to the Airport, including but not limited to the "grant assurances" to the FAA, then the Cities may, in their sole discretion, offer Lessee a new lease of no more than fifty (50) years of the Leased Premises under such terms and conditions, including rental rates and on the then-current lease form being offered by the Cities.

1.3 This Agreement is specifically conditioned upon Lessee having obtained from the applicable government authorities any and all building permits, special use or conditional use permits, licenses and approvals (collectively, the "**Permits**") required for the construction of the Improvements as contemplated herein, as well as any required off-site improvements related thereto. Lessee covenants that it shall use commercially reasonable efforts and due diligence to obtain the Permits and deliver copies of the same to the Cities on or before the date which shall be twenty four (24) months after the Effective Date (the "**Permit Review Date**"). Any and all fees, charges or expenses incurred by the Cities in so cooperating shall be borne by Lessee and shall be reimbursed to the Cities within thirty (30) days of receipt of an invoice for the same. This Agreement is also specifically conditioned upon Lessee having obtained the Cities' as applicable, approval (not to be unreasonably withheld, conditioned or delayed) of site plans, conceptual drawings, and preliminary and final plans and specifications for the Improvements (collectively, "**Plans and Specifications**"). In preparing the Plans and Specifications, Lessee shall ensure that all proposed Improvements to be constructed in City of Loveland will be in full compliance with the then current Development Policy and Application Procedures for Development at Northern Colorado Regional Airport, if any ("**Development Procedures**"). In addition, Lessee shall also ensure that all Plans and Specifications submitted for approval comply with the Airport's design standards, if any, as well as all applicable building, use and zoning regulations. If Lessee is unable, in its business judgment, to assure itself of the availability of the Permits or the Cities' approval of the Plans and Specifications on or before the Permit Review Date, then Lessee shall have the option to terminate this Agreement by written notice delivered to the Cities within thirty (30) days following the Permit Review Date, and if within such time period Lessee shall not have obtained the Permits or the Cities' approval of the Plans and Specifications, then this Agreement shall terminate as of the end of such thirty (30) day period and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. The failure to deliver the termination notice in a timely manner shall render this termination clause inoperative and void. If Lessee has not delivered copies of the Permits to the Cities by the Permit Review Date, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to deliver the Permits to the Cities by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31st) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.

1.4 In addition, Lessee shall have twenty four (24) months after the Effective Date (the "**Inspection and Entitlement Period**") (i) to obtain, at its sole cost and expense, any and all platting, master planned, subdivision, PUD, land use or other approvals, including approval of a site development plan ("**Entitlements**") which are required to enable Lessee to operate and develop the Leased Premises in accordance with the preliminary site plan depicted in Exhibit "B;" (ii) to form or modify a special/metropolitan district to recover costs associated with developing various utilities and infrastructure, as well as costs incurred in making various improvements to Rocky Mountain Avenue or elsewhere serving the Leased Premises, which district service area Lessee agrees shall not encumber the real property owned by the Cities but only the improvements thereon unless Lessee obtains the express written consent of the Cities; (iii) to inspect, test, examine, survey or conduct any studies of the Leased Premises as Lessee may deem necessary; (iv) to ascertain the availability of utilities and other services and to finalize any development agreements related thereto; and (v) to otherwise investigate the desirability and feasibility of the Leased Premises for Lessee's use. Lessee acknowledges that the Cities may enter into an intergovernmental agreement requiring the approval of both Cities, as co-owners of the Airport, in connection with any service plan or amendment to service plan for Lessee's proposed metropolitan district presented to the City of Loveland for approval. Lessee further agrees

to provide the Commission with Lessee's final site development plan for review prior to Lessee's submittal of such final site development plan to Loveland in order for the Commission to provide input to Loveland regarding the plan. Lessee shall be entitled to terminate this Agreement upon notice in writing to the Cities at any time prior to the end of the Inspection and Entitlement Period if (i) Lessee is unable, in its business judgment, to assure itself that it will be able to obtain the necessary Entitlements, form or modify the special/metropolitan district, or finalize any development agreements related to utilities and other necessary infrastructure or (ii) Lessee otherwise determines, in its business judgment, that the condition of the Leased Premises is unsatisfactory for Lessee's intended use, or that any necessary utilities, services, or approvals are unavailable. If Lessee so terminates this Agreement, all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement. If Lessee does not notify the Cities prior to the end of the Inspection and Entitlement Period of Lessee's election to terminate this Agreement for any of the foregoing reasons, then this termination clause shall be inoperative and void, and this Agreement shall remain in full force and effect. If Lessee has not obtained approval of a site development plan for Lessee's development of the Leased Premises in substantially similar form to the plan depicted on Exhibit B, the Cities may terminate this Agreement by providing Lessee notice of intent to terminate this Agreement within thirty (30) days. If Lessee fails to obtain approval of such site development plan by the end of the thirty (30) days, this Agreement shall automatically terminate as of the thirty-first (31st) day and all further obligations of the parties hereunder shall end and be of no further force or effect except for obligations which expressly survive the termination of this Agreement.

1.5 In the event Lessee has not commenced construction of any horizontal improvements to the Leased Premises for example, grading work or installation of utilities, within three (3) years after the Effective Date of this Agreement, subject to extension mutually agreed upon in writing by the parties, this Lease shall automatically and immediately terminate. In addition, in the event Lessee has not commenced construction of any of the vertical improvements for the hangar and office buildings and/or FBO facility, it being expressly understood and agreed that Lessee will be developing the Leased Premises in phases, on or before five (5) years after the Effective Date of this Agreement, subject to extension mutually agreed upon by the parties, this Agreement shall automatically and immediately terminate. Nothing contained herein shall prohibit or operate to prohibit Lessee from applying for or seeking reimbursement for any of the Improvements from any local government, state or federal entity.

ARTICLE 2: LEASED PREMISES

2.1 The Leased Premises consist of the parcel of land described in **Exhibit "A"**, which is attached hereto and by this reference made a part hereof. The Parties acknowledge that the exact legal description is subject to adjustment and will be more accurately described with the development of the site development plan for the Leased Premises.

2.2 The Parties further acknowledge that a public use taxiway exists on the west portion of the Leased Premises that connects current extended taxiway Delta with current taxiway Alpha (hereinafter the "Existing Tarmac"). The Existing Tarmac is identified on Exhibit B, attached hereto. Use, access, maintenance and repair of such Existing Tarmac shall be subject to the terms and conditions set forth in this Agreement. Without limiting the foregoing, the Cities acknowledge that the Improvements, except for the Existing Tarmac and Additional Taxway as described in Section 5.9.2 below, to be constructed upon the Leased Premises shall, during the term of this Agreement, be and remain the property of Lessee or any successor in interest.

2.3 Lessee acknowledges that a portion of the Leased Premises may be subject to an existing intergovernmental lease agreement between the Cities and the State of Colorado, Department of Public Safety, Division of Fire Prevention and Control (the "Division") for its SEAT base. To the extent that the leased premises for the SEAT base overlaps with the Leased Premises of this Lease, it shall be Lessee's obligation to obtain the agreement of the Division to relocate its SEAT base to another location on the Airport property, which relocation shall be accomplished at Lessee's sole cost and expense. The Cities agree to cooperate in executing a lease amendment or new lease with the Division as necessary to accomplish the relocation.

2.4 The Cities hereby represent and warrant that they have full right and authority to enter into this Lease and that no other interest exists in the Lease Premises that would materially adversely affect Lessee's use and enjoyment of the Leased Premises as contemplated herein and that if during the **Inspection and Entitlement Period** any condition is found to exist that in Lessee's sole reasonable discretion materially adversely may affect Lessee's use and enjoyment of the Leased Premises, Lessor shall remove, remediate or otherwise mitigate such condition to Lessee's reasonable satisfaction at Lessor's sole cost and expense.

ARTICLE 3: USE OF LEASED PREMISES

3.1 Lessee agrees for itself and its sublessees that it is permitted only to use the Leased Premises for aeronautical activities. The term "Aeronautical Activities" shall mean any activity or service that involves, makes possible, facilitates, is related to, assists in, or is required for the operation of aircraft, or which contributes to or is required for the safety of aircraft operations. Lessee and its sublessees may use, occupy and sublease the Leased Premises for the following aeronautical purposes and for no other purpose whatsoever unless approved in writing by the Cities:

3.1.1 For the construction, installation, maintenance, and operation of the Improvements including an FBO facility, a restaurant, an overhead transportation system, expanded tarmac area, parking facilities, office and retail space, and hangar space be used for the parking, storage, servicing, repair, maintenance, modification, and construction of aircraft. Lessee further agrees that the parking facilities shall not exceed the number of parking spaces ultimately approved in the site plan to be dedicated to customers of the FBO facility, restaurant, office and retail space. Operation of the FBO facility and the provision of FBO Services (as hereinafter defined) are referred to herein as the "**FBO Operation**". Lessee shall conduct the FBO Operation (or cause same to be conducted) in compliance with the Minimum Standards. In addition to compliance with the Minimum Standards, all uses on the Leased Premises shall also comply with the City of Loveland, Colorado, building, use and zoning codes, regulations and requirements applicable to the Leased Premises. The Leased Premises shall not be used for residential purposes.

3.1.2 "**FBO Services**" as used herein shall mean all essential and specialized aircraft services necessary to ensure that the basic needs of aircraft owners, pilots, and passengers are provided for at the Airport at a minimum level or above, as more fully set forth in the Minimum Standards. Should Lessee desire the FBO to provide aircraft fueling services, the parties shall execute an amendment to this Lease to include the appropriate terms and conditions for such fueling operations in compliance with the Minimum Standards. Such amendment shall require approval by the City Managers for the Cities to the extent permitted by the Cities' charters and Municipal Codes or by the City Managers' duly authorized designees.

3.1.3 Nothing contained in this Agreement shall be construed as granting an exclusive license, permit, franchise or other right to provide FBO Services or any other services. Lessee understands and agrees that the Cities may lease other property at the Airport to other tenants who provide or will cause to be provided the same or similar services.

3.1.4 The Cities make no representations, guarantees, or warranties that the Leased Premises may be lawfully used for the purposes set forth in this Section 3.1. Lessee shall have the sole responsibility of obtaining all applicable permits or other governmental approvals necessary to construct and use the Leased Premises as intended herein, including all permits and/or approvals required by the City of Loveland.

ARTICLE 4: RENT

4.1 Commencing on the Effective Date and continuing until the Rent Commencement Date (hereinafter defined), Lessee shall pay to the Cities an annual rent of \$0.05 per square foot for the Rental Area (as hereinafter defined), for a total of \$28,204.80 per year.

4.2 Commencing on the earlier of (i) twenty four months (24) months after the Effective Date and (ii) the date that the first certificate of occupancy (or its equivalent) is issued for any of the Improvements (the “**Rent Commencement Date**”), Lessee agrees to pay to the Cities for the first ten (10) years following the Rent Commencement Date during the Term an annual rent of \$0.15 per square foot for the Rental Area (as hereinafter defined), for a total of \$84,614.40 per year. Commencing on the eleventh (11th) year of the Term, Lessee shall pay to the Cities an annual rent of \$0.25 per square foot for the Rental Area, for a total of \$141,024.00, which rental shall thereafter during the Term be subject to adjustment pursuant to Section 4.3. “**Rental Area**” as used herein shall mean area comprising a portion but not all of the Leased Premises upon which the parties hereto have agreed to calculate the annual rental for the Leased Premises, which Rental Area contains 564,096 square feet **as depicted in Exhibit “A”** which is attached hereto and by this reference made a part hereof. The Rental Area includes paved areas which Lessee shall construct to comply with the Minimum Standards.

4.3 Commencing on the first day of the month following the eleventh (11th) anniversary of the Rent Commencement Date, and each year thereafter during the remainder of the Term, the annual rent shall be adjusted by multiplying the annual rent payable in the next preceding year by a fraction, the numerator of which shall be the C.P.I., as hereinafter defined, published for the previous month of December and the denominator of which shall be the C.P.I. published for the month of December which preceded the month used as the numerator. In no event shall the annual rent be reduced from that payable in a previous year.

4.3.1 The term “**C.P.I.**” as used herein shall mean the Consumer Price Index for all Urban Consumers (CPI_U), All Items, for Denver-Boulder-Greeley, CO as published by the Bureau of Labor Statistics of the United States Department of Labor, 1982-84 base = 100. In the event the base year is changed, the C.P.I. shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of Labor Statistics ceases to publish the C.P.I., or this index, an equivalent or comparable economic index will be used.

4.4 The annual rent payable hereunder may be paid in advance in annual installments, or shall be paid in equal monthly installments on the first day of each month in advance at the office of the Airport Manager or at such other office as may be directed in writing by the Cities. Payments due to the Cities under this Agreement shall be made in legal tender of the United States and paid without offset. In addition to any other remedies provided in this Agreement, in the event that any rental, fee or charge set forth in this Agreement is not paid to the Cities within ten (10) days of the date due, Lessee agrees to pay a late charge of \$50.00 for each such late payment, and default interest shall accrue on such payment from the date the payment was due, at a rate of twelve percent (12%) per annum.

With respect to the hangars Lessee proposes to construct as part of the Improvements depicted on Exhibit B, Lessee agrees that the the hangars shall, collectively, be at least a total square footage reasonably consistent with Exhibit B to be finally determined during the **Inspection and Entitlement Period** as part of site plan development approval process and shall have a concrete or asphalt floor, with each Hangar to have at least one aircraft access door sized to accommodate an average private aircraft. Lessee shall use commercially reasonable and diligent efforts to complete construction of the Hangars within 3 years from the completion of horizontal infrastructure needed to serve the same..

4.5 Lessee, as additional rent, shall construct and maintain a paved aircraft ramp area on the Leased Premises (the “**Ramp**”). The Ramp must be designed and built to size and specifications in compliance with the Minimum Standards, and for a minimum weight bearing capacity, established by the Cities, built to the full width of the Leased Premises, and to connect with adjacent taxiway, ramp and/or auto parking areas, in order

that a continuous and safe pavement section results. If access to the Leased Premises is not available on existing taxiways and/or roadways, then Lessee may also be requested to construct the same during the **Inspection and Entitlement Period** as part of site plan development approval process. It is the responsibility of Lessee to maintain the entire Ramp area, and all other pavement areas on the Leased Premises, in a manner, which is safe and clean of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. Notwithstanding the foregoing, the Cities shall be responsible for snow removal on the aircraft Ramp area excluding any parking and side lots and excluding any area within three feet (3') of any Hangar; provided, however, that priority of snow removal shall be in accordance with the Cities' Snow Removal Plan as it now exists or as it may be amended in the Cities' sole discretion. Lessee grants to users of the Airport the right to use aircraft Ramp areas on the Leased Premises for passage of aircraft at all times on and near the adjacent taxiway. The construction time and default provisions of subsection 4.4 shall be applicable to the Ramp described in this subsection.

4.6 The Cities understand that Lessee intends to sublease portions of the Leased Premises and/or the Improvements located thereon and, in such instances, the Cities may agree to accept payments of any rents or fees required hereunder directly from such sublessees; provided, however, that the obligations of such a sublessee to make any payment required hereunder directly to the Cities shall not relieve Lessee of its liability or obligations for such payment.

4.7 Fees due under the Minimum Standards or to obtain any permit or license required by the Minimum Standards for commercial activities conducted in whole or part on the Leased Premises shall be paid by Lessee to the Cities as additional rent under this Agreement.

ARTICLE 5: ACCEPTANCE, CONSTRUCTION, CARE, MAINTENANCE, AND REPAIR

5.1 Subject to the provisions of Sections 1.3 and 1.4 hereof, Lessee accepts possession of the Leased Premises "as is" in its present condition, and, subject to all limitations imposed upon the use thereof by the rules and regulations of the Federal Aviation Administration ("FAA"), the Airport Rules and Regulations (as hereinafter defined), and by ordinances of the Cities. The Cities represent to Lessee that, to their knowledge, the Leased Premises are free of any adverse environmental conditions and no part of the Leased Premises lies in a flood hazard area or constitutes a fresh water wetland, nor is any part of the Leased Premises within one hundred feet (100') feet of a fresh water wetland. Except as may otherwise be provided for herein, the Cities shall not be required to maintain nor to make any improvements, repairs or restoration upon or to the Leased Premises or to any of the improvements presently located thereon or placed thereon by Lessee.

5.2 Lessee may construct the Improvements on the Leased Premises for the uses specified in Article 3 hereof and shall not be required to obtain any approvals from the Cities in connection therewith so long as the construction of the Improvements is substantially consistent with the previously approved Plans and Specifications. Prior to the commencement of any construction of the Improvements, Lessee shall have the Leased Premises staked by a certified surveying company to ensure all Improvements are placed accurately on the Leased Premises. Within ninety (90) days of any certificate of occupancy being received, Lessee shall submit to the Airport Manager a full set of as-built record drawings of the completed Improvements, which among other things, depicts exact locations of the completed Improvements, including utilities, made on and/or off of the Leased Premises.

5.3 All improvements, alterations, additions, removal and relocation of structures and construction projects constructed on the Leased Premises shall in all respects be accomplished in a good and workmanlike manner; in accordance with previously approved Plans and Specifications and the applicable building code; pursuant to a valid building permit, when applicable, issued by the applicable authority; according to the terms and conditions of such building permit; and in a manner consistent with state and federal requirements.

5.4 Lessee shall include in all construction contracts entered into by it in connection with any construction of the Improvements, a provision requiring the contractor to indemnify, release, and save harmless

the Cities, their commissioners, officers, representatives, agents and employees from any and all loss of or damage to property, or injuries to, or death of, any person or persons and from any and all damages, suits, causes of action, and judgments, including workman's compensation claims, in any way resulting from, or arising out of, directly or indirectly, such contractor's operations in connection herewith, and the contractor's use or occupancy of the Leased Premises, and of any portion of the Airport, and including acts and omissions of officers, employees, representatives, agents, servants, subcontractors, assigns, and suppliers of the contractor as well as all other persons doing business with contractor; provided, however, that the Cities shall give the contractor prompt and timely notice of any claim made against the Cities which may result in a judgment against the Cities because of such injuries or damages, and shall deliver to the contractor all papers, notices, documents, summons and other legal process served upon the Cities or its agents; provided further, that the contractor and its insurer, or either of them, shall have the right to compromise and defend all claims, actions, suits and proceedings to the extent of the contractor's interests therein; and, provided further, contractor need not indemnify, release and save harmless the Cities against loss of property, or injury to or death of persons, caused by the negligence or willful misconduct of the Cities, their commissioners, agents or employees. Lessee shall require the contractor to furnish liability insurance in such amounts as may be reasonably required by the Cities. Lessee shall also include in any construction contract such provisions as may be reasonably required by the Cities relating to the operations of the contractor on the Airport. Lessee shall provide to the Cities a copy of all construction contracts entered into in connection with the Leased Premises.

5.5 When construction work involving structural components or structural modification has been completed, Lessee shall deliver to the Cities a certificate of an architect or structural engineer licensed to practice in the State of Colorado, not in regular employ of either party hereto and familiar with the construction of said improvements, certifying that the improvements have been constructed substantially in accordance with the approved Plans and Specifications and in compliance with all laws, ordinances, and governmental rules and regulations and orders and certifying that in the engineer's or architect's opinion such improvements have an expected useful life of a duration which is customary for such improvements under similar conditions and circumstances.

5.6 Except as otherwise expressly provided herein, Lessee shall, throughout the term of this Agreement, assume the entire responsibility, cost and expense for all repair and maintenance whatsoever on the Leased Premises and all Improvements thereon in a good workmanlike manner, whether such repair or maintenance be ordinary or extraordinary, structural or otherwise. Additionally, Lessee, without limiting the generality hereof, shall, except as otherwise expressly provided herein:

5.6.1 Keep at all times, in a clean and orderly condition and appearance, the Leased Premises, all Improvements thereon and all of Lessee's fixtures, equipment and personal property which are located on any part of the Leased Premises. Lessee shall not park or leave, or allow to be parked, aircraft on the taxiways, ramps or pavement adjacent to any building in a manner which unduly interferes with or obstructs access to other buildings or movement on adjacent taxiways.

5.6.2 Provide and maintain on the Leased Premises all obstruction lights and similar devices, and safety equipment required by law.

5.6.3 Take measures to prevent erosion, including but not limited to, the planting and replanting of grasses with respect to all portions of the Leased Premises not paved or built upon, if any, and in particular shall plant, maintain and replant any landscaped areas.

5.6.4 Be responsible for the maintenance and repair of all utility services lines placed on the Leased Premises and used by Lessee exclusively, including, but not limited to, water lines, gas lines, electrical power and telephone conduits and lines, sanitary sewers and storm sewers.

5.6.5 Maintain (or cause to be maintained) all paved areas of the Leased Premises, excluding the Additional Taxiway (hereinafter defined), in a manner that is safe and clear of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users.

5.7 Lessee shall conduct an initial Phase I environmental study ("Phase I") for the Leased Premises within six (6) months of the Effective Date. Such Phase I shall serve as a baseline for the provisions of this Paragraph 5.7 and 5.8 below. If such Phase I identifies conditions that need to be remediated, Lessor shall forthwith do so at its sole cost and expense, if Lessee so elects. Lessee shall notify the Cities of its decision to remediate within thirty (30) days of completion of the Phase I. If Lessee does not elect to remediate, the Lease shall terminate on the thirty-first (31st) day after completion of the Phase I. Thereafter, Lessee shall not cause or permit any Hazardous Material as said term is hereinafter defined, to be brought upon, kept or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or sublessees without the prior written consent of the Cities, which consent the Cities shall not unreasonably withhold, condition or delay as long as Lessee demonstrates to the Cities' reasonable satisfaction that such Hazardous Material is necessary, desirable or useful to Lessee's business or operations on the Leased Premises and will be used, kept and stored in compliance with all laws regulating such Hazardous Material ("**Hazardous Material Regulations**"). Notwithstanding the foregoing, aircraft fuel, lubricating oil, antifreeze and biodegradable cleaning solvents used in the course of aircraft maintenance may be brought upon and used on the Leased Premises in the ordinary course of Lessee's or its sublessees' operations as long as any such materials are used, kept, stored, transported and disposed of in compliance with all applicable Hazardous Material Regulations, including, without limitation, the Storm Water Management Plan adopted by the Cities. If (i) Lessee breaches the obligations stated in the preceding sentence, or (ii) if the presence of Hazardous Material on the Leased Premises if caused by or voluntarily permitted by Lessee results in contamination of the Leased Premises, then Lessee shall indemnify, defend and hold the Cities harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the lease term as the result of such contamination. This indemnification of the Cities by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Leased Premises that occurred during the term of this Agreement as a result of Lessee's or its sublessees' acts. Without limiting the foregoing, if the presence of any Hazardous Material on the Leased Premises caused or permitted by Lessee results in any contamination of the Leased Premises, Lessee shall promptly take all actions, at its sole expense, as are necessary to return the Leased Premises to the condition existing prior to the introduction of any such Hazardous Material to the Leased Premises.

5.8 "**Hazardous Material**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government and includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Act (33 U.S.C. §1321); (v) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act (42 U.S.C. § 6903); (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Compensation and Liability Act (42 U.S.C. §9601); or (vii) defined as a "regulated substance" pursuant to Subchapter IX Solid Waste Disposal Act (Regulation of Underground Storage Tanks) (42 U.S.C. §6991).

5.9 As shown on the site plan attached hereto as **Exhibit "B"**, Lessee may, as part of the Improvements, construct an expanded tarmac area and other paved areas outside the Rental Area but within the boundaries of the Leased Premises (such expanded tarmac and other paved areas being hereinafter referred to as "**Additional Paved Areas**"). Lessee shall construct the Additional Paved Areas in compliance with FAA standards for airport design in effect at the time of construction. The Additional Paved Areas are depicted on **Exhibit "A"** comprising a portion but not all of the Leased Premises. It is agreed that future parking areas to serve a restaurant and related facilities will NOT be subject to FAA standards and will not be eligible for FAA reimbursement contemplated below for expanded tarmac areas.

5.9.1 The parties hereto acknowledge and agree that portions of the Additional Paved Areas that may be designated as expanded tarmac and other paved areas subject to airport ground control may be eligible for reimbursement from the FAA discretionary grant resources. Accordingly, though Lessee shall be responsible for the initial construction of such Additional Paved Areas, the Cities agree to timely apply for FAA discretionary grant resources for purposes of reimbursing Lessee for the cost of constructing same only to the extent that such grant request does not disproportionately impact Airport projects; provided, however, Lessee acknowledges that the granting of such funding shall be in the FAA's sole discretion. If the FAA approves grant funding for the construction of any portion of the Additional Paved Areas, the Cities shall so notify Lessee (which notification shall include details on any and all FAA requirements for such funding) and shall reimburse Lessee for the cost of constructing same (such reimbursement not to exceed the amount granted by the FAA) within ninety (90) days after the Cities have received both such FAA funding and Lessee's written request for reimbursement, which written request shall include a final lien waiver from Lessee's general contractor and invoices and other reasonable documentation showing the cost of constructing such portions of the Additional Paved Areas together with any other documentation that may be required by the FAA. If Lessee so elects to construct such portions of the Additional Paved Areas, same shall be built in accordance with all state and federal regulations, including those of the FAA and the Transportation Security Administration ("TSA"), and Lessee shall warrant that the same shall be free of defects in materials and workmanship for a period of two (2) years after substantial completion and acceptance by the Cities of same.

5.9.2 Upon completion of any of the Additional Paved Areas, Lessee shall be deemed to have granted to the Cities and Airport users the right to use same from time to time for passage of aircraft and other vehicles. If Lessee is reimbursed for its costs in constructing portions of the Additional Paved Areas, Lessee shall pay the Cities as additional rent the Airport's current improved land lease rate for the square footage of the Additional Paved Areas except for those areas defined as transitional surface for passage of aircraft that will not be solely utilized by the Improvements on the Leased Premises (the "Additional Taxiway"). The Additional Taxiway, once determined, will be marked and striped as a taxiway, and will be designed to replace the Existing Taxiway Delta and Alpha One and will conform to FAA design standards for a Group 1 aircraft as defined in FAA Advisory Circular 150/5300-13A. At all times, the Existing Taxiway shall remain open and accessible for the passage of aircraft until such time as the Additional Taxiway is complete and acceptable for the passage of aircraft in the sole discretion of the Airport Manager. The Additional Taxiway will connect current taxiway Delta with current taxiway Alpha Throughout the term of this Agreement, the Cities shall be responsible for the maintenance and repair of the Existing Taxiway and Additional Taxiway (the "Airport Maintained Paved Areas"). Lessee shall have the right to charge reasonable and customary tie down fees for temporary occupancy by aircraft of the Additional Paved Areas (other than transit or de minimus occupancy). Notwithstanding anything contained in this Agreement to the contrary, it is expressly agreed and understood that Lessee has no obligation to monitor or police vehicles (except those allowed on the Airport by Lessee or its sublessees) on the Airport Maintained Paved Areas to determine if they are legally upon the Airport or to determine if they are operating in a safe condition or in a safe manner. Lessee shall be responsible (at its cost and expense) for maintaining the Additional Paved Areas outside of the Additional Taxiway in a manner that is safe and clear of debris so as not to cause danger or unsafe conditions for taxiing aircraft and Airport users. The Cities shall be solely responsible (at their cost and expense) for maintaining only the Additional Taxiway.

5.10 Subject to the provisions of Article 10, Lessee shall keep the Leased Premises, and the Improvements constructed by Lessee or its sublessees on the Leased Premises free and clear of any liens and encumbrances, except as contemplated by Article 10, or unless expressly approved in writing by the Cities, and shall indemnify, hold harmless and defend the Cities from any liens and encumbrances arising out of any work performed or materials furnished by or at the direction of Lessee or its sublessees. In the event any lien is filed, Lessee shall do all acts necessary to discharge any lien within ten (10) days of filing, or if Lessee desires to contest any lien, then Lessee shall deposit with the Cities such security as the Cities shall reasonably demand to insure the payment of the lien claim. In the event Lessee fails to pay any lien claim when due or fails to

deposit the security with the Cities, then the Cities shall have the right to expend all sums necessary to discharge the lien claim, and Lessee shall pay the Cities, as additional rental when the next rental payment is due, all sums expended by the Cities in discharging any lien, including reasonable attorneys' fees and costs.

ARTICLE 6: ADDITIONAL OBLIGATIONS OF LESSEE

6.1 Lessee shall conduct its operations and cause each of its sublessees to conduct their operations hereunder in an orderly and proper manner, considering the nature of such operations, so as not to unreasonably annoy, disturb, endanger or be offensive to others.

6.2 Further, Lessee shall take all reasonable measures:

6.2.1 To reduce to a practicable minimum vibrations tending to damage any equipment, structure, buildings or portions of buildings.

6.2.2 Not to produce or allow to be produced on the Airport through the operation of machinery or equipment any electrical, electronic or other disturbances that interfere with the operation by the Cities or the FAA of air navigational, communication or flight equipment on the Airport or on aircraft using the Airport, or with ground transportation communications.

6.3 Lessee shall comply and shall require all of its sublessees to comply with all federal, state and municipal laws, ordinances, rules, regulations and requirements, the Minimum Standards, Airport security rules and regulations, and other Airport rules and regulations, as they now exist or may hereafter be amended or promulgated, and the terms of this Agreement, applicable to the Leased Premises and the Improvements thereon and its operations and activities at the Airport hereunder.

6.4 Lessee and its sublessees shall commit no nuisance, waste or injury on the Leased Premises, and shall not do, or permit to be done, anything that may result in the creation, commission or maintenance of such nuisance, waste or injury on the Leased Premises.

6.5 Lessee shall take measures and shall require its sublessees to take measures to ensure security in compliance with FAA and TSA regulations and the Airport Security Plan, as they now exist or may hereafter be amended or promulgated.

6.6 Lessee and its sublessees shall not do, nor permit to be done, any act or thing which will invalidate or conflict with any fire insurance policies or regulations applicable to the Leased Premises or any part thereof; or other contiguous premises at the Airport.

6.7 Lessee and its sublessees shall be responsible for complying with all laws and regulations related to the the installation, maintenance or operation of any restaurant, kitchen, stand or other establishment of any type for the sale of food or of any vending machines or device designed to dispense or sell merchandise or services of any kind to the general public.

6.8 Except for uses permitted under Article 3 hereof, Lessee shall not provide or allow to be provided, any services of any sort on the Leased Premises for commercial purposes without all required development approvals, and a license from the Cities if and as required by the Minimum Standards then in effect.

6.9 Lessee will conduct its operations and require its sublessees to conduct their operations in such a manner as to keep the noise produced by aircraft engines and component parts thereof, and any other noise, to a minimum, by such methods as are practicable, considering the extent and type of the operations of Lessee and/or its sublessees and the limitations of federal law. Lessee and its sublessees agree that all aircraft based on the Leased Premises shall comply with the noise standards established under Part 36 of Title 14 of the Code

of Federal Regulations (“FAR 36”) as amended from time to time. In addition, Lessee and its sublessees will employ the maximum amount of noise arresting and noise reducing devices that are available and economically practicable, considering the extent of their operations, but in no event less than those devices required by federal, state or local law. In its use of the Leased Premises, Lessee and its sublessees shall take all possible care, exercise caution and use commercially reasonable efforts to minimize prop or jet blast interference and prevent jet blast damage to aircraft operating on taxiways and to buildings, structures and roadways, now located on or which in the future may be located on areas adjacent to the Leased Premises. In the event the Cities determine that Lessee and/or its sublessees has not curbed the prop or jet blast interference and/or damage, Lessee hereby covenants and agrees to erect and maintain at its own expense such structure or structures as may be necessary to prevent prop or jet blast interference, subject, however, to the prior written approval of the Cities as to type, manner and method of construction.

6.9 Lessee shall not store nor permit the storage of disabled aircraft or any equipment or materials outside of the Improvements on the Leased Premises for any period in excess of thirty (30) consecutive days without the prior written approval of the Cities.

6.10 On forms and at the frequency prescribed by the Airport Manager at least annually, and with respect to each aircraft regularly stored on the Leased Premises, Lessee shall provide the Cities with the (a) make and model (b) N-number and (c) identity and address of the registered owner. This requirement shall apply to aircraft whether owned by Lessee or another party, and regardless of whether its storage is subject to the Minimum Standards.

ARTICLE 7: INGRESS AND EGRESS

7.1 Lessee and its sublessees shall have the right of ingress and egress between the Leased Premises and the public landing areas at the Airport by means of connecting taxiways; and between the Leased Premises and the entrance(s) to the Airport by means of connecting paved roads. In addition, Lessee and its sublessees shall have the right to use the public runways and public aviation aids at all times during which they are open to the public. Such rights of ingress, egress and use shall be in common with others having rights of use and passage thereon.

7.1.1 Lessee shall be responsible for the construction of any taxiways and/or roadways needed for access to the Leased Premises at its sole cost and expense. Upon completion of construction, those portions of any such taxiways or roadways located off the Leased Premises shall be conveyed and dedicated to the Cities or City of Loveland, as determined in a development agreement to be considering during the **Inspection and Entitlement Period** as part of site plan development approval process that shall address maintenance, conveyance and dedication, warranty, and warranty surety.

7.2 The use of any roadways or taxiways on the Airport shall be subject to the Rules and Regulations of the Airport, which are now in effect or which may hereafter be promulgated, and subject to temporary closure, provided, however, that any closure shall be only for reasonably necessary or unique circumstances, and provided that fourteen (14) days’ prior written notice will be given to Lessee relevant to any closure, unless such closure is necessary due to emergency. Lessee, for itself and its authorized sublessees, hereby releases and discharges the Cities, the Commission, their officers, employees and agents, and all their respective successors and assigns, of and from any and all claims, demands, or causes of action which Lessee or its authorized sublessees may now or at any time hereafter have against any of the foregoing, arising or alleged to arise out of the closing of any street, roadway or other area, provided that other reasonable means of access to the Leased Premises remain available to Lessee without cost to Lessee, unless otherwise mandated by emergency safety considerations or lawful exercise of the police power. Lessee shall not do or permit anything to be done which will interfere with the free access and passage of others to space adjacent to the Leased Premises or in any streets or roadways on the Airport.

7.3 Lessee understands and agrees that the public taxilanes on the Leased Premises may be used by all airplanes legally upon the Airport. Lessee shall assure that the public taxilanes are left open and unobstructed. Notwithstanding anything contained in this Agreement to the contrary, it is expressly agreed and understood that Lessee has no obligation to monitor or police vehicles (except those allowed on the Airport by Lessee) on the public taxilanes to determine if they are legally upon the Airport or to determine if they are operating in a safe condition or in a safe manner.

ARTICLE 8: INSURANCE, DAMAGE OR DESTRUCTION

8.1 Lessee, at its sole cost and expense, shall procure and maintain throughout the term of this Agreement insurance protection for all risk coverage on the Improvements which are part of the Leased Premises to the extent of one hundred percent (100%) of the actual replacement cost thereof. All policies of insurance required herein shall be taken out with insurance companies qualified to do insurance business in the State of Colorado and having a Bests' Insurance Guide rating of at least A-, and all such policies shall be renewed at least ten (10) days before their expiration date.

8.1.1 The above stated property insurance shall be for the benefit and to safeguard the interests of the Cities and Lessee.

8.1.2 Lessee shall settle all losses with the insurance carrier. Lessee shall consult with the Cities and use its best efforts to obtain a settlement that covers the cost of repairing or rebuilding the Improvements.

8.1.3 Lessee shall provide certificates of insurance, in a form acceptable to the Cities and marked "premium paid" evidencing existence of all insurance required to be maintained prior to occupancy of the Improvements. Upon the failure of Lessee to maintain such insurance as above provided, the Cities, at their option, may take out such insurance and charge the cost thereof to Lessee, which shall be payable on demand, or may give notice of default pursuant to Article 18.

8.2 In the event the Improvements and any subsequent improvements, insurable or uninsurable, on the Leased Premises are damaged or destroyed to the extent that they are unusable by Lessee for the purposes for which they were used prior to such damage, or same are destroyed, Lessee shall promptly repair and reconstruct the Improvements substantially as they were immediately prior to such casualty or in a new or modified design, subject to the provisions of Article 5 hereof and applicable building codes and Airport design standards, if any, existing at the time of repairing or rebuilding. If the aforesaid damage or destruction occurs in the last five (5) years of the Term, Lessee may elect not to repair and reconstruct the Improvements, subject to the following terms and conditions:

8.2.1 Lessee shall give the Cities written notice of its election not to repair and reconstruct the Improvements within ninety (90) days of the date upon which the Improvements were damaged or destroyed. In such case, the Cities shall have the option of either:

8.2.1.1 Requiring Lessee to clear the site, remove all debris and paving, stub up all utilities, and restore the site to its original cleared condition prior to commencement of construction; in which case Lessee shall retain all insurance proceeds above those necessary to fund such site restoration; or

8.2.1.2 Taking title to the damaged Improvements, as is, in which case Lessee shall assign to and the Cities shall retain all insurance coverage and proceeds.

8.2.2 Upon Lessee's notice under Section 8.2.1 hereof and Lessee's compliance with the provisions of Sections 8.2.1.1 or 8.2.1.2 hereof, the Cities shall terminate this Agreement and relieve Lessee of all future rental obligations hereunder.

8.3 All policies of insurance required herein shall name the Cities as additional insureds.

8.4 Whenever in this Agreement, provision is made for the carrying of any insurance, it shall be deemed that such provision is complied with if such insurance otherwise complying with such provision is carried under a blanket policy or policies covering the Leased Premises as well as other properties.

8.5 Lessee shall not violate, nor permit to be violated, any of the conditions of any of the said policies; and shall perform and satisfy, or cause to be satisfied, the requirements of the companies writing such policies.

ARTICLE 9: LIABILITIES AND INDEMNITIES

9.1 The Cities shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, by Lessee, its agents, servants, employees or authorized sublessees, or their guests or invitees. Lessee, and each of its sublessees, shall not in any way be liable for any cost, liability, damage or injury, including cost of suit and expenses of legal services, claimed or recovered by any person whomsoever as a result of any operations, works, acts or omissions performed on the Leased Premises, or the Airport, solely by the Cities or the Commission, their agents, servants, employees or authorized tenants, or their guests or invitees.

9.2 Lessee agrees (and shall cause its sublessees to agree) to indemnify, save and hold harmless, the Cities and the Commission, their officers, agents, servants and employees (collectively, “**Indemnified Parties**”), of and from any and all costs, liability, damage and expense, including costs of suit and reasonable expenses of legal services, claimed or recovered, justly or unjustly, falsely, fraudulently or frivolously, by any person, firm or corporation by reason of injury to, or death of, any person or persons, including Cities’ personnel, and damage to, destruction or loss of use of any property, including Cities’ property, to the extent arising from, or resulting from, any operations, works, acts or omissions of Lessee, its agents, servants, employees, contractors, or authorized sublessees; provided, however, the foregoing indemnity shall not apply to the extent any such cost, liability, damage or expense arises from the negligence or willful misconduct of any Indemnified Parties. Upon the filing with the Cities by anyone of a claim for damages arising out of incidents for which Lessee herein agrees to indemnify and hold the Indemnified Parties harmless, the Cities shall notify Lessee of such claim and in the event that Lessee does not settle or compromise such claim, then Lessee shall undertake the legal defense of such claim on behalf of Lessee and the Indemnified Parties. It is specifically agreed, however, that the Cities at their own cost and expense, may participate in the legal defense of any such claim. Any final judgment rendered against the Indemnified Parties for any cause for which Lessee is liable shall be conclusive against Lessee as to liability and amount upon the expiration of the time for appeal.

9.3 Lessee shall procure and keep in force during the term of this Agreement a policy of commercial general liability insurance insuring Lessee and the Cities against any liability for personal injury, bodily injury, death, or property damage arising out of the subject of this Agreement with a combined single limit of at least Five Million dollars (\$5,000,000.00). Lessee shall also procure and keep in force during the term of this Agreement policies or endorsements providing coverage for aircraft liability, hangar keepers’ liability, products liability, motor vehicle liability and insured contracts coverage with the same combined single limit. Finally, Lessee shall maintain workers’ compensation insurance in accordance with Colorado law. The policies shall be for the mutual and joint benefit and protection of Lessee and the Cities and such policies shall contain a provision that the Cities, although named as an insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its servants, agents, citizens, and employees by reason of Lessee’s negligence. Lessee shall provide certificates of insurance, in a form reasonably acceptable to the Cities and marked “premium paid” evidencing existence of all insurance required to be maintained by Lessee prior to the Commencement Date. In addition to the insurance requirements of this Section 9.3, Lessee shall procure (or cause the operator of the FBO facility to procure), prior to the opening and operation of the FBO

facility, all insurance for an FBO and for any additional specialized services offered by Lessee (or the FBO operator) as required by the Minimum Standards; provided that in the event of any conflict between the insurance provisions of this Agreement and the terms of the Minimum Standards, the most stringent insurance requirements shall apply.

9.4 Lessee represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this Agreement. Lessee agrees to save and hold the Cities, their officers, employees, agents and representatives free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Lessee under or in any way connected with this Agreement.

ARTICLE 10: LEASEHOLD MORTGAGES

10.1 Subject to the Cities' prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, Lessee may, at any time, or from time to time, hypothecate, pledge, encumber or mortgage its interest in this Agreement, the leasehold estate in the Leased Premises created hereby, or any part or parts thereof or interest therein. No mortgage or other encumbrance of the leasehold that is granted by Lessee may encumber the fee or reversionary interest of the Cities in the Leased Premises. So long as Lessee is in compliance with all terms, conditions, and provisions of the Lease, the right of Lessee to mortgage its leasehold estate shall be a continuing right and shall not be deemed to be exhausted by its exercise on one or more occasions. However, it shall be a further condition of Lessee's right to mortgage its leasehold estate that the mortgagee agree notwithstanding the terms of any mortgage that all insurance proceeds available to Lessee will be applied to repair and restore any damaged building(s) or other improvements located on the Leased Premises. If Lessee shall execute a Leasehold Mortgage of its leasehold estate, and if the holder of such Leasehold Mortgage shall provide the Cities through the Commission or Airport Manager with notice in the manner described in Article 23 with notice of such Leasehold Mortgage together with a true copy of such Leasehold Mortgage and the name and address of the Leasehold Mortgagee (as hereinafter defined), then following receipt of such notice by the Cities, the provisions of this Article 10 shall apply in respect to such Leasehold Mortgage.

10.2 The term "**Leasehold Mortgage**" as used in this Agreement shall include, but not be limited to, a mortgage, a deed of trust, a deed to secure debt, or other security instrument by which Lessee's leasehold estate is mortgaged, conveyed, assigned, or otherwise transferred, to secure a debt or other obligation in connection with the construction contemplated by Article 5, above. The term "**Leasehold Mortgage**" as used in this Agreement shall refer to the holder of any Leasehold Mortgage upon the leasehold estate created by this Agreement and/or in Lessee's interest and estate in any Improvements.

10.3 The Cities, upon providing Lessee any notice of default under this Agreement or termination of this Agreement, shall at the same time provide a copy of such notice to the Leasehold Mortgagee by first class U.S. mail at the address specified in the notice given pursuant to Section 10.1, above. Such Leasehold Mortgagee shall have the additional periods of time specified in Sections 10.4 hereof to remedy, commence remedying, or cause to be remedied the default or acts or omissions which are specified in any such notice. The Cities shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Lessee.

10.4 Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur which entitles the Cities to terminate this Agreement, the Cities shall have no right to terminate this Agreement unless, following the expiration of the period of time given Lessee to cure such default or the act or omission which gave rise to such default, the Leasehold Mortgagee is given an additional period of sixty (60) days to:

10.4.1 Notify the Cities of such Leasehold Mortgagee's desire to defeat such termination notice; and

10.4.2 Pay or cause to be paid all rent, additional rent, and other payments then due and in arrears as specified in the termination notice to such Leasehold Mortgagee and which may become due during such sixty (60) day period; and

10.4.3 Comply with due diligence and continuity, or in good faith commence to and with diligence continue to pursue compliance with all non-monetary requirements of this Agreement then in default.

10.5 The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Agreement or of the leasehold estate hereby created, nor shall the Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Agreement or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions of this Agreement. Any Leasehold Mortgagee who acquires Lessee's interest in this Agreement by foreclosure, assignment in lieu of foreclosure or otherwise shall be deemed to be a permitted assignee or transferee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Lessee to be performed hereunder from and after the date of such purchase or assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate. If the Leasehold Mortgagee or its designee shall become holder of the leasehold estate and if the Improvements on the Leased Premises shall have been or become materially damaged on, before or after the date of such purchase or assignment, the Leasehold Mortgagee or its designee shall, subject to Section 8.2 hereof, be obligated to repair, replace or reconstruct the damaged Improvements.

ARTICLE 11: RULES AND REGULATIONS

Lessee acknowledges that the Cities have proposed or adopted rules and regulations with respect to the occupancy and use of the Airport ("**Rules and Regulations**"), and such Rules and Regulations may be amended, supplemented or re-enacted from time to time by the Cities, provided that such Rules and Regulations apply generally to all similar occupants and users on the Airport and same do not unreasonably impede, impair or restrain general aviation usage at the Airport. Lessee and its sublessees agree to observe and obey any and all such Rules and Regulations and all other federal, state and municipal rules, regulations and laws and to require its officers, agents, employees, sublessees, contractors, and suppliers to observe and obey the same. In the event of a conflict between the provisions of the Rules and Regulations and this Agreement, the more stringent provisions shall control. This provision will include compliance with the Airport's Noise Abatement Plan as it now exists and as it may hereafter be amended or supplemented. The Cities reserve the right to deny access to the Airport and its facilities to any person, firm or corporation that fails or refuses to obey and comply with the Rules and Regulations or any other applicable rules, regulations or laws. Nothing in this Article 11 shall be construed to limit the rights of Lessee to file any action challenging the lawfulness of any such amendment, supplement or reenactment of any such Rules and Regulations, or to challenge the application of the same to Lessee.

ARTICLE 12: SIGNS

Lessee shall have the right to install and maintain one or more signs on the Leased Premises identifying Lessee, its sublessees and their operations and identifying permitted business tenants in the FBO facility; provided, however, the subject matter, type, design, number, location and elevation of such signs, and whether lighted or unlighted, shall be subject to and in accordance with the City of Loveland Sign Code and Airport design standards, if any. No sign will be allowed that may be confusing to aircraft pilots or automobile drivers or other traffic.

ARTICLE 13: ASSIGNMENT AND SUBLEASE

13.1 The prior written consent of the Cities shall be required for any sale, transfer, assignment or sublease of this Agreement and of the leasehold estate hereby created. Consent may be withheld by the Cities in the event (a) Lessee is in default of any of the terms or conditions of this Agreement beyond any applicable notice and cure period; (b) the transferee, assignee or sublessee does not deliver to the Cities its written agreement to be bound by all of the provisions of this Agreement in a form reasonably satisfactory to the Cities; (c) the transferee, assignee or sublessee does not submit proof of insurance as required at Sections 8 and 9, herein; or (d) the transferee, assignee or sublessee has not met the licensing requirements set forth in the Minimum Standards. In reviewing a request for consent to assignment or sublease of this Agreement, the Cities may inquire into the legal, technical and financial qualifications of the proposed transferee, assignee or sublessee, and Lessee shall provide such information and assistance as may be reasonably requested in doing so. The Cities may condition their consent to or deny consent for any transfer, assignment or sublease upon terms and conditions reasonably related to the legal, technical, and financial qualifications of the proposed transferee, assignee or sublessee. Consent shall not otherwise be unreasonably withheld, conditioned or delayed. Upon the granting of written consent by the Cities and actual transfer or assignment, Lessee shall be released by the Cities from its obligations under this Agreement. Other than in the manner set forth in Article 29 below, Lessee shall not subdivide or fractionalize either its ownership of the Improvements or leasehold interest in the Leased Premises.

13.2 Notwithstanding the provisions of Section 13.1, Lessee shall have the right to engage in the following activities through sublease, license or concession agreements, which shall be subject and subordinate to this Agreement and include the same insurance and indemnity provisions in favor of the Cities, without the prior written consent of the Cities:

13.2.1 “Aeronautical activities” as defined in Section 3.1 above; and

13.2.2 Subletting of hangar space, retail and restaurant space, office space and the FBO facility, renting of tie-down space, and other activities included in services provided by an FBO under the Minimum Standards, as amended from time to time.

13.3 Notwithstanding anything to the contrary contained herein, Lessee shall be permitted to assign this Agreement (without the need for Cities’ approval) to any corporation with which Lessee may merge or consolidate, or to which Lessee may sell or assign all or substantially all of its corporate assets, or to a wholly owned subsidiary or affiliate, so long as such corporation or entity taking assignment is controlled by Martin Lind.

13.4 Any attempt to transfer any interest in violation of the provisions of this Article 13 shall be void unless otherwise provided by Colorado law.

ARTICLE 14: CONDEMNATION

In the event that all or any portion of the Leased Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of appropriation, condemnation or eminent domain (or pursuant to a sale to such power or authority under the threat of condemnation or eminent domain), all rents payable with respect to that portion of the Leased Premises taken shall no longer be payable, and the proceeds, if any, from such taking or sale shall be allocated between the Cities and Lessee in accordance with the applicable condemnation law, with Lessee being entitled to compensation for the fair market value of the leasehold interest, Improvements and personal property taken. If a portion of the Leased Premises is so taken or sold, and as a result thereof, the remaining part cannot reasonably be used to continue the authorized uses set forth in Article 3, as determined by Lessee in its sole discretion, then this Agreement shall terminate at Lessee’s election, and Lessee’s obligation to pay rent and perform the other conditions of this Agreement shall be deemed to have ceased as of the date of such taking or sale. In the event Lessee elects not to terminate this

Agreement, effective as of the date of such taking, the rental payable hereunder shall be wholly abated during any time Lessee or its sublessees are unable to carry on their operations, and upon restoration and resumption of Lessee's and its sublessees' operations, the rental payable hereunder shall be reduced by the same proportion which that portion of the Leased Premises so taken bears to the entire area of the Leased Premises prior to such taking. Nothing in this subparagraph shall be construed to limit the Cities' rights to condemn Lessee's leasehold rights and interests in the Leased Premises pursuant to state law.

ARTICLE 15: NON-DISCRIMINATION

15.1 Lessee, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States government program or activity is extended, Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.2 Lessee, for itself, its personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that:

15.2.1 No person on the grounds of race, color, national origin, creed, religion, sex, disability, or age and without regard to the exercise of rights guaranteed by state or federal law shall be excluded from participating in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Leased Premises;

15.2.2 In the construction of any Improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of of race, color, national origin, creed, religion, sex, disability or age shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination;

15.2.3 That Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

15.3 In this connection, the Cities reserve the right to take whatever action they might be entitled by law to take in order to enforce this provision following sixty (60) days' prior written notice to Lessee of any alleged violation. This Article 15 is to be considered as a covenant on the part of Lessee, a breach of which, continuing after notice by the Cities to cease and desist and after a determination that a violation exists made in accordance with the procedures and appeals provided by law, will constitute a material breach of this Agreement and will entitle the Cities, at their option, to exercise its right of termination as provided for herein, or take any action that it deems necessary to enforce compliance herewith.

15.4 To the extent legally required and applicable, Lessee assures that it will undertake an affirmative action program as required by 14 CFR, Part 152, Subpart E, to ensure that no person shall on the grounds of race, creed, color, national origin, disability or sex, be excluded from participation in any employment activities covered in 14 CFR Part 152 Subpart E. Lessee assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Lessee assures that it will require that its covered sub organizations provide assurances to Lessee that they similarly will undertake an affirmative action program and that they will require assurances from their sub organizations, to the extent required by 14 CFR Part 152, Subpart E, to the same effect.

15.5 Lessee shall include the foregoing provisions (Sections 15.1 through 15.4) in every agreement or concession pursuant to which any person or persons, other than Lessee, operates any facility at the Leased Premises providing service to the public and shall include a provision granting the Cities a right to take such action as the United States may direct to enforce such covenant.

ARTICLE 16: GOVERNMENTAL REQUIREMENTS

16.1 Lessee shall procure all licenses, certificates, permits or other authorization from all governmental authorities, if any, having jurisdiction over Lessee's operations at the Leased Premises which may be necessary for Lessee's operations on the Airport.

16.2 Lessee shall pay all taxes, license, certification, permits and examination fees and excise taxes which may be assessed, levied, exacted or imposed on the Leased Premises or operation hereunder or on the gross receipts or gross income to Lessee therefrom, and shall make all applications, reports and returns required in connection therewith.

16.3 Lessee shall pay all water, sewer, utility and other applicable use taxes and fees, arising from its occupancy and use of the Leased Premises and/or the Improvements.

16.4 Lessee agrees that the Cities are governmental entities; therefore, all direct and indirect financial obligations of each City under this Agreement shall be subject to annual appropriations pursuant to Article X, Section 20 of the Colorado Constitution, the Cities' respective charters and ordinances, and applicable law. This Agreement and the obligations of the Cities hereunder do not constitute a multi-year fiscal obligation and are expressly contingent upon the Cities' respective governing bodies budgeting and appropriating the funds necessary to fulfill the Cities' respective obligations.

ARTICLE 17: RIGHTS OF ENTRY RESERVED

17.1 The Cities, by their officers, employees, agents, representatives and contractors, shall have the right at all reasonable times to enter upon the Leased Premises and enter the Improvements for any and all purposes not inconsistent with this Agreement, including, without limitation, inspection, environmental testing, and repair and maintenance of the Additional Taxiway, if it exists, provided such action by the Cities, their officers, employees, agents, representatives and contractors does not unreasonably interfere with Lessee's (or its sublessees') use, occupancy or security requirements of the Leased Premises. Except when necessary for reasons of public safety or law enforcement, or for the protection of property, as reasonably determined by the Cities, the Cities shall provide seventy-two (72) hours' written notice of its intent to inspect.

17.2 Without limiting the generality of the foregoing, the Cities, by their officers, employees, agents, representatives, contractors and furnishers of utilities and other services, shall have the right, at their own cost and expense, whether for their own benefit, or for the benefit of others than Lessee at the Airport, to maintain existing and future Airport mechanical, electrical and other utility systems and to enter upon the easements in the Leased Premises to make such repairs, replacements or alterations thereto, as may, in the opinion of the Cities, be deemed necessary or advisable, and from time to time to construct or install over, in or under existing easements within the Leased Premises such systems or parts thereof and in connection with such maintenance use the Leased Premises' existing easements for access to other parts of the Airport otherwise not conveniently accessible; provided, however, that in the exercise of such rights of access, repair, alteration or new construction, the Cities shall not install a utility under or through any building on the Leased Premises or unreasonably interfere with the actual use and occupancy of the Leased Premises by Lessee (or its sublessees). It is specifically understood and agreed that the reservation of the aforesaid right by the Cities shall not impose or be construed to impose upon the Cities any obligation to repair, replace or alter any utility service lines now or hereafter located on the Leased Premises for the purpose of providing utility services only to the Leased Premises; provided, however, that if the Cities repair, replace or alter any utility service lines now

or hereafter located on the Leased Premises for the purpose of providing utility services to others, the Cities will restore the Leased Premises to their preexisting condition in a timely manner. Lessee will provide for the installation, maintenance and repair, at its own expense, of all service lines of utilities providing services only to the Leased Premises. Cities will repair, replace and maintain all other utility lines, at the Cities' expense.

17.3 In the event that any personal property of Lessee or any sublessee shall obstruct the access of the Cities, their officers, employees, agents or contractors, or the utility company furnishing utility service over, along and across the existing easements to any of the existing utility, mechanical, electrical and other systems, and thus shall interfere with the inspection, maintenance or repair of any such system pursuant to Section 17.2, Lessee shall move such property, as directed by the Cities or said utility company, upon reasonable notice by the Cities, in order that access may be had to the system or part thereof for inspection, maintenance or repair. If Lessee or any sublessee shall fail to so move such property after direction from the Cities or said utility company to do so, the Cities or the utility company may move it, and Lessee on behalf of itself and its sublessees hereby waives any claim against the Cities for damages as a result there from, except for claims for damages arising from the Cities' negligence or willful misconduct.

17.4 The Cities reserve the right to access the Leased Premises at all times and without notice to Lessee for the operation of emergency vehicles and fire trucks as necessary or appropriate to the safe operation of the Airport.

ARTICLE 18: TERMINATION

18.1 In the event of a default on the part of Lessee in the payment of rents, the Cities shall give written notice to Lessee and each holder of a Leasehold Mortgage, if any, of which they have been give notice under Section 10.1, of such default, and demand the cancellation of this Agreement, or the correction thereof. If, within sixty (60) days after the date the Cities give such notice, Lessee has not corrected said default and paid the delinquent amount in full, then subject to Article 10 above, the Cities may, by written notice to Lessee and the holder of a Leasehold Mortgage, terminate this Agreement.

18.2 Subject to the provisions of Section 18.1 and Article 10 above, this Agreement, together with all rights and privileges granted in and to the Leased Premises, shall terminate at the option of the Cities with prompt written notice to Lessee and the holder of a Leasehold Mortgage upon the happening of any one or more of the following events:

18.2.1 The filing by Lessee of a voluntary petition in bankruptcy, or any assignment for benefit of creditors of all or any part of Lessee's assets; or

18.2.2 Any institution of proceedings in bankruptcy against Lessee; provided, however, that Lessee may defeat such termination if the petition is dismissed within one hundred twenty (120) days after the institution thereof; or

18.2.3 The filing of a petition requesting a court to take jurisdiction of Lessee or its assets under the provision of any Federal reorganization act which, if it is an involuntary petition is not dismissed within one hundred twenty (120) days after its being filed; or

18.2.4 The filing of a request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a court of competent jurisdiction, which if the request if not made by Lessee is not rejected within one hundred twenty (120) days after being made, or the request for the appointment of a receiver or trustee of all, or substantially all, of Lessee's assets by a voluntary agreement with Lessee's creditors.

18.3 Subject to Article 10, upon the default by Lessee in the performance of any covenant or condition required to be performed by Lessee other than the payment of rent, and the failure of Lessee to remedy

such default for a period of sixty (60) days after mailing by the Cities of written notice to remedy the same, unless more extensive notice is otherwise provided for in this Agreement, the Cities may, by written notice of cancellation to Lessee, and each holder of a Leasehold Mortgage, terminate this Agreement and all rights and privileges granted hereby in and to the Leased Premises.

18.4 Upon the default by Lessee, and the giving of notice of the default and cancellation by the Cities as provided for elsewhere herein, the notice of cancellation shall become final.

18.5 Subject to the provisions of Section 18.1 and Article 10, upon the cancellation or termination of this Agreement for any reason, all rights of Lessee, authorized tenants and any other person in possession of the Leased Premises shall terminate, including all rights or alleged rights of Leasehold Mortgagees, sublessees, creditors, trustees, assigns, and all others similarly so situated as to the Leased Premises. Except as may be expressly provided to the contrary elsewhere herein, upon said cancellation or termination of this Agreement for any reason, the Leased Premises and all Improvements located thereon, except for Lessee's (and its sublessees') equipment, fixtures and other personal property which may be removed from said Leased Premises without damage thereto as provided elsewhere herein, shall be and become the property of the Cities, free and clear of all encumbrances and all claims of Lessee, its sublessees (if any), Leasehold Mortgagees, creditors, trustees, assigns and all others, and the Cities shall have immediate right of possession of the Leased Premises and such Improvements. Lessee agrees to execute any documents, if any, necessary to transfer title of such Improvements to the Cities.

18.6 Failure by the Cities or Lessee to take any authorized action upon default by Lessee of any of the terms, covenants or conditions required to be performed, kept and observed by Lessee shall not be construed to be, nor act as, a waiver of said default nor of any subsequent default of any of the terms, covenants and conditions contained herein to be performed, kept and observed by Lessee. Acceptance of rentals by the Cities from Lessee, or performance by the Cities under the terms hereof, for any period or periods after a default by Lessee of any of the terms, covenants and conditions herein required to be performed, kept and observed by Lessee shall not be deemed a waiver or estoppel of any right on the part of the Cities to cancel this Agreement for any subsequent failure by Lessee to so perform, keep or observe any of said terms, covenants or conditions.

18.7 This Lease will terminate at the option of Lessee:

18.7.1 Upon the permanent closure of the Airport, the term "permanent closure" to mean for the purposes of this Agreement, the closure of the Airport for ninety (90) or more consecutive days;

18.7.2 The loss of the ability of Lessee, its sublessees or their customers due to no significant fault of Lessee to fly in or out of the Airport for reasons other than inclement weather, casualty or disaster, for a period of ninety (90) consecutive days; and

18.7.3 The default by Cities in the performance of any covenant or condition required to be performed by the Cities, and the failure of the Cities to remedy such default for a period of sixty (60) days after receipt from Lessee of written notice to remedy the same, or default in the timely payment of any money due Lessee and failure to cure such default within sixty (60) days after notice to the Cities. Notice of exercise of the option to terminate by Lessee shall be given in the manner specified in Article 23 (Notices).

18.8 If, after the FBO facility is operational, Lessee ceases to conduct or cause to be conducted its authorized Aeronautical Activities on the Leased Premises for a period of twelve (12) consecutive months, the Cities may terminate this Agreement by written notice to Lessee given at any time while such cessation continues, unless Lessee resumes or causes to be resumed such activities within sixty (60) days following receipt of written notice from the Cities of such intent to terminate this Agreement.

18.9 Upon termination of this Agreement prior to the expiration of the Term, the Cities may, but are not required to, relet the Leased Premises, or any part thereof, for the whole or any part of the remainder of the Term, or for a longer period of time. Subject to Section 21.3, any rents received by the Cities as a result of such reletting shall remain the property of the Cities and shall not be credited to or otherwise become the property of Lessee.

ARTICLE 19: OWNERSHIP OF IMPROVEMENTS, SURRENDER

19.1 Title to the Improvements during the Term shall be in Lessee, but notwithstanding such title, the terms and conditions of this Agreement shall govern the construction, use, maintenance and operation of the Improvements and the exercise of Lessee's rights with respect thereto; and Lessee's right, title, interest, and estate in and to the Improvements shall not be separable from the leasehold estate granted Lessee hereunder. Lessee shall be entitled to claim all depreciation and other tax attributes applicable to the use and ownership of the Improvements during the Term. Upon the expiration or earlier termination of this Agreement, title to the Improvements shall vest in and become the full and absolute property of the Cities without need of any further action being taken by Lessee or the Cities, and Lessee shall immediately surrender possession of the Improvements upon such termination or expiration as provided in Section 19.2 below. Lessee shall execute any and all documents, if any, necessary to transfer title to the Cities. Except as otherwise expressly set forth herein, the value or cost of the Improvements constructed by Lessee shall not in any way constitute a substitute for or a credit against any obligation of Lessee under this Agreement to pay rent as required pursuant to Article 4.

19.2 Subject to Section 8.2 above, upon the expiration, cancellation or earlier termination of this Agreement pursuant to any terms hereof, Lessee shall peaceably quit and surrender the Leased Premises and Improvements, and any and all machinery and equipment constructed, installed or placed by Lessee thereon which is necessary to the operation of the Improvements to the Cities in good order and condition, ordinary wear and tear and obsolescence in spite of repair excepted. Lessee shall have the right, but not the obligation, within sixty (60) days after expiration or earlier termination of this Agreement to remove from the Leased Premises all personal property, fixtures and trade equipment other than fixtures, machinery and equipment necessary to the operation of the Improvements. Lessee shall repair, at its sole cost and expense, any damage to the Leased Premises or to the Improvements caused by such removal.

19.3 Upon such expiration, cancellation or termination, the Cities may re-enter and repossess the Leased Premises together with all Improvements and additions thereto, or pursue any remedy permitted by law for the enforcement of any of the provisions of this Agreement, at the Cities' election. In the event that Lessee remains in possession of the Leased Premises after the expiration, cancellation or termination of this Agreement without written agreement with respect thereto, then Lessee shall be deemed to be occupying the Leased Premises as a tenant at-will, subject to all of the conditions, provisions and obligations of this Agreement, but without any rights to extend the term of this Agreement. The Cities' acceptance of rent from Lessee in such event shall not alter the status of Lessee as a tenant at-will whose occupancy of the Leased Premises may be terminated by the Cities at any time upon thirty (30) days' prior written notice.

ARTICLE 20: SERVICES TO LESSEE

20.1 The Cities covenant and agree that during the term of this Agreement, and subject to Airport priorities then in effect, they will use reasonable efforts to (a) operate the Airport as such for the use and benefit of the public; provided, however, that the Cities may prohibit or limit any given type, kind or class of aeronautical use of the Airport if such action is necessary for the safe and/or efficient operation of the Airport or necessary to serve the civil aviation needs of the public, (b) maintain the runways, taxiways and Additional Taxiway, if it exists, in good repair, including the removal of snow, and (c) keep in good repair hard-surfaced public roads on the Airport for access to the Leased Premises and remove snow.

20.1.1 Except as otherwise expressly set forth herein, said obligations of the Cities relevant to the maintenance of public roads and taxiways shall extend to the point where in such roads, streets

and taxiways reach the property line of the Leased Premises, or the Ramp area constructed by Lessee under Article 4.5.

20.1.2 Except as otherwise expressly set forth herein, said obligations of the Cities relevant to the snow removal from public roads and taxiways shall extend to the point where in such roads, streets and taxiways reach the property line of the Leased Premises, and shall additionally include the Ramp area constructed by Lessee under Article 4.5 subject to the snow removal limitations set forth under Article 4.5, above.

20.2 Except in cases of emergency, in which case no notice shall be required, the Cities will give not less than fourteen (14) days' prior written notice to Lessee of any anticipated temporary Airport closure, for maintenance, expansion or otherwise. Rent due for the Leased Premises under Article 4 shall abate on the twenty first (21st) consecutive day of any voluntary temporary Airport closure by the Cities and such abatement shall continue until the Airport reopens, provided that no abatement shall exceed a total of sixty (60) consecutive days' rent. Notwithstanding the above, the Cities shall not be deemed to be in breach of any provision of this Article 20 in the event of a permanent closure of the Airport; provided, however, that if such permanent closure is in connection with the construction of a new airport by the Cities, Lessee shall have the option to enter into a substitute ground lease agreement with the Cities for the use of a portion of such new airport not smaller than the Leased Premises under financial terms which are no less favorable than those set forth herein.

ARTICLE 21: SURVIVAL OF THE OBLIGATIONS OF LESSEE

21.1 In the event that this Agreement shall have been terminated due to default by Lessee in accordance with notice of termination as provided in Article 18, all of the obligations of Lessee under this Agreement shall survive such termination, re-entry, regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and the amount or amounts of damages or deficiency shall become due and payable to the Cities to the same extent, at the same time or times, and in the same manner as if no termination, re-entry, regaining or resumption of possession had taken place. The Cities may maintain separate actions each month to recover the damage or deficiency then due or at its option and at any time may sue to recover the full deficiency for the entire unexpired term of this Agreement discounted to present value.

21.2 The amount of damages for the period of time subsequent to termination (or re-entry, regaining or resumption of possession) on account of Lessee's rental obligations shall be the sum of the following:

21.2.1 The amount of the total of all installments of rents, less the installments thereof payable prior to the effective date of termination; and

21.2.2 An amount equal to all expenses incurred by the Cities and not reimbursed in connection with regaining possession, restoring the Leased Premises required by Article 19, above, acquiring a new lease for the Leased Premises, legal expenses (including, but not limited to, reasonable attorneys' fees) and putting the Leased Premises in order.

21.3 There shall be credited to the account of Lessee against its survived obligations hereunder, the amount actually received from any lessee, licensee, permittee, or other occupier in connection with the use of the Leased Premises or Improvements or portions thereof during the balance of the term of this Agreement, and the market value of the occupancy of such portions of the Leased Premises (including the Improvements) as the Cities may themselves during such period actually use and occupy. No such use and occupancy shall be, or be construed to be, an acceptance of a surrender of the Leased Premises, nor shall such use and occupancy constitute a waiver of any rights of the Cities. The Cities will use their best efforts to minimize damages to Lessee under this Article.

21.4 The provisions of this Article 21 shall not be applicable to termination of this Agreement if expressly provided to the contrary elsewhere in this Agreement.

ARTICLE 22: USE SUBSEQUENT TO CANCELLATION OR TERMINATION

The Cities shall, upon termination or cancellation, or upon re-entry, regaining or resumption of possession, have the right to repair and to make structural or other changes to the Leased Premises and Improvements, including changes which alter their character and the suitability thereof for the purposes of Lessee under this Agreement, without affecting, altering or diminishing the obligations of Lessee hereunder, provided that any structural changes shall not be at Lessee's expense.

ARTICLE 23: NOTICES

23.1 Any notice, consent, approval or other communication given by either party to the other relating to this Agreement shall be in writing, and shall be delivered in person, sent by certified U.S. mail postage prepaid, sent by reputable overnight courier, or sent by electronic means (with evidence of such transmission received) to such other party at the respective addresses set forth below (or at such other address as may be designated from time to time by written notice given in the manner provided herein). Such notice shall, if hand delivered or personally served, be effective immediately upon receipt. If sent by US mail postage prepaid, such notice shall be deemed given on the third (3rd) business day following deposit in the United States mail, postage prepaid and properly addressed; if delivered by overnight courier, notice shall be deemed effective on the first (1st) business day following deposit with such courier; and if delivered by electronic means, notice shall be deemed effective when received.

23.2 The notice addresses of the parties are as follows:

To the Cities: Northern Colorado Regional Airport Commission
Attn: Airport Manager
4900 Earhart Drive
Loveland, CO 80538

Facsimile: (970) 962-2855

Email address: airport@cityofloveland.org

With a copy to: Loveland City Attorney's Office
500 E. Third Street
Loveland, CO 80537

Fort Collins City Attorney's Office
City Hall West
300 LaPorte Ave.
Fort Collins, CO 80521

and

To Lessee: Attn: Martin Lind
Attn: Gary White, Esq.
Company Name: Discovery Air, LLC
c/o Water Valley Land Company
Address: 1625 Pelican Lakes Pointe, Suite 201
City, State and Zip Code: Windsor, CO 80550

ARTICLE 24: INVALID PROVISIONS

The invalidity of any provisions, articles, paragraphs, portions or clauses of this Agreement shall have no effect upon the validity of any other part or portion hereof, so long as the remainder shall constitute an enforceable agreement. Furthermore, in lieu of such invalid provisions, articles, paragraphs, portions or clauses, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such invalid provision as may be possible and be legal, valid and enforceable.

ARTICLE 25: MISCELLANEOUS PROVISIONS

25.1 Remedies to be Non-exclusive. All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of, or exclusive of, each other, or of any other remedy available to the Cities, or Lessee, at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities shall not prevent the exercise of any other remedy, provided that the Cities' remedies in the event of default shall not exceed those set forth in this Agreement.

25.2 Non-liability of Individuals. No director, officer, agent or employee of the Cities shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same. Except to the extent otherwise expressly provided for herein, no officer, manager, member, agent or employee of Lessee shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his or their execution or attempted execution of the same.

25.3 Estoppel Certificate. At the request of Lessee in connection with (i) its obtaining a Leasehold Mortgage or (ii) an assignment of its interest in this Agreement, the Cities shall execute and deliver a written statement identifying them as the lessors under this Agreement and certifying:

25.3.1 The documents that then comprise this Agreement,

25.3.2 That this Agreement is in full force and effect,

25.3.3 The then current annual amount of rent and the date through which it has been paid,

25.3.4 The expiration date of this Agreement,

25.3.5 That no amounts are then owed by Lessee to the Cities (or, if amounts are owed, specifying the same)

25.3.6 To the knowledge of the Cities, there are not defaults by Lessee under this Agreement or any facts which but for the passage of time, the giving of notice or both would constitute such a default, and

25.3.7 Remaining rights to renew the term of this Agreement to the extent not theretofore exercised.

The Leasehold Mortgagee or party acquiring Lessee's interest in this Agreement shall be entitled to rely conclusively upon such written statement.

25.4 Recording of Memorandum of Agreement. A memorandum of this Agreement shall be recorded by the Cities, and the costs of such recordation, and any closing costs associated with this Agreement, its execution and recordation, shall be billed to and paid by Lessee as additional rent.

25.5 General Provisions.

25.5.1 This Agreement shall be construed in accordance with the laws of the State of Colorado and venue shall be in Larimer County, Colorado.

25.5.2 This Agreement is made for the sole and exclusive benefit of the Cities and Lessee, their successors and assigns, and is not made for the benefit of any third party.

25.5.3 In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

25.5.4 All covenants, stipulations and agreements in this Agreement shall extend to and bind each party hereto, its legal representatives, successors and assigns.

25.5.5 The titles of the several articles of this Agreement are inserted herein for convenience only, and are not intended and shall not be construed to affect in any manner the terms and provisions hereof, or the interpretation or construction thereof.

25.5.6 Nothing herein contained shall create, or be construed to create, a partnership, joint venture, agency or any other relationship between the Cities and Lessee, other than that of landlord and tenant. The Cities and Lessee each expressly disclaim the existence of any such other relationship between them.

25.5.7 Cities have and may allow certain portions of the Airport to be used by other tenants at any time and Lessee shall not interfere in any manner with said other tenants or with the facilities granted to such tenants. Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right prohibited by Section 308 of the Federal Aviation Act of 1958, as amended, and the Cities reserved the right to grant to others the privilege and right of conducting any one or all of the activities specified herein, or any other activities of an aeronautical nature.

25.5.8 In the event any action or proceeding is brought to recover payments due under this Agreement or take possession of the Leased Premises and/or the improvements thereon, or to enforce compliance with this Agreement for failure to observe any of its covenants, the prevailing party shall be awarded reasonable attorneys' fees and costs as set by the court.

25.5.9 The time within which either party hereto shall be required to perform any act under this Agreement, other than the payment of money, shall be extended by a period equal to the number of days during which performance of such act is delayed unavoidably by strikes, lockouts, acts of God, governmental restrictions, failure or inability to secure materials or labor by reason of or similar regulation or order of any governmental or regulatory body, war, enemy action, acts of terrorism, civil disturbance, fire, unavoidable casualties, or any similar occurrence.

25.5.10 The Cities designate the Airport Manager as their representatives who shall make, within the scope of their authority, all necessary and proper decisions with reference to this Agreement.

25.5.11 Lessee agrees that that the Cities are governmental entities subject to the Colorado Open Records Act ("CORA"), C.R.S. § 24-72-201 to 205.5, which provides that all public records shall be open for inspection by any person at reasonable times, except as provided in CORA or as otherwise specifically provided by law. Lessee may mark any documents provided to the Cities as "trade secrets",

“privileged information”, or “confidential commercial, financial, or other data.” Unless such documents are marked appropriately and in accordance with CORA, the Cities may be required to release relevant information related to this Agreement and the Leased Premises.

25.6 Availability of Government Facilities. In the event the existence, maintenance or operation of air navigation aids or other facilities supplied or operated by the United States or the State of Colorado at or in conjunction with the Airport are discontinued, the Cities shall have no obligation to furnish such facilities.

25.7 Avigation Easement. There is hereby reserved to the Cities, their successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used for navigation of or flight in the air, using said airspace or landing at, taking off from or operating on the Airport. Lessee agrees to execute any and all documents, if any, necessary to establish such avigation easement.

25.8 Part 77. Lessee agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations or any amendments thereto in the event any future structure or building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on the Leased Premises.

ARTICLE 26: SUBORDINATION CLAUSES

26.1 This Agreement is subject and subordinate to the following:

26.1.1 The Cities reserve the right to develop and improve the Airport in any manner approved by the City Councils, provided Lessee is not deprived of (i) the use of or access to the Leased Premises by motor vehicles and/or aircraft owned or operated by Lessee or Lessee’s assigns, sublessees, renters, agents, employees or invitees or (ii) any of Lessee’s rights under this Agreement.

26.1.2 The Cities reserve the right to take any action they consider necessary to protect the aerial approaches to the Airport against obstruction, together with the right to prevent Lessee from erecting or permitting to be erected any building or other structure on the Airport which would limit the usefulness of the Airport or constitute a hazard to aircraft.

26.1.3 This Agreement is and shall be subordinate to the provisions of existing and future agreements between the Cities and the United States relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the obtaining or expenditure of federal funds for the benefit of the Airport. This Agreement shall also be subordinate to any FAA and TSA regulations as they exist or as they may be amended from time to time in the future.

26.1.4 During time of war or national emergency, the Cities shall have the right to lease all or any part of the landing area of the Airport to the United States for military use, and if any such lease is executed, the provisions of this Agreement insofar as they may be inconsistent with the provisions of such lease to the government, shall be suspended, but such suspension shall not extend the term of this Agreement. Abatement of rentals shall be reasonably determined by the Cities and Lessee in proportion to the degree of interference with Lessee’s use of the Leased Premises.

26.1.5 Except to the extent required for the performance of any obligations of Lessee hereunder, nothing contained in this Agreement shall grant to Lessee any rights whatsoever in the airspace above the Leased Premises other than those reasonably necessary to Lessee’s enjoyment of the Leased Premises and Cities’ Airport facilities and which are consistent with FAA rules, regulations and orders currently or subsequently effective. Further, Lessee’s rights in airspace above the Leased

Premises and the Airport and the Airport facilities shall be not less than the rights therein by other users of the Airport and Airport facilities.

ARTICLE 27: QUIET ENJOYMENT

Cities hereby covenant and warrant that they are the owners of the Leased Premises and that Lessee upon payment of rentals herein provided for and performance of provisions on its part to be performed shall and may peacefully possess and enjoy the Leased Premises during the term hereof and any extensions hereof without any interruption or disturbance.

ARTICLE 28: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement of the parties hereto and may be changed, modified, discharged or extended by written instrument duly executed by the Cities and Lessee. The parties agree that no representations or warranties shall be binding upon the Cities or Lessee unless expressed in writing.

ARTICLE 29: REQUIREMENTS FOR CONDOMINIUMIZATION

This Agreement does not authorize Lessee to create either a common interest community or hangar condominiums on the Leased Premises. If Lessee desires to create a common interest community or hangar condominiums on the Leased Premises, a written amendment to this Agreement shall be required, containing such additional terms as the Cities may reasonably require, including but not necessarily limited to terms necessary for compliance with the Colorado state law.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

[Signatures on the following page]

CITY OF LOVELAND, COLORADO

Stephen C. Adams, City Manager

ATTEST:

Clerk

APPROVED AS TO FORM:

Assistant City Attorney

CITY OF FORT COLLINS, COLORADO

Darin A. Atteberry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Discovery Air, LLC, a Colorado limited liability company,

ATTEST:

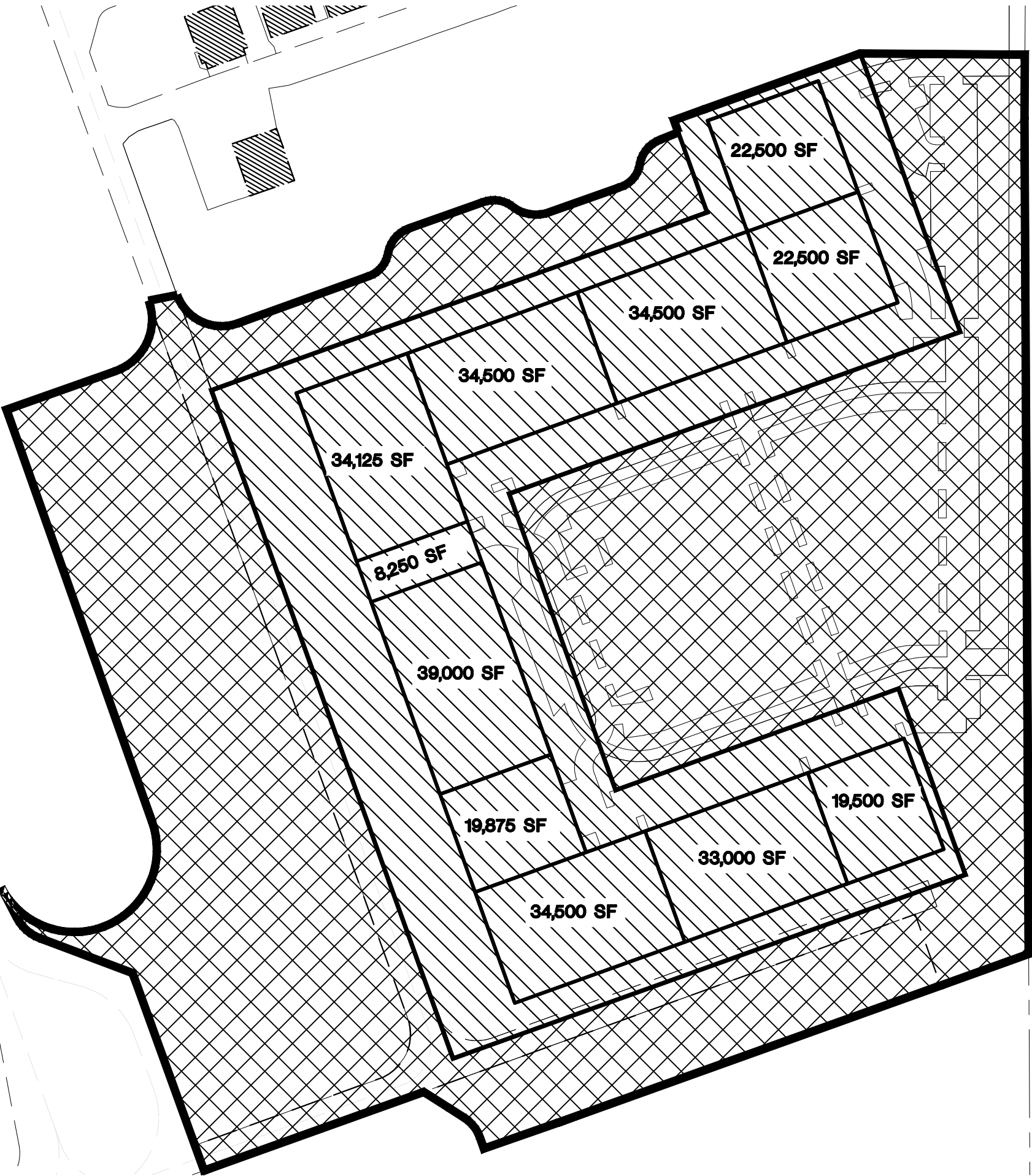
By: _____
Name: _____
Title: _____

Exhibit “A”

Description of Leased Premises

[ATTACHED]

Exhibit A



- Lease Premises
- Additional Paved Area
- Rental Area

BUILDING FOOTPRINT	302,250 SF
EXTENDED AREA	261,846 SF
<hr/>	
TOTAL RENTAL AREA	564,096 SF

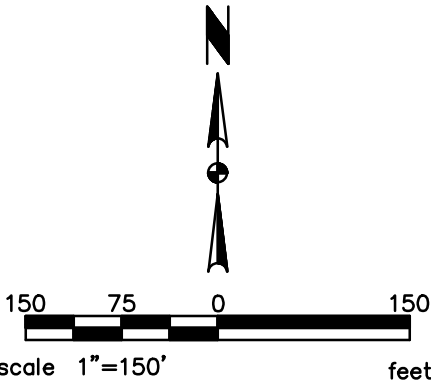


Exhibit “B”
Preliminary Site Plan
[ATTACHED]

NORTHERN COLORADO REGIONAL AIRPORT
PRELIMINARY SITE PLAN
LOVELAND, COLORADO

APPLICANT:
AIRPARK OF THE ROCKIES, LLC
1625 PELICAN LAKES POINT,
SUITE 201
WINDSOR, CO 80550
(970) 686-5825
FAX (970) 686-2768



TST, INC.
CONSULTING ENGINEERS
748 WHALERS WAY, BLDG. D
FORT COLLINS, COLORADO
(970) 226-0557
FAX (970) 226-0204



Know what's below.
Call before you dig.

NOT FOR
CONSTRUCTION

DATE:
APRIL 17, 2018

SHEET TITLE:
PRELIMINARY
SITE PLAN

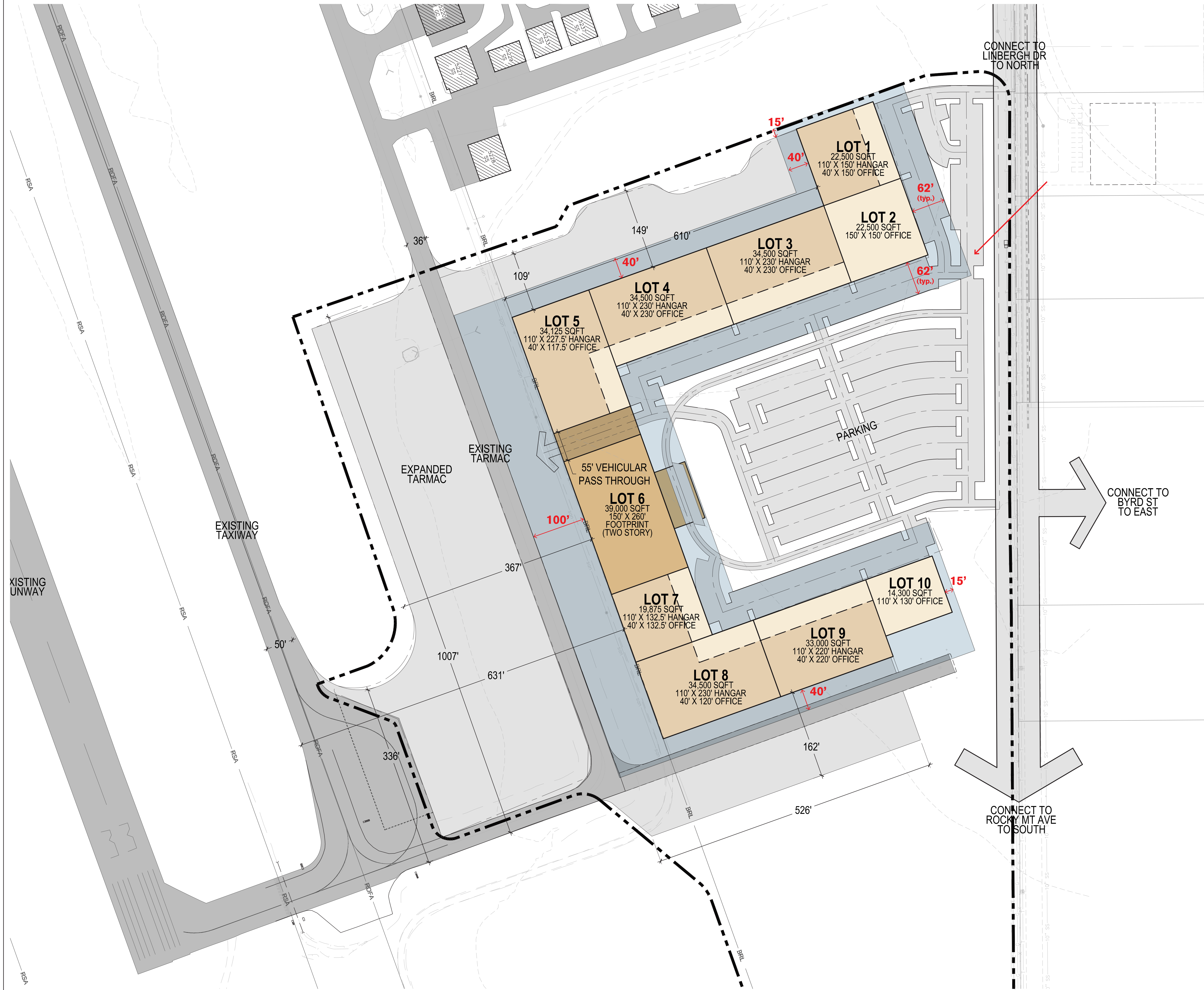
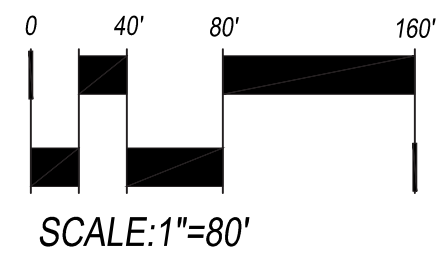
SP-03

LOT SUMMARY				
Lot Number	Hangar Size (sqft)	Office (sqft)	FBO (sqft) *	Total (sqft)
Lot 1	16,500	6,000	---	22,500
Lot 2	---	22,500	---	22,500
Lot 3	25,300	9,200	---	34,500
Lot 4	25,300	9,200	---	34,500
Lot 5	29,425	4,700	---	34,125
Lot 6	---	---	39,000	39,000
Lot 7	14,575	5,300	---	19,875
Lot 8	29,700	4,800	---	34,500
Lot 9	24,200	8,800	---	33,000
Lot 10	---	14,300	---	14,300
Type A Total	165,000	84,800	39,000	288,800

Ramp Inside Taxiway	188,270
Ramp Outside Taxiway	244,860
Parking	270,000

*Note: The FBO building is a two-story structure with a 39,000 sqft footprint, totaling a maximum of up to 78,000 sqft. FBO shall contain multiple uses, including, but are not limited to restaurant, gondola, offices, retail, service and aviation related uses.

LEGEND	
	BUILDING RESTRICTION LINE
	RUNWAY OBJECT FREE AREA
	RUNWAY SAFETY AREA
	LIMIT OF WORK
	EXISTING PAVEMENT
	PROPOSED PAVEMENT
	EXISTING BUILDING
	PROPOSED OFFICE
	PROPOSED HANGAR
	PROPOSED FBO



CHECKED BY: MB, BR
DRAWN BY: DJ

Consideration of a Land Lease Agreement

Between the Cities of Fort Collins, Loveland, and Discovery Air LLC



Background

- Intergovernmental agreement
 - Airport Commission has authority to approve standard lease agreements typical for smaller hangar developments
- The proposed lease was negotiated to encourage private sector investment into the Airport, and key differences between this lease and standard leases are:
 - Reduced lease rate
 - Longer lease term
 - Possible formation of a metro district

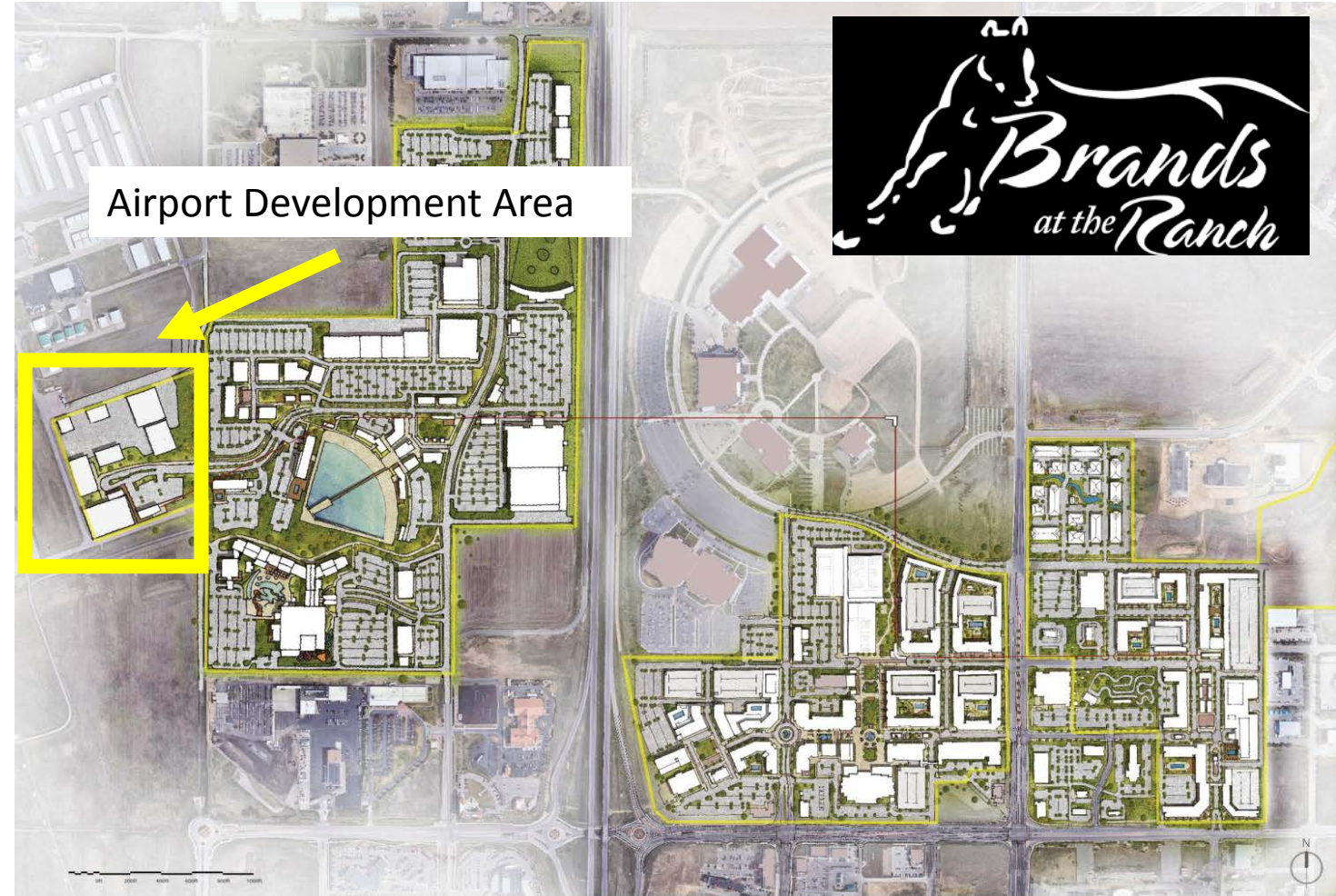


Proposed Development Site

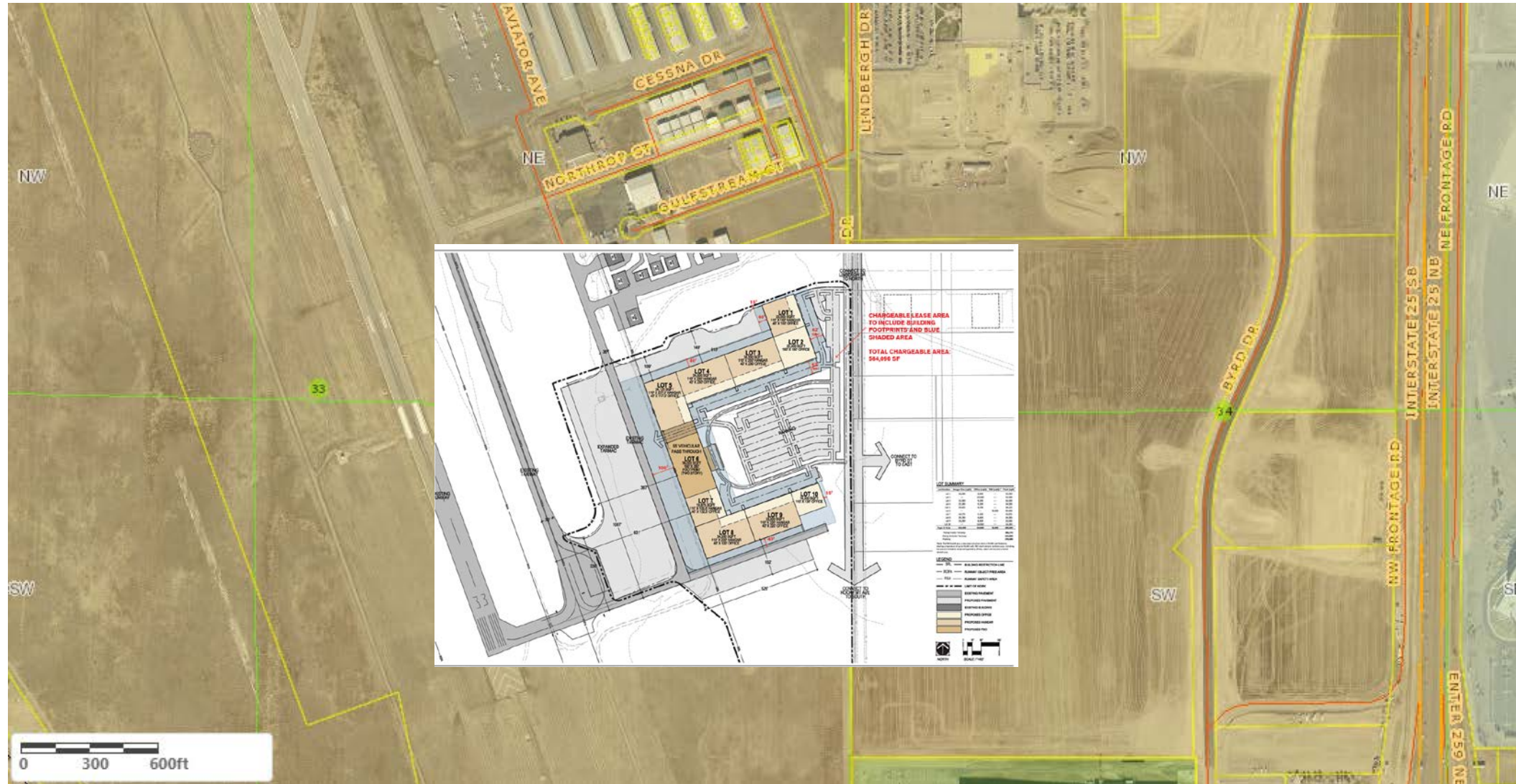


Proposal

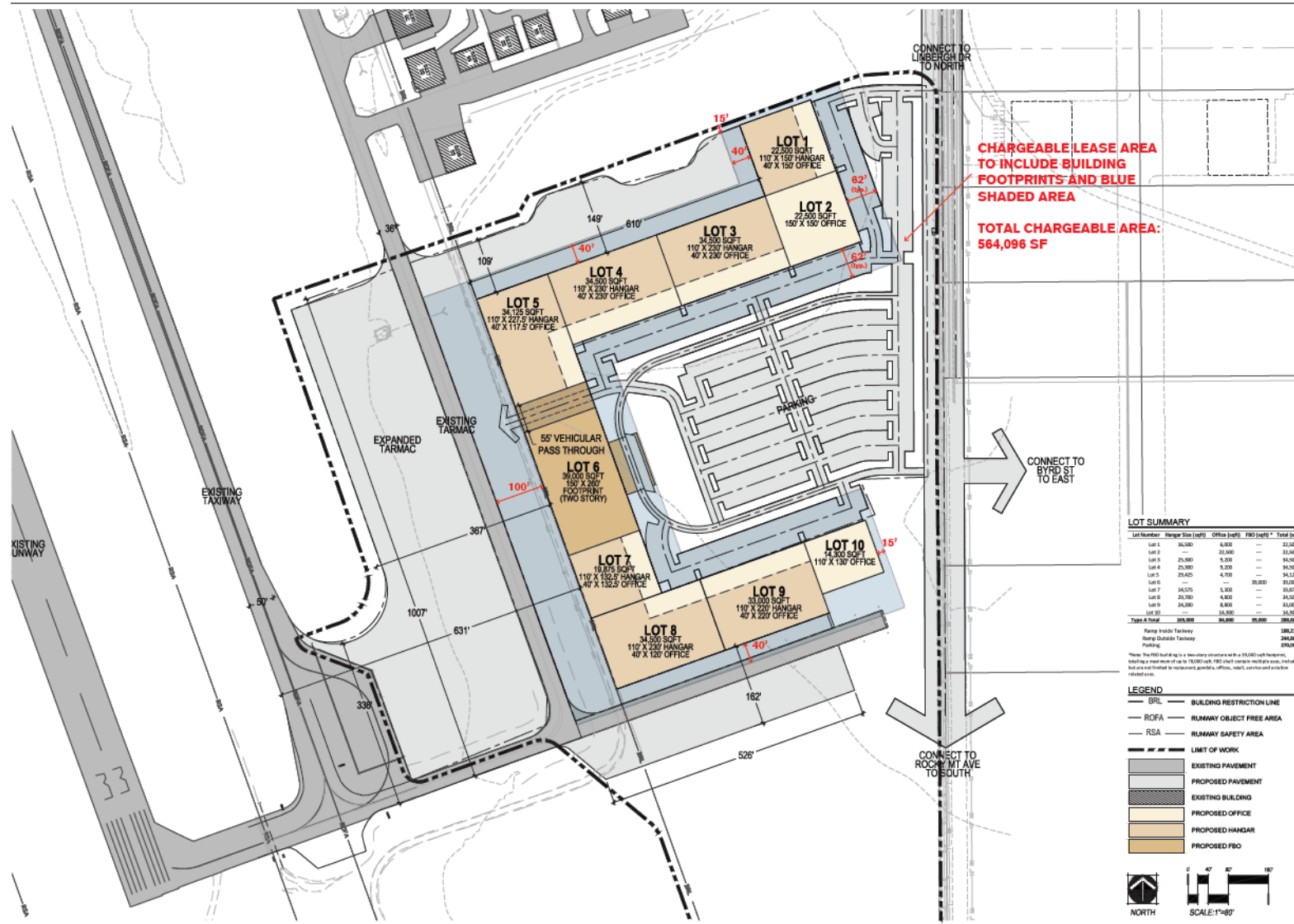
- Development would be part of a larger planned project
- The proposed use is for a corporate aviation campus including a new Fixed Base Operator (FBO), a restaurant open to the public, multiple large hangars and associated office space, and an aerial tram



Preliminary Site Development Plan



Concept Enlarged



Lease Details

- Lease area: 564,096 square feet or approximately 13 acres
- Term: Initial Two year option period that will roll into a 50 year total land lease (FAA maximum)
- Annual rate:
 - Years 1-2: option period, \$0.05 per square foot or \$28,000
 - Years 3-10: \$0.15 per square foot or \$85,000
 - Years 11-50: \$0.25 per square foot plus inflationary adjustments or \$141,000
- Value of the lease = \$4.9 million at 2.5% estimated inflation
- Rates do not change based on project phasing or construction schedule
- Developer would have to relocate Colorado wildfire air tanker facility



Cost Analysis & Performance Measures

- Lease includes the provision that any expanded aircraft ramp will be refunded through FAA grants if they are available
 - Conforms to current Airport policy
- A portion of an aircraft taxiway may need to be rerouted to accommodate the development
 - Taxiway is shown on the Airport's capital plan for rehabilitation due to age/ condition
 - Operational and Maintenance costs in line with existing Airport agreements
- Performance measures are included in the Lease agreement
 - Must have site development planning and associated approvals completed prior to the end of the option/ entitlement period of 24 months
 - Horizontal infrastructure: three years; Vertical: five years



Lease Rates & Term Rationale

- Rate and term encourage private investment
 - No upfront development cost or risk to the Cities
 - Income is comparable to what the Airport would generate over time
 - Fuel flowage from larger aircraft, for which this development is designed, would have a positive financial impact to the Airport
 - Historical construction averages reflect it could take 25 years to develop without private sector partnership
 - Potentially a catalyst to attract additional development & businesses
- Additional project benefits
 - Will enhance the Airport's economic impact & job creation
 - Centennial Airport and other successful airports use similar models for large scale aeronautical land leasing



Agreement Approval Timeline

- October 18, Northern Colorado Regional Airport Commission: Recommended approval of the land lease agreement to the City Councils
- November 19, present the lease agreement at the Council Finance Committee in Fort Collins
- November 20, Loveland City Council
- December 4, Fort Collins City Council 1st reading
- December 18, Fort Collins City Council 2nd reading



COUNCIL FINANCE COMMITTEE AGENDA ITEM SUMMARY

Staff: Blaine Dunn, Sr. Treasury Analyst

Date: November 19, 2018

SUBJECT FOR DISCUSSION

General Employee Retirement Plan Review

EXECUTIVE SUMMARY

The General Employee Retirement Plan “the Plan” was established in 1971 and was closed to new members in 1999. There are currently 401 total members left in the Plan including active employees, terminated vested employees, and employees receiving a benefit. In 2017 the total pension liability was \$60.0M and the fiduciary net position for the Plan was \$48.8M, leaving a net pension liability of \$11.2M.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council Finance desire any additional information?

Does Council Finance have any comments on strategy and direction of the Plan?

BACKGROUND/DISCUSSION

The Plan is overseen by the General Employees Retirement Committee (GERC). The GERC is comprised of 6 members, 1 from financial services, 4 current or former employees covered by the Plan, and 1 at large member. The GERC administers the Plan including setting the investment policy and making any changes to assumptions used in the actuarial valuations. In 2017 the GERC decided to reduce the assumed rate of return from 6.5% to 6.25%. The 20-year average return for the plan is currently 6.1%.

In 2013 Council approved increasing the supplementary contribution to \$1.12M annually. This was to help reach full funding of the plan sooner than previously projected. It is currently estimated the plan will meet full funding by 2031. This is when the City supplemental contributions will end.

The current net pension liability of \$11.2M is the lowest amount the Plan has had since 2007. The current funding ratio of 81% is the highest the Plan has had since 2007 and compares favorably with other public sector plans. The Plan continues to be able to meet all obligations and overall is in a healthy financial status.

ATTACHMENTS

Attachment 1 - PowerPoint

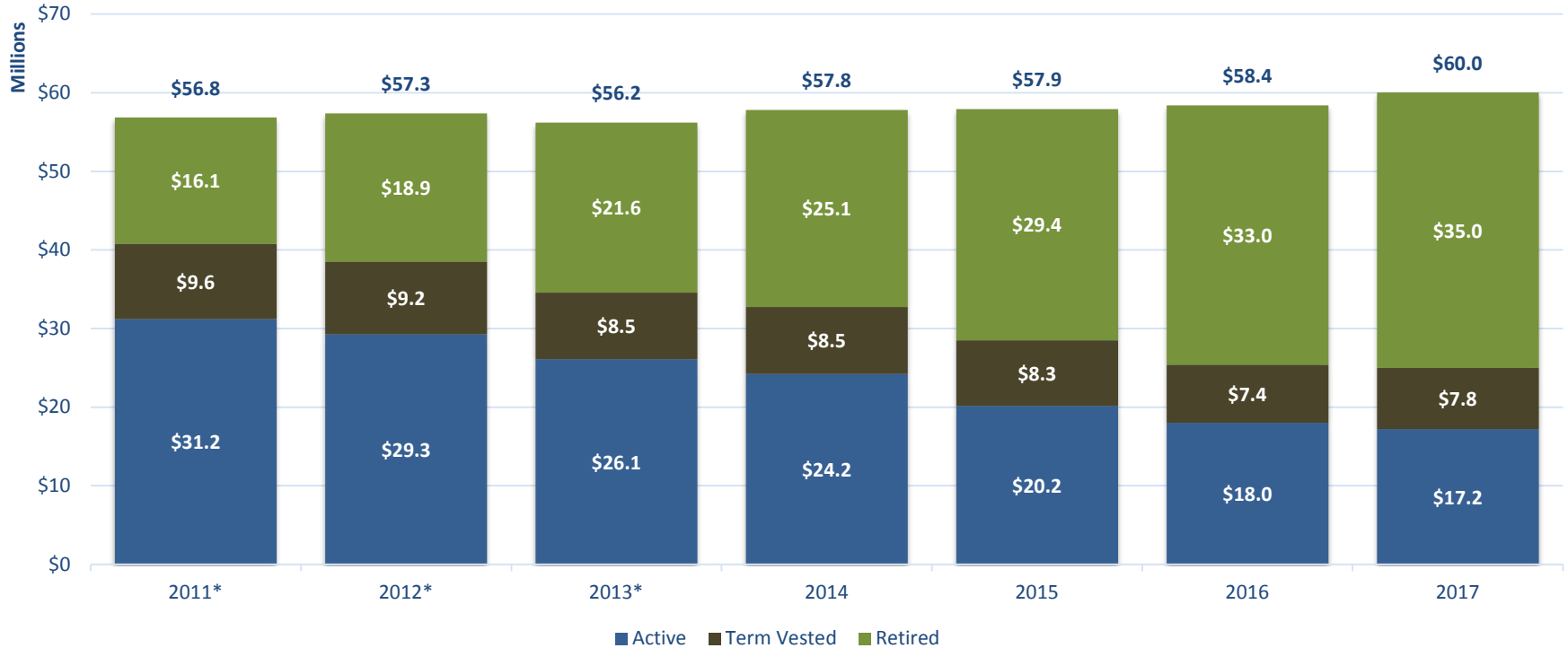


General Employee Retirement Plan Review
Blaine Dunn, Sr. Treasury Analyst

- **Established January 1, 1971**
- **Closed to new members January 1, 1999**
- **Defined Benefit**
 - Years of service
 - 1.5% per year
 - Average of highest 5 consecutive years
 - Example: 20 years x 1.5% x \$55,000 = \$16,500 benefit per year
- **No COLA in retirement**
- **General Employees Retirement Committee (GERC)**
 - Administers the Plan
 - Composed of 6 members (1 from Financial Services, 4 current or former employees in GERP, 1 tax paying elector of the city)

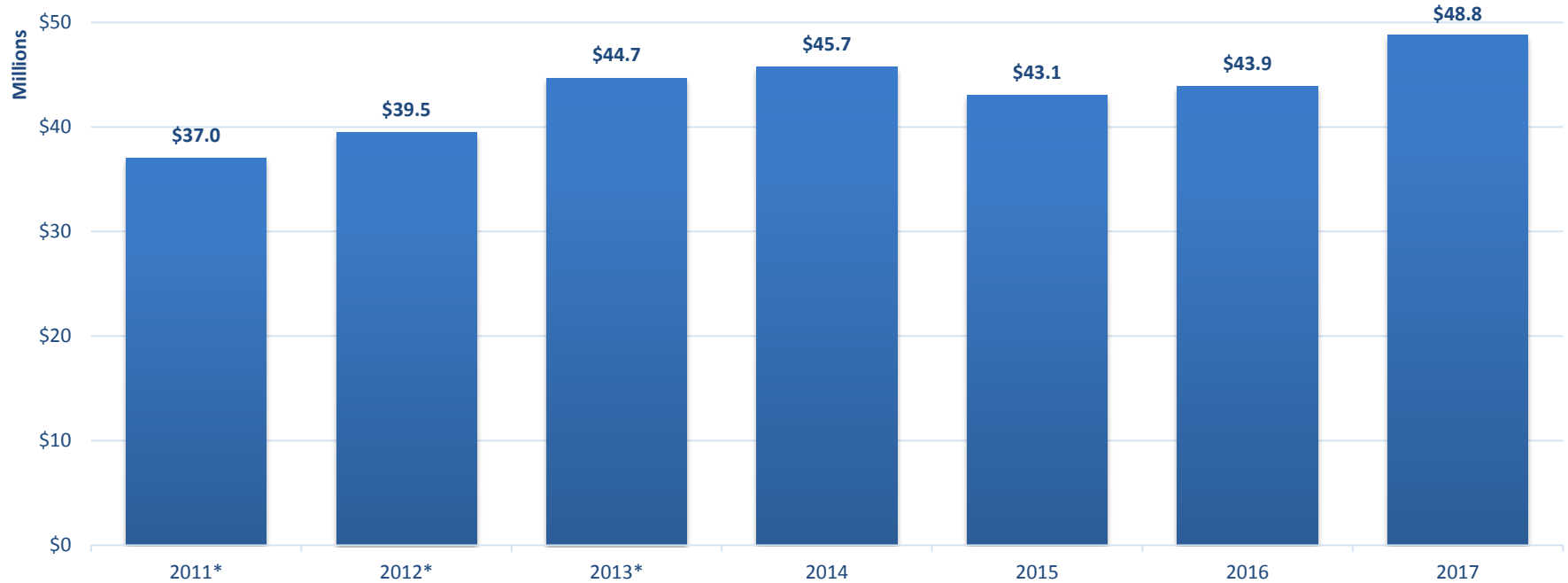
Year Ending	Actives	Terminated Vested	Retired / Beneficiary	Total
2017	70	89	242	401
2016	78	94	238	410
2015	95	103	222	420
2014	113	113	205	431
2013	128	121	190	439

Total Pension Liability



* Years restated based on new GASB disclosures

Fiduciary Net Position

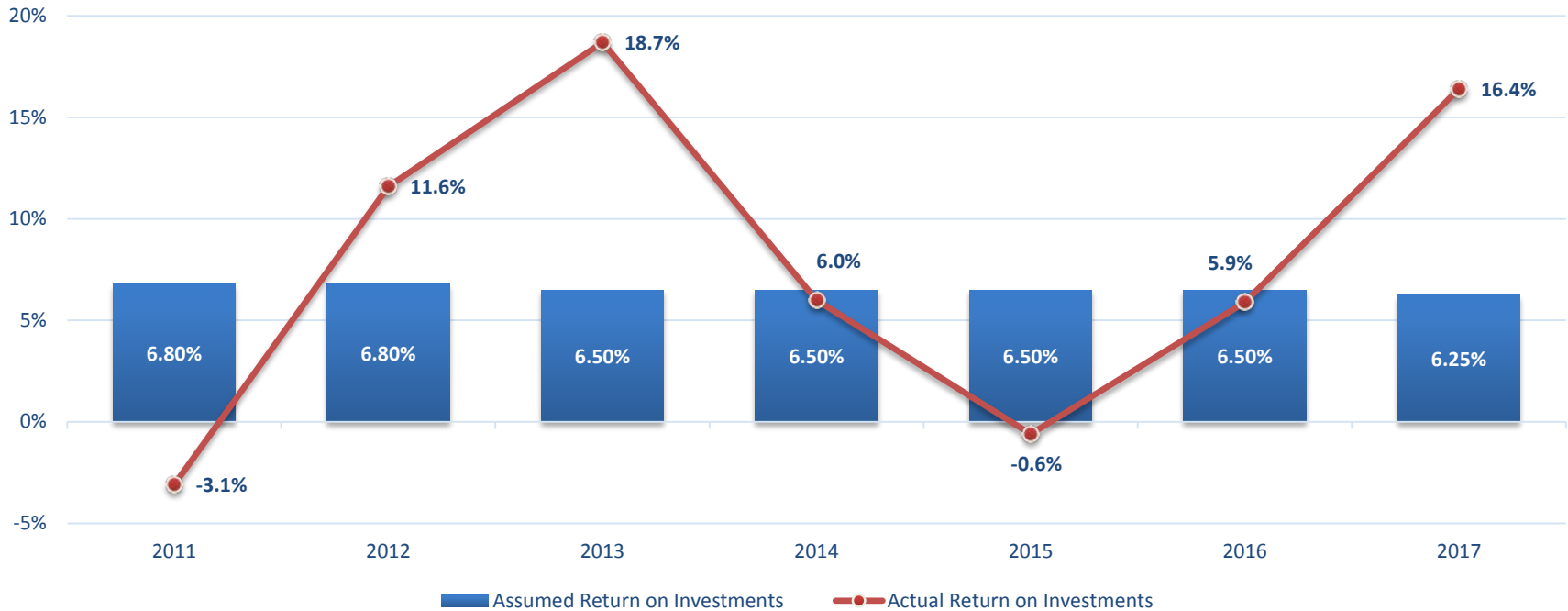


* Years restated based on new GASB disclosures

	Minimum	Target	Maximum
Equities/Stocks			
Domestic	35%	45%	55%
International	5%	15%	25%
Fixed Income/Bonds	30%	40%	50%
TOTAL		<hr/> 100%	

Current portfolio distribution in red (approximate)

Return on Investments

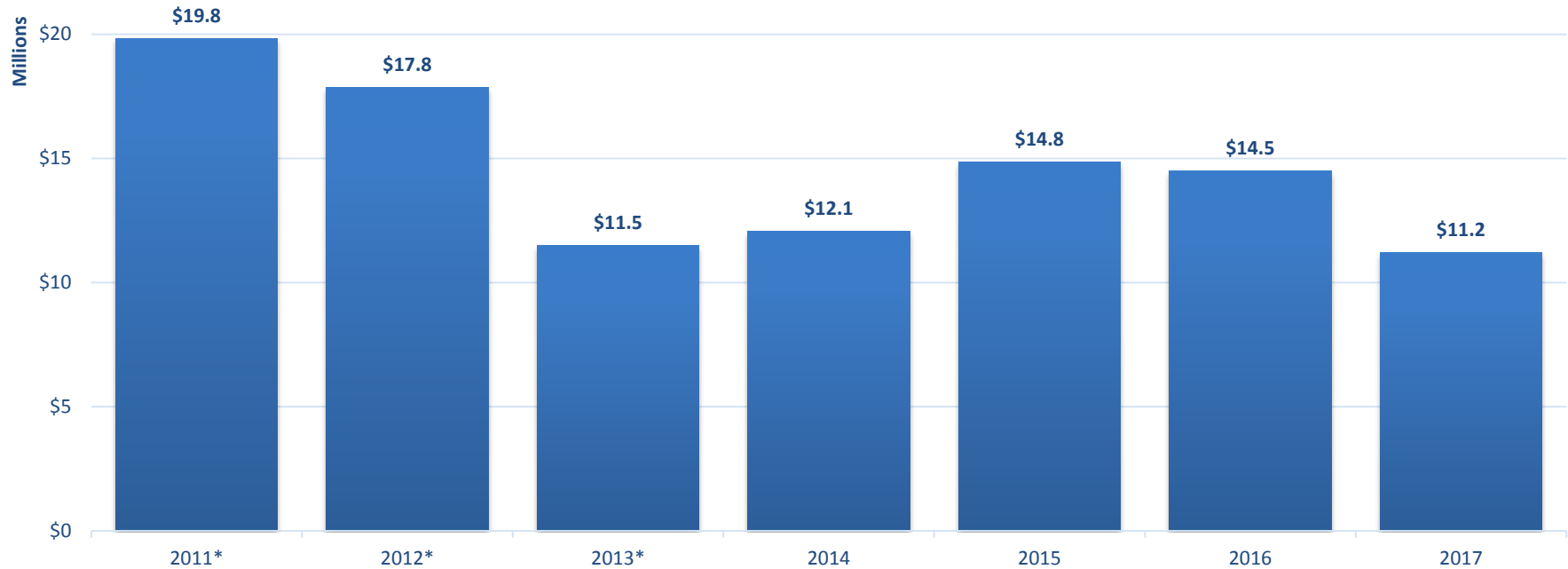


20yr Average Annual Rate of Return – 6.1%

Recent Major Assumption Changes

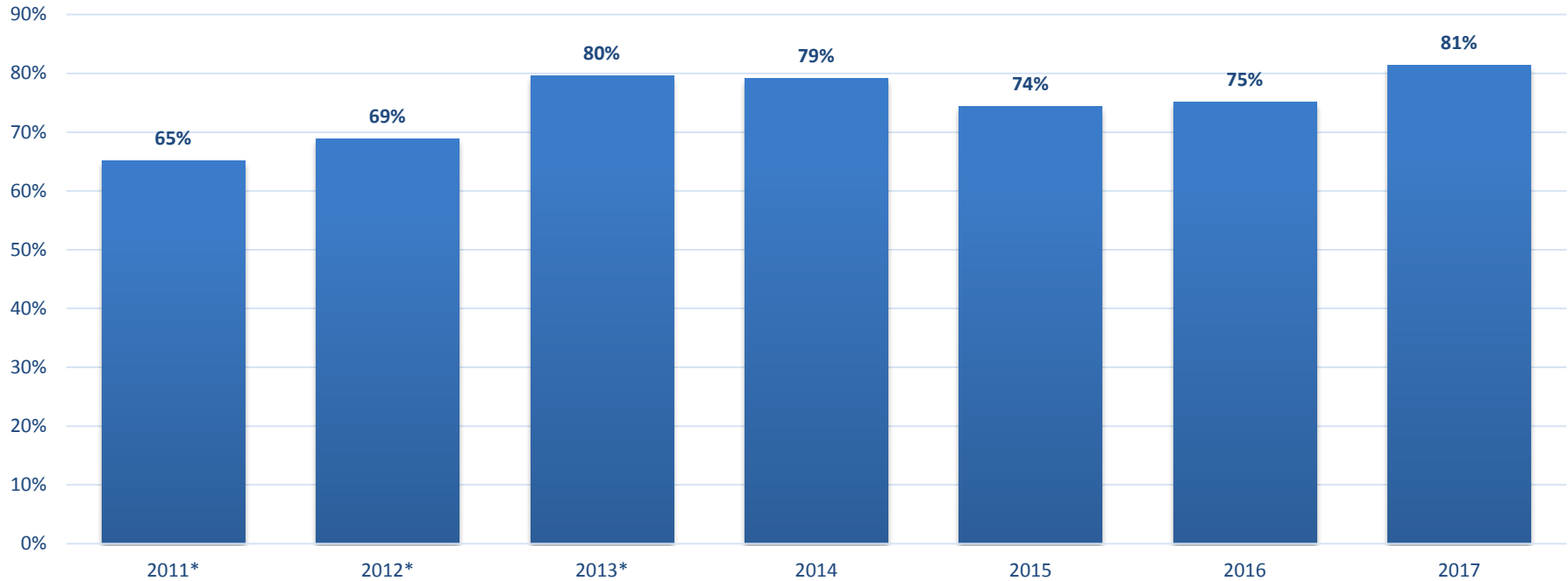
- **Investment Return**
 - 7.5% through 2010
 - 6.8% 2011-2012 (\$3.7 M increase to Net Pension Liability(NPL))
 - 6.5% beginning 2013 (\$1.6M increase to NPL)
 - 6.25% beginning 2018 (\$1.3M increase to NPL)
- **Mortality Tables**
 - In 2010 updated to most recent actuarial industry standard (\$1.3 M increase to NPL)
 - In 2014 applied generational scaling (\$830k increase in NPL)
- **Increased Supplemental Contribution from City to \$1.12M annually in 2013**

Net Pension Liability



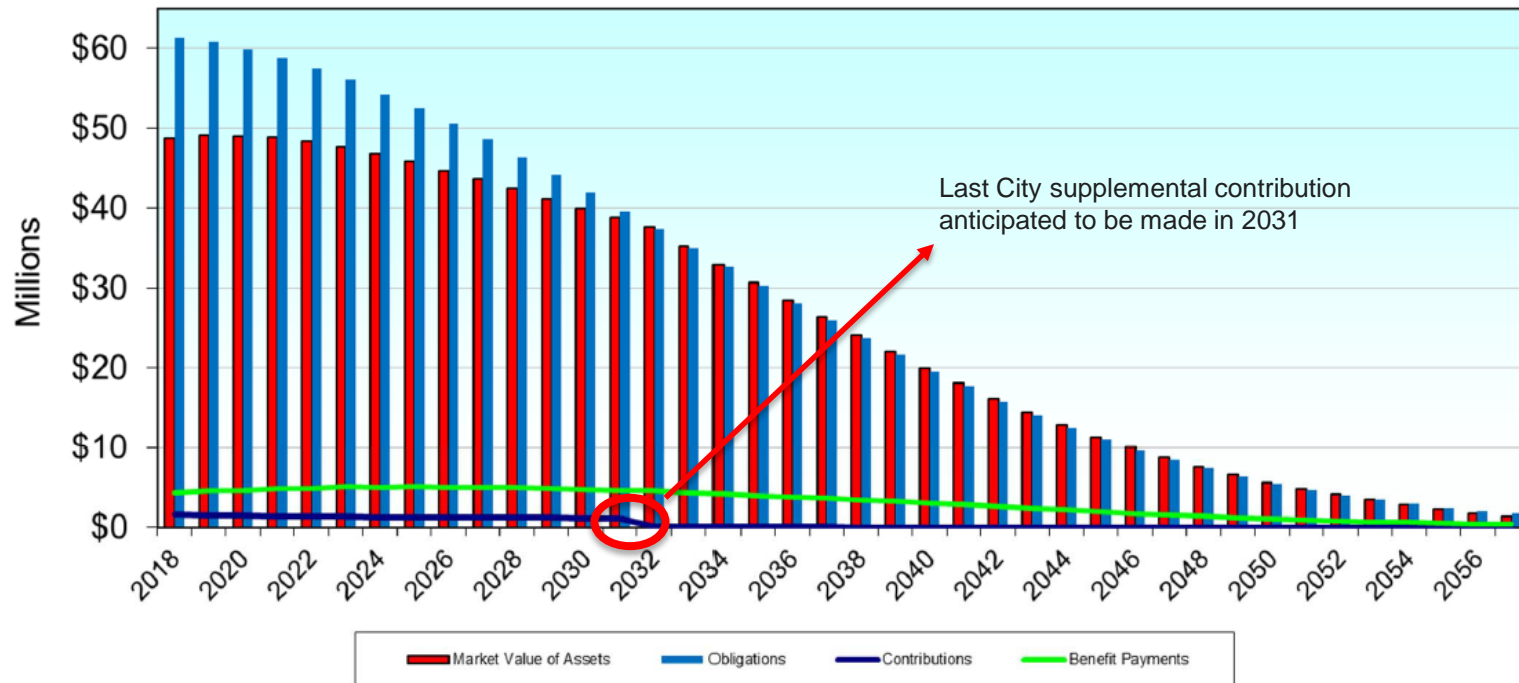
* Years restated based on new GASB disclosures

Funded Ratio



* Years restated based on new GASB disclosures

Funding Levels by Year



Assumes Market Value of Assets earns 6.25% per annum, and payroll contributions are 10.5% of compensation.
Includes excess contributions of \$1,120,000 for 2018- 2031.

- **Net Pension Liability (NPL) - \$11.2M**
 - Lowest since 2007
- **Funded Ratio – 80%**
 - Highest since 2007; compares favorably with other public sector plans
- **Full Funding reached in 2031 with current assumptions**
 - Increased 3 years with change in investment return assumption
 - Supplemental contribution should end in 2031

- Does Finance Committee desire any additional information?
- Does Finance Committee have any comments on strategy and direction of the Plan?

COUNCIL FINANCE COMMITTEE AGENDA ITEM SUMMARY

Staff: John Phelan and Sean Carpenter

Date: November 19, 2018

SUBJECT FOR DISCUSSION: EPIC Loan Program Update and Next Steps

EXECUTIVE SUMMARY:

This item will provide an update on the EPIC Loan Program, including the history of on-bill financing, current activities related to the Bloomberg Mayors Challenge and next steps regarding the establishment of a 3rd party capital revolving loan fund.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Staff is seeking Council Finance support for issuance of the EPIC 3rd Party Capital RFP and feedback regarding other next steps.

BACKGROUND/DISCUSSION

Fort Collins has ambitious goals for energy efficiency, renewable energy and greenhouse gas emissions reductions (see [Energy Policy](#) and [Climate Action Plan](#)). Meeting these objectives will require customers undertake comprehensive efficiency improvements, particularly for older less energy efficient rental properties, owner-occupied homes and small businesses, to drive savings in both electricity and natural gas. An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward.

This section outlines the history of on-bill financing, current activities and proposed next steps.

On-bill Financing 1.0

The Home Efficiency Loan Program (HELP, aka OBF) operated from January 2013 through early 2017. The program was ended when the outstanding loan balance from Light & Power reserve funds reached the maximum of \$1.6M authorized by Council. The remaining outstanding loan balance from reserves is approximately \$1M.

Highlights and results include:

- HELP was launched in January 2013, loan activity was slow through mid-2015, after which time it ramped up significantly (see chart in Exhibit A – HELP Program Activity).
- In February 2017, when the final OBF1.0 loan was funded, total program loan production was over \$1.75M (see chart in Exhibit A).
- The median term was 10 years.
- Average loan amount was \$8,900.
- All loans to date have been for single family homes. Small business customers are also eligible for the program (based on ownership of the property), but no loans have been completed to date.

- Interest rates have varied since the program's inception:
 - 2013 – 5.25% to 6.25% based on customer qualifications and loan term
 - 2014 – 5.0% or 6.0% based on customer qualifications
 - February 2015 to May 2016 – 2.5% for all loans and terms
 - June 2016 to October 2016 – 4.0% for all loans and terms

Elevations Credit Union

The City of Fort Collins issued an RFP for energy loan financing and entered a partnership with Elevations Credit Union in 2017. Elevations offers energy efficiency loans for credit union members with a range of interest rates, terms and qualifications. The partnership is informal in nature, whereby the Efficiency Works Home program can provide information to interested customers, who can then engage with Elevations if they are interested. Uptake of the program has been minimal, with an average of three to five loans issued per month. With the implementation of EPIC, Elevations loans will continue to be an option for interested customers.

2018 Bloomberg Mayors Challenge

The Bloomberg Philanthropies *Mayors Challenge* is a yearlong competition that challenged leaders across the United States to uncover and test bold, inventive ideas to confront the toughest problems faced by cities today (www.mayorschallenge.bloomberg.org). After successful runs in the United States (2013), Europe (2014), and Latin America and the Caribbean (2016), the Mayors Challenge returned to the U.S. and was reimagined to address the urgent need for American mayors to innovate.

The 2018 Mayors Challenge competition invested over \$17 million in the more than 320 cities that entered the competition, via efforts including “idea accelerator workshops”, coaching and testing with the 35 cities that won the first round of the competition (e.g. “Champion Cities”), and via the grand prize awards made to the Mayors Challenge winners. The Mayors Challenge is part of the *American Cities Initiative*, a suite of investments to strengthen city halls and advance critical policies.

The competition was open to all cities in America with 30,000 or more residents. The “problem” that each team tried to solve was to be selected by their Mayor or elected City leadership. In the summer of 2017, in response to the challenge issued by Bloomberg Philanthropies, Fort Collins Mayor Wade Troxell selected the “Climate Economy” (e.g. building the foundation for a lower carbon, prosperous future for Fort Collins) as the theme for the just announced competition.

Staff from Fort Collins Economic Health Office and Utilities Departments began developing a core project team, in collaboration with other city staff and CSU. In February 2018, we were informed that our proposal won the first round of the competition and that we were a “Champion City” (35 out of 324 Cities). Fort Collins was awarded \$100,000 to further develop our idea. The final competition was between the 35 Champion Cities, and last week Fort Collins was selected as one of nine “Grand Champions” and was awarded a \$1M prize.

Fort Collins has a lot of rental properties; in fact, approximately 50% of our housing stock in the City is rental property. Because much of our housing stock is older (CSU was founded when we

were still the *Colorado Territory*, pre-statehood!), we knew that many housing units could benefit from energy efficiency upgrades. However, more than just saving energy, we were moved by new research and studies around “social determinants of health” and the impacts of housing on health and wellbeing. We believed that we could develop a project that could address “the Climate Economy” via energy efficiency, and in so doing also address other important “human centered” issues in our Community around indoor air quality, equity and wellbeing, housing instability and housing affordability.

A partial list of benefits for City residents would include:

- **Increased efficiency** via more energy efficient housing stock;
- **Improved health and wellbeing** for all residents; particularly for low- and moderate-income households, 96% of whom are renters in Fort Collins.
- **Innovative research.** We are working with CSU Engineering Professor Dr. Ellison Carter to help us research the potential health and wellbeing impacts for residents of these housing upgrades. Dr. Carter is an expert on indoor air quality and core member of our Bloomberg Mayors Challenge team.
- **New jobs and investment in our community** for our network of local contractors who are doing the upgrading work for area home and rental property owners. Suppliers and other partners will also see increased sales and can be expected to hire new workers, and improved properties will also benefit home and rental property owners via increased asset values.
- **Reduced carbon emissions** in support of the City’s Climate Action goals.

Colorado Energy Office

The Colorado Energy Office (CEO) has demonstrated its support of Fort Collins EPIC program with financial support of a \$200,000 grant and \$1M low interest loan for the purpose of providing loan capital. As part of the grant funds, Fort Collins staff will be providing support to the Colorado Energy Office for the development of a toolkit for on-bill financing which CEO can offer to other Colorado communities.

Through a Memorandum of Understanding (MOU) between the Colorado Energy Office (CEO), Environmental and Energy Study Institute (EESI), and the City of Fort Collins, Utilities will work with CEO and EESI to develop a scalable utility on-bill financing program model. The purpose is to promote the expansion of on-bill financing or repayment programs by utilities across Colorado through the creation of a practical “how-to” resource guide (Guide) for utilities wishing to launch their own on-bill program. The intent of the Guide is to:

- Build on existing publications and research that highlight industry best practices, case studies, and lessons learned;
- Include useful tools and considerations specific to issues that Colorado utilities face in launching this type of financing program;
- Develop the guide in an iterative process by requesting and incorporating feedback from utilities or other stakeholders.

It is expected the Guide will be promoted to interested utilities in Colorado initially, but may also be adapted by EESI for use as a resource to promote on-bill repayment programs across the United States.

EPIC 3rd Party Capital RFP

The City of Fort Collins is requesting proposals from one or more qualified firms to provide capital in support of the ongoing *EPIC Loan program* (aka “On-Bill Financing”). Potential firms include banks, credit unions, investment funds and foundations. See attachment 1 for the draft scope of work for this RFP.

The EPIC Loan Program is designed to balance the programmatic objectives and financial requirements of the City of Fort Collins, while also meeting the needs and expectations of capital providers and utilities customers. The name EPIC comes from an element of the efficiency program, whereby homes receive an Energy Performance Improvement Certificate. However, for the purposes of implementation, the program is simply known as the EPIC.

The purpose of this RFP is to seek additional sources of capital to be able to offer a continuing source of funds (e.g. a revolving loan fund) to meet increasing customer demand for energy efficiency financing. Fort Collins Utilities will be the borrower and guarantor of the funds from prospective capital providers, and Fort Collins Utilities will in turn service the repayments to its capital lenders using repayment obligations from customers to Utilities. In this on-bill financing model, prospective capital providers will not be originating loans to, or otherwise engaging directly with, Utilities customers. Instead, capital providers will lend or grant funds to the City, and the City will undertake and / or oversee loan underwriting, origination and collections. Capital providers will therefore have recourse to the EPIC fund and repayments for funds borrowed, but not to individual Utilities customers (Figure 1).



Figure 1: Capital and Repayment Structure

Proposed capital sources for the EPIC Loan program need to align with the following high-level objectives:

- **Attractive:** The loan program must be able to provide attractive loan terms to customers, specifically attractive interest rates.
- **Scalable:** The program must be scalable in support of Fort Collins ambitious energy goals. It is anticipated that Fort Collins will upgrade thousands of homes in the coming years.
- **Simple:** the implementation and administration of the program must be as simple as possible for all parties, including customers, Utilities and the capital partner(s).

Potential Size of Loan Portfolio

During the On-Bill Financing Version 1 (OBF1.0) period from July 2015 to February 2017, the rate of loan activity was equivalent to approximately 120 loans and \$1M annually. The scaling of goals associated with the EPIC Loan program are to complete a minimum of 1,000 projects by the end of 2021. Based on typical project needs, this would require up to \$10M of capital be available. With a range of loan terms from 3 to 20 years, the expectation for a breakdown of necessary 3rd party capital amounts and terms would be:

Loan Term	Percentage of Portfolio
3-5 years	20%
5-10 years	30%
10-20 years	50%

Potential Financial Solution

Utilities intends to create a sustainable cycle of loans and repayments similar in concept to a revolving loan fund. There are a range of structures which could be successful, based upon standard financial structures, with regular P&I and / or balloon payments, to be determined. For example, loan and / or grant capital tied to Community Reinvestment Act (CRA) obligations for area banks are a potentially viable option for lending capital, as the EPIC loan program will be targeting older rental properties where many low and moderate-income households live (e.g. LMI census tracts), among other eligible Utilities customers.

Flexible structures which minimize the need for the City to carry non-deployed debt capital, such as lines of credit versus term loans, are encouraged. In all cases, Fort Collins Utilities would be the borrower, with the 3rd party funds being loaned to customers by the City. Fort Collins Utilities would be responsible for the repayment to the capital provider. In turn, Utilities customers carry the obligation for repayment of loans to the City via their utility bill. Note: The Utility department has various code-specified tools for recourse of delinquent Utility bills that makes the risk profile for the EPIC loan portfolio extremely low. Any proposed solution must also consider all applicable Colorado statutes.

Fort Collins Utilities recognizes that this proposed financing model is unique for a municipal-owned utility, and as such we are committed to working with responsive applicants to “co-create” a viable and scalable financing model that is workable and beneficial for all parties. For the purposes of this RFP, the presumed model will include:

- Capital to be provided as a line of credit, program related investment (PRI) or other vehicle(s) that minimize interest carrying costs to the City related to capital access.
- All program funding, including lending capital and repayments, will be accounted for in a manner under which the recourse for capital providers will be limited to the loan enterprise fund. This may take the form of a separate Fort Collins Utilities enterprise fund which will be independent of existing enterprise funds.

EPIC Loan Implementation

EPIC leverages existing processes delivered through the Efficiency Works Home program, offered to Fort Collins customers in collaboration with Platte River Power Authority. Financial services are delivered by Energy Smart Partners after a competitive selection process earlier this year.

At a high level, the process relating to the efficiency and loan programs is:

- An efficiency audit or assessment is conducted on the home by the EW- Home advisor/auditor.
- Opportunities for improved health, safety, comfort, and energy efficiency are identified. Costs are provided for each measure, and savings are estimated in either a package presentation made by the auditor, or in an audit report generated and sent to the owner by the advisor. In the EW-Home streamlined path costs and estimated savings are provided by the program advisor. In the standard path, costs are developed and presented in proposals by the participating contractors.
- An energy audit is also required for the rooftop solar program. The solar system specifications are submitted to the solar program coordinator for loan approval.
- If desired, the homeowner can choose to pursue an EPIC loan, as follows:
 - Customer makes application for a loan to financial services provider
 - Loan terms are generally described below in EPIC Loan Characteristics below
 - Upon approval, the homeowner and contractor(s) coordinate the timing and completion of the project
 - Upon notification that the project and all inspections are complete, loan funds are disbursed to contractors (by financial services provider)
 - A UCC lien filing is completed with Larimer County for the loan (by financial services provider).
 - Closing documents are provided from financial services provider to the Utilities Billing Department staff to set up the loan in the billing software
 - Loan payments are added to the customer's monthly utility services bill.

Next Steps

- Council will consider an item related to EPIC with a code "clean up" ordinance scheduled for December 4th. The purpose of this item is to remove conflicting language which defines an interest rate for on-bill financing loans at a specific value based on a specific date of issuance. Currently, this language restricts the allowable interest rate to a single value for all loans. The interest rate range definition remains in code, and specific rates will be set on an ongoing basis, generally annually, in the Financial Officer's rules and regulations. The language remaining in code sets the allowable range of interest rates for on-bill financing at between 2.5% and 10%.
- The Financial Officer's Rules and Regulations are adopted administratively. The proposed interest rates starting January 1, 2019 are based on the customer selected loan term as follows:

Loan Term	Interest Rate
3 or 5 years	3.49%
7 or 10 years	3.99%
15 or 20 years	4.49%

- Staff continues to seek methods to simplify the EPIC program processes for customers, Utilities and Energy Smart Partners. The recording of the loans with Larimer County via a UCC filing (aka mechanics lien) has been identified as a driver of significant complexity and related costs. During the implementation of OBF 1.0, this recording was deemed necessary to “cloud the title” ensuring that the utility loan would show up in a title search. However, preliminary discussion with Utilities billing staff indicates that this recording is likely not necessary because title processes in nearly all cases include a check with Utilities regarding outstanding balances for utility bills. Pending further investigation into any potential risks, staff expects to propose to eliminate this recording to simplify the application process and reduce loan closing costs.

ATTACHMENTS

Attachment 1: EPIC 3rd Party Capital RFP, DRAFT Scope of Work (Word document)

Attachment 2: Council Finance EPIC Loan Program 11-19-2018 (PowerPoint)

DRAFT Scope of Services

3rd Party Capital RFP, DRAFT Scope of Work

Introduction

The City of Fort Collins is requesting proposals from one or more qualified firms to provide capital in support of the ongoing *EPIC Loan program* (aka “On-Bill Financing”). Potential firms include banks, credit unions, investment funds and foundations.

Fort Collins has ambitious goals for energy efficiency, renewable energy and greenhouse gas emissions reductions (see [Energy Policy](#) and [Climate Action Plan](#)). Meeting these objectives will require customers undertake comprehensive efficiency improvements, particularly for older less energy efficient rental properties, owner-occupied homes and small businesses, to drive savings in both electricity and natural gas. An ongoing and attractive financing structure to support energy efficiency retrofits will be a critical element for success moving forward. The EPIC Loan Program is designed to balance the programmatic objectives and financial requirements of the City of Fort Collins, while also meeting the needs and expectations of capital providers and utilities customers. The name EPIC comes from an element of the efficiency program, whereby homes receive an Energy Performance Improvement Certificate. However, for the purposes of implementation, the program is simply known as the EPIC.

Anticipated Financial Structure

EPIC currently provides financing to Fort Collins Utilities (Utilities) residential and small business customers to improve the energy and water efficiency of existing buildings, including renewable energy projects, such as roof-mounted solar systems. However, most projects are expected to focus on more basic energy efficiency upgrading, such as air sealing, improved insulation and windows.

Once a Fort Collins Utilities homeowner or small business elects to finance a project with a participating energy efficiency contractor, the EPIC fund provides the funds for the project, which are disbursed to the contractor by an existing third-party loan originator. Loan payments are then serviced on the customer’s monthly utility bill by the Utilities department directly, which in addition to energy efficiency loans also provides electricity, water, wastewater and stormwater services to area residents and small businesses.

EPIC loan capital comes from a “stack” of resources provided by entities external to the City of Fort Collins. The current stack is comprised of low interest loans and grant funds, not taxpayer or ratepayer reserves. **The purpose of this RFP is to seek additional sources of capital to be able to offer a continuing source of funds (e.g. a revolving loan fund) to meet increasing customer demand for energy efficiency financing.** Fort Collins Utilities will be the borrower and guarantor of the funds from prospective capital providers, and Fort Collins Utilities will in turn service the repayments to its capital lenders using repayment obligations from customers to Utilities. In this on-bill financing model, prospective capital providers will not be originating loans to, or otherwise engaging directly with, Utilities customers. Instead, capital providers will lend or grant funds to the City, and the City will undertake and / or oversee loan underwriting, origination and collections. Capital providers will therefore have recourse to the EPIC fund and repayments for funds borrowed, but not to individual Utilities customers (Figure 1).



Figure 1: Capital and Repayment Structure

Program Objectives

Proposed capital sources for the EPIC Loan program need to align with the following high-level objectives:

- **Attractive:** The loan program must be able to provide attractive loan terms to customers, specifically attractive interest rates.
- **Scalable:** The program must be scalable in support of Fort Collins ambitious energy goals. It is anticipated that Fort Collins will upgrade thousands of homes in the coming years.
- **Simple:** the implementation and administration of the program must be as simple as possible for all parties, including customers, Utilities and the capital partner(s).

Potential Size of Loan Portfolio

During the On-Bill Financing Version 1 (OBF1.0) period from July 2015 to February 2017, the rate of loan activity was equivalent to approximately 120 loans and \$1M annually. The scaling of goals associated with the EPIC Loan program are to complete a minimum of 1,000 projects by the end of 2021. Based on typical project needs, this would require up to \$10M of capital be available. With a range of loan terms from 3 to 20 years, the expectation for a breakdown of necessary 3rd party capital amounts and terms would be:

Loan Term	Percentage of Portfolio
3-5 years	20%
5-10 years	30%
10-20 years	50%

Potential Financial Solution

Utilities intends to create a sustainable cycle of loans and repayments similar in concept to a revolving loan fund. There are a range of structures which could be successful, based upon standard financial structures, with regular P&I and / or balloon payments, to be determined. For example, loan and / or grant capital tied to Community Reinvestment Act (CRA) obligations for area banks are a potentially viable option for lending capital, as the EPIC loan program will be targeting older rental properties where many low and moderate-income households live (e.g. LMI census tracts), among other eligible Utilities customers.

Flexible structures which minimize the need for the City to carry non-deployed debt capital, such as lines of credit versus term loans, are encouraged. In all cases, Fort Collins Utilities would be the borrower, with the 3rd party funds being loaned to customers by the City. Fort Collins Utilities would be responsible for the repayment to the capital provider. In turn, Utilities customers carry the obligation for repayment of loans to the City via their utility bill. Note: The Utility department has various code-specified tools for recourse of delinquent Utility bills that makes the risk profile

for the EPIC loan portfolio extremely low. Any proposed solution must also consider all applicable Colorado statutes.

Fort Collins Utilities recognizes that this proposed financing model is unique for a municipal-owned utility, and as such we are committed to working with responsive applicants to “co-create” a viable and scalable financing model that is workable and beneficial for all parties. For the purposes of this RFP, the presumed model will include:

- Capital to be provided as a line of credit, program related investment (PRI) or other vehicle(s) that minimize interest carrying costs to the City related to capital access.
- All program funding, including lending capital and repayments, will be accounted for in a manner under which the recourse for capital providers will be limited to the loan enterprise fund. This may take the form of a separate Fort Collins Utilities enterprise fund which will be independent of existing enterprise funds.

Proposal Contents

Respondents must provide a complete description of any proposed solution, defining the following key characteristics:

- Legal name of the lender and the primary contact person
- Proposed value, structure and terms of capital
- The City requires that capital be available in terms/maturities that correspond with those offered by the City to its customers, currently (3, 5, 7, 10, 15, or 20-year terms)
- Interest Rates – the proposal should provide a single, fixed interest rate for each maturity offered. If the submitted interest rate is subject to change periodically, please explain the method and frequency, including an applicable formula or indexed calculation.
- Roles and responsibilities
- Description of how proposed structure would operate in alignment with all state and local laws and requirements.
- The City requires a prepayment option without penalty in the event a utilities customer prepays their loan.
- Conditions or Covenants – Provide a list of all conditions, covenants, terms or restrictions which would be included in your commitment to provide financing for the EPIC loan program. The City may reject proposals based on specific conditions or covenants requested by the lender, including conditions or covenants which may be considered “usual and customary” by the prospective lender.

External Professional Support

The City has retained the law firm of Butler Snow LLP, who will prepare and/or review the necessary documents. Butler Snow will deliver an opinion to the effect that the obligations of the City in connection with the financial structure are valid and binding.

Hilltop Securities Inc. will act as financial advisor to the City.

BACKGROUND

EPIC LOAN PROGRAM

To achieve community energy and climate goals, as adopted by City Council, a “reboot” and upgrade of the original approach has been implemented – and renamed EPIC Loans. The EPIC program will:

- Materially contribute to the City’s energy and climate objectives, particularly the 2030 goals. Research and analysis contained herein indicates that OBF2.0 will be a critical factor in the City’s likelihood of achieving CAP goals;
- Expand equitable participation of low and moderate-income households in energy efficiency and renewable energy programs, in part by emphasizing the targeting of older, energy inefficient rental properties;
- Establish a scalable Public-Private Partnership (PPP) social impact model that incents the private sector and residents to upgrade aging building stock in an affordable, cost effective manner;
- Spur the start, strengthening and/or expansion of new and existing energy efficiency related businesses and jobs in Fort Collins;
- Obtain non-recourse, private-sector debt capital to fund new energy efficiency loans for homes and businesses.

In short, the EPIC loan program addresses key social, environmental and economic needs of the City by offering a program that supports our climate, equity and inclusion, and economic health goals.

Existing Loan Capital Resources

Fort Collins Utilities is currently offering EPIC loans to customers based on the following sources of capital:

- \$100,000 from the Champion cities phase of the [2018 Bloomberg Mayors Challenge](#).
- Fort Collins was notified on October 29, 2018 of being awarded \$1M as a winning city in the national Bloomberg Mayors Challenge.
- \$1.2M funding from the Colorado Energy Office (\$200,000 grant and \$1,000,000 low interest loan), in support of Fort Collins development of an On-bill Financing Toolkit for deployment in up to four additional Colorado communities. Each of the other communities will be eligible for up to \$1M loans from the Energy Office.

EPIC Program Information

EPIC provides residential and small commercial utility customers with low-cost financing for energy efficiency, solar photovoltaic, and water conservation improvements to support Fort Collins Utilities (Utilities) efficiency and conservation efforts and the outcomes adopted in City policies and plans, such as the CAP, Energy Policy and Water Efficiency Plan. Formerly known as the Home Efficiency Loan Program (HELP), HELP was established by Fort Collins City Council Ordinance No. 033, 2012, which revised language in Chapter 26 of the Fort Collins Municipal Code (Municipal Code) to enable Utilities to provide financing and on-bill servicing of loans for energy efficiency, water efficiency and renewable energy projects.

The HELP started as an on-bill financing (OBF) program providing loans to Utilities customers for energy and water efficiency projects and renewable energy systems which are serviced on

the utility bill. The original HELP program initiated over 135 loans for a total of \$1,600,000. The original source of capital was reserve funds from the Fort Collins Light & Power utility.

The program was modeled after other successful OBF programs and is most succinctly described as a loan program which is serviced by Utilities on customer's monthly bills. Customers qualify based on their bill payment history and credit score, eligible projects are defined by Utilities incentive programs, and the loans are currently secured via a Uniform Commercial Code (UCC) lien filing recorded with Larimer County.

Municipal Code changes adopted by Council in 2012 authorize Utilities to provide financing services to meet the program deliverables. A key element of the program is that the loan payments are treated like any other element of a customer's bill (e.g., electricity, water, wastewater and storm water). With such treatment, loan payments are not differentiated from other billed utility services, in each service is billed as a "single" utility bill receivable. Utilities normal and customary practices for non-payment apply, up to and including service disconnection. Utilities also has established lien rights under Section 26-718 of the Municipal Code for collection of any past due amounts at a property's time of sale, known as a "perpetual lien".

The program uses pre-existing standard capabilities of the Utilities billing system. Customer qualification and loan closing services are provided in partnership with a third party financial services partner.

The EPIC product guideline is included in Exhibit B – Product Sample Guide as an example of the loan process.

Fort Collins Utilities Energy and Water Programs

EPIC supports several Utilities efficiency programs, which define eligible projects and provide quality assurance. Utilities has offered a best practices home efficiency program since 2010. Now branded under Efficiency Works – Home (EW – Home), the program provides a comprehensive audit, rebates, a contractor network and personalized advising. Over 2,000 homes have received improvements in the areas of insulation and air sealing, heating and cooling systems and windows. Project qualifications for EPIC loans are identical to those for rebates under EW – Home. This ensures that the project for each loan has the documentation of meeting required efficiency levels and installation standards, and that the participating contractors have agreed to the quality assurance requirements. The standard path for the EW-Home rebate program involves the rebates being paid directly to the customers.

For solar photovoltaic systems, Utilities similarly has rebate application and verification processes which ensure that the systems are properly sized, installed by qualified contractors and verified to operate according to interconnection standards.

For water service line projects, Utilities reviews each project plan to ensure compliance with all codes and standards.

HELP Program Activity and Information

- HELP was launched in January 2013, loan activity was slow through mid-2015, after which time it ramped up significantly (see chart in Exhibit A – HELP Program Activity).
- In February 2017, when the final OBF1.0 loan was funded, total program loan production was over \$1.75M (see chart in Exhibit A).

- The median term was 10 years.
- Average loan amount was \$8,900.
- All loans to date have been for single family homes. Small business customers are also eligible for the program (based on ownership of the property), but no loans have been completed to date.
- Interest rates have varied since the program's inception:
 - 2013 – 5.25% to 6.25% based on customer qualifications and loan term
 - 2014 – 5.0% or 6.0% based on customer qualifications
 - February 2015 to May 2016 – 2.5% for all loans and terms
 - June 2016 to October 2016 – 4.0% for all loans and terms

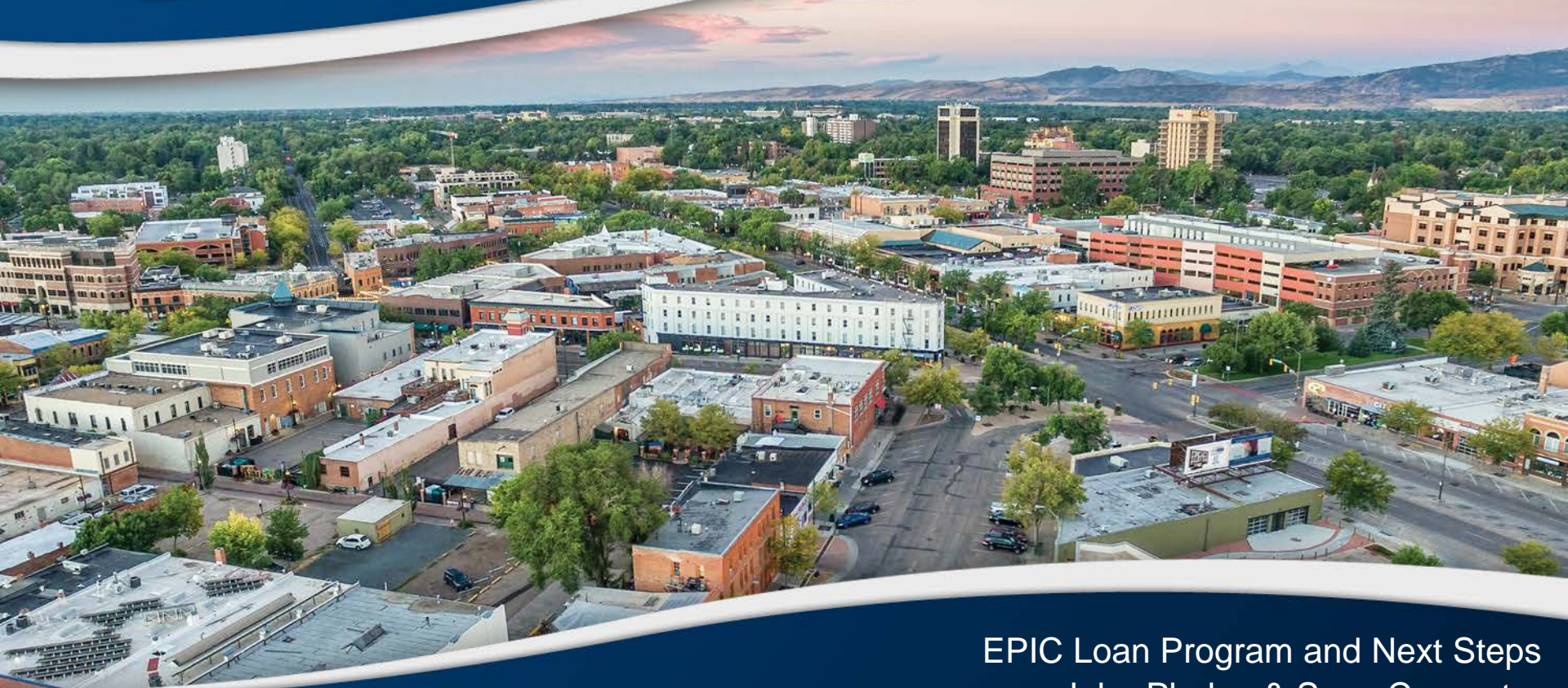
EPIC Loan Processes

At a high level, the process relating to the efficiency and loan programs is:

- An efficiency audit or assessment is conducted on the home by the EW- Home advisor/auditor.
- Opportunities for improved health, safety, comfort, and energy efficiency are identified. Costs are provided for each measure, and savings are estimated in either a package presentation made by the auditor, or in an audit report generated and sent to the owner by the advisor. In the EW-Home streamlined path costs and estimated savings are provided by the program advisor. In the standard path, costs are developed and presented in proposals by the participating contractors.
- An energy audit is also required for the rooftop solar program. The solar system specifications are submitted to the solar program coordinator for loan approval.
- If desired, the homeowner can choose to pursue an EPIC loan, as follows:
 - Customer makes application for a loan to financial services provider
 - Loan terms are generally described below in EPIC Loan Characteristics below
 - Upon approval, the homeowner and contractor(s) coordinate the timing and completion of the project
 - Upon notification that the project and all inspections are complete, loan funds are disbursed to contractors (by financial services provider)
 - A UCC lien filing is completed with Larimer County for the loan (by financial services provider).
 - Closing documents are provided from financial services provider to the Utilities Billing Department staff to set up the loan in the billing software
 - Loan payments are added to the customer's monthly utility services bill.

EPIC LOAN CHARACTERISTICS

Attribute	Notes
Retail Interest Rates	Allowable range from 2.5-10% per proposed rate ordinance. A 4% interest rate is in place as of August 2018. The rates will be revised annually, beginning in Q1 2019 to be 3.49% for 3 and 5 year terms, 3.99% for 7 and 10 year terms and 4.49% for 15 and 20 year terms. <i>These interest rates are subject to change based on the available capital costs.</i>
Customer Qualification	Minimum six-month good bill payment history and a FICO Credit score minimum (previously 640)
Fees	\$25 for the application, \$199 to \$400 for closing (depending on loan amount), \$11 for recording, \$26 for removing and re-recording the UCC lien to accommodate subordination requests.
Recording	UCC lien filing recorded with Larimer County
Loan term	3, 5, 7, 10, 15, or 20 years selected by applicant and based on measure type
Customer Eligibility	Residential single family (detached), townhome properties (attached), small business customers (by owner), and rental properties (by owner)



EPIC Loan Program and Next Steps
John Phelan & Sean Carpenter

Objectives of this meeting:

- Approve clean up / amendment of rate ordinance language;
- Support the continued development of the EPIC model as a public/private partnership (P3) that uses grant and debt sources of lending capital to drive energy efficiency upgrading that benefit the entire community (note: EPIC *does not* use Utility reserve funds);
- Support release of *Capital Provider RFP* to identify other *potential* financing partners, including debt capital sources of up to \$8 million.

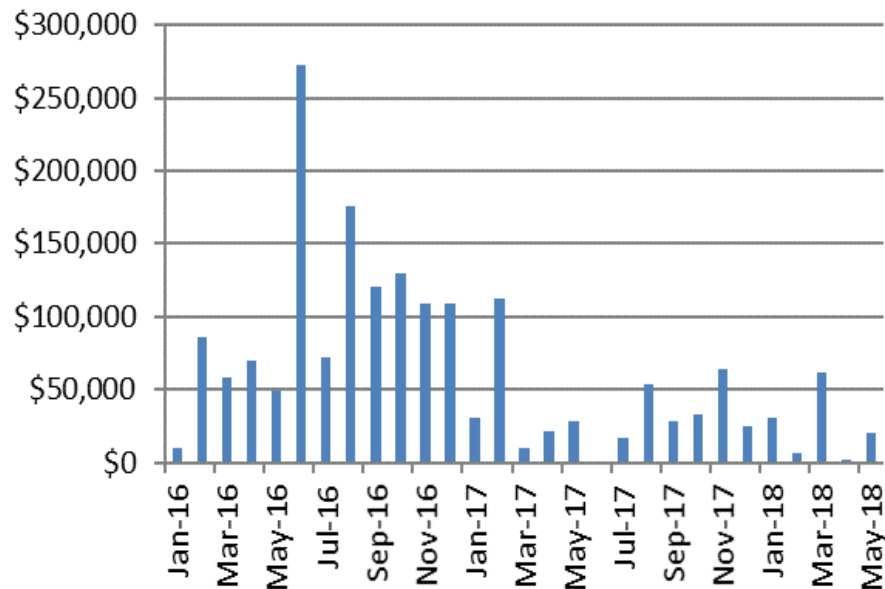
Before there was EPIC, there was “On Bill Finance 1.0”

- Pilot began in 2013
- \$1.6M in Utility ratepayer reserve funds allocated by Council
- Interest rate reduced from 5/6% to 2.5% in 2015, leading to rapid uptake
- Loan termed up to the life of the efficiency measure (5- 20 years)
- Loans repaid on owner's portion of Utility bill
- **0% default rate** (N=150 / 37.5% of \$1.6M reserve funds repaid to date)

Elevations Credit Union (ECU)

- Success of pilot led to City issuance of RFP for a private partner to fund efficiency lending: 2 respondents - ECU only qualified applicant
- ECU RFP response a market entry & customer acquisition strategy
- ECU is a “hand-off” referral for external lending, not on bill finance
- Transition from OBF to ECU saw dramatic *decrease* in new loans and new energy efficiency projects (see chart, next slide)

On-Bill Finance 1.0 to ECU



- 2016 OBF 1.0 (HELP) loans through February 2017
- ECU loans begin March 2017
- Significant drop off with ECU
- OBF active loan avg value: \$11,038
- ECU active loan avg value: \$7,136
- ECU saw both much lower volume *and* less comprehensive projects

2018 Bloomberg Mayors Challenge

- Summer of 2017 Bloomberg Philanthropies issued challenge to mayors nationwide to solve big, challenging problems facing their cities
- 324 cities entered national competition
- February 2018 Fort Collins selected as “Champion City” for EPIC project, with \$100,000 for 7 months of intensive idea prototyping
- Final proposal submitted in August 2017; EPIC won \$1M grand prize in October 2017 for its scalability and potential for replication (9 grand prize winners nationwide)

Colorado Energy Office (CEO)

- CEO is interested in promoting on-bill finance across Colorado
- Fort Collins used \$100,000 Champions award to secure \$1.2M from CEO for EPIC (\$200,000 grant, \$1M low interest loan @1.5-2.0%, TBD)
- EPIC team developing “On Bill Finance in a Box” manual with pro-bono support from Congressional research organization Environmental and Energy Study Institute (EESI)
- CEO to invest additional \$4M in EPIC model across 4 other cities in CO

EPIC Program Delivery

- Delivered via Efficiency Works Homes (in collaboration with Platte River Power Authority)
- “Easy Button” approach (AKA “Streamlined Path”)
- Contractor Referral Network
- Funding Partners loan underwriting and origination
- 6 loans closed since August with 25 in progress
- Avg loan \$14,400; avg term 15 years, avg payment \$113 / month
- EPIC loan provides lower payments, longer terms & lower interest rates on comprehensive projects than comparable ECU products

Rationale for 3rd Party Capital Partner RFP

- Demand for EPIC financing exceeds the capital available from Bloomberg and CEO funding alone (\$1.9M +/- in lending capital pledged, future loan fund size of \$6M - \$8M needed to meet estimated resident demand)
- Need to create sustainable capital stack (grant equity & debt) to support attractive retail terms. Goal is to drive upgrading of older housing while protecting City resources (e.g. avoid carried interest, use of Utility reserves)
- Local funders have expressed significant interest in collaboration
- RFP needed to transparently dialog with known and new potential funders for EPIC

Term and Structure for 3rd Party Capital

- Borrow on the Light & Power enterprise
- Re-lend to customers via EPIC with on-bill servicing
- Pledge the customer loan revenue
- Compatible with existing and forecast L&P debt (based on preliminary review)
- Borrow and relend at term parity (e.g. 5-year debt for 5-year loans)
- Maintain interest rates based on blended cost of capital (considering term and admin charge)
- Final structure to be co-created with financial partner(s)

- December 4th Code “Clean up”
- Remove conflicting language defining interest rates
- Retain in code the allowable interest rate range of 2.5% - 10%
- Refer to Financial Officers Rules and Regulations
- Proposed 2019 rates based on loan term (*subject to market conditions and actual cost of capital, per RFP respondents*)
 - 3 or 5 years, 3.49%
 - 7 or 10 years, 3.99%
 - 15 or 20 years, 4.49%

Requests:

- Committee support for ordinance clean up / rate changes
- Conceptual approval for staff to continue development of EPIC P3 model

Next Steps:

- Issue RFP for private capital providers
- EPIC team to discuss potential terms and financial instruments with private capital providers (e.g. short / medium / long term capital, fixed and / or variable rates, lines of credit etc.)
- Return to Council Finance with results / report

Backup Slides

Potential for simplification of processes and reduction in loan origination and underwriting costs for customers, Utilities and Energy Smart Partners

- Consider elimination of Larimer County UCC recording
- Included in OBF 1.0 to ensure the OBF loan will show up in title searches
- Utility billing staff indicates this step is likely not necessary
- Staff will further investigate and may make related recommendation(s) to improve the EPIC process and customer experience

COUNCIL FINANCE COMMITTEE AGENDA ITEM SUMMARY

Staff: Jennifer Poznanovic, Project & Revenue Manager

Date: November 19, 2018

SUBJECT FOR DISCUSSION

Internet Sales Tax Update

EXECUTIVE SUMMARY

Following the *Wayfair* US Supreme Court decision in June of 2018, Fort Collins wants to better understand the potential to require remote sellers to collect and remit sales tax in Fort Collins. Starting in December, the state of Colorado will require remote sellers above the de minimis (same thresholds as South Dakota) to collect and remit sales tax.

The Colorado Municipal League (CML) Sales Tax Simplification Committee met in October 2018. There was consensus that it would be highly unlikely that self-collecting municipalities would impose a sales tax filing obligation on remote sellers without risking a lawsuit or undue burden prohibited by the *Wayfair* decision. There was also agreement that the CML and its members should lead the discussion and propose the solution, rather than let the legislature decide what is best for self-collecting home rule municipalities.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council Finance Committee support collaborative efforts with the Colorado Municipal League?

BACKGROUND/DISCUSSION

***Wayfair* decision June 2018**

The Supreme Court held that South Dakota could impose a sales tax filing obligation on any remote seller who had a substantial nexus with the state, and that a physical presence was no longer necessary. The Supreme Court upheld South Dakota's determination that a substantial nexus meant those retailers whose only contact with the state was annual sales of \$100,000, or 200 separate sales transactions of any amount. The Supreme Court looked favorably on South Dakota's law for several reasons. South Dakota's law created a threshold for sales, protecting smaller sellers. South Dakota is a member of the Streamlined Sales & Use Tax Agreement, providing online retailers some compliance simplification. Also, the law was not applied retroactively.

Colorado Department of Revenue (DOR) Implementation of *Wayfair*

Starting this November, remote sellers above the de minimis (same thresholds as South Dakota), are required to obtain a state sales tax license from the state of Colorado. Collection and remittance of sales tax to the state begins on December 1, 2018. The state will collect state and local sales tax for any entities it collects in-state sales tax for. The state of Colorado is responsible for approximately 265 jurisdictions, 150 statutory cities, 24 home rule municipalities and all but two counties.

Self-Collection Home Rule Municipalities and *Wayfair*

Fort Collins is one of 71 self-collecting home rule municipalities. Home-rule municipalities have autonomy over their sales tax with their own separate registration, licensing, forms, auditors and tax base. In other words, home rule municipalities are like separate taxing states within the state of Colorado.

October 23, 2018 at the Colorado Municipal League (CML) Sales Tax Simplification Committee there was consensus that it would be highly unlikely that self-collecting municipalities would impose a sales tax filing obligation on remote sellers without risking a lawsuit or undue burden prohibited by the *Wayfair* decision.

It is possible that a lawsuit filed against one self-collecting municipality could result in an injunction that effectively extends to all local governments and the state. There was discussion around differences between South Dakota and Colorado such as Colorado not being part of the Streamlined Sales & Use Tax Agreement (South Dakota is). Also, Colorado has numerous taxing jurisdictions whereas the *Wayfair* court addressed only South Dakota's state sales and use tax.

The committee discussed other possibilities including a model adopted by Alabama, a uniform rate for remote sellers. There were concerns regarding unfair taxation and TABOR with this option. Another possibility discussed was legislation around the Marketplace Fairness Act. More work needs to be done to understand if this could be a viable option.

There was agreement that the CML and its members should lead the discussion and propose the solution, along with Colorado DOR, rather than let the legislature decide what is best for self-collecting home rule municipalities.

Top Internet Retailers Licensed in Fort Collins

Of the top 84 online shopping, B2B and B2C sales on the internet, 15 are licensed in Fort Collins. Of the top 40, 30 percent are licensed. The rank below is in order of 2017 total revenue.

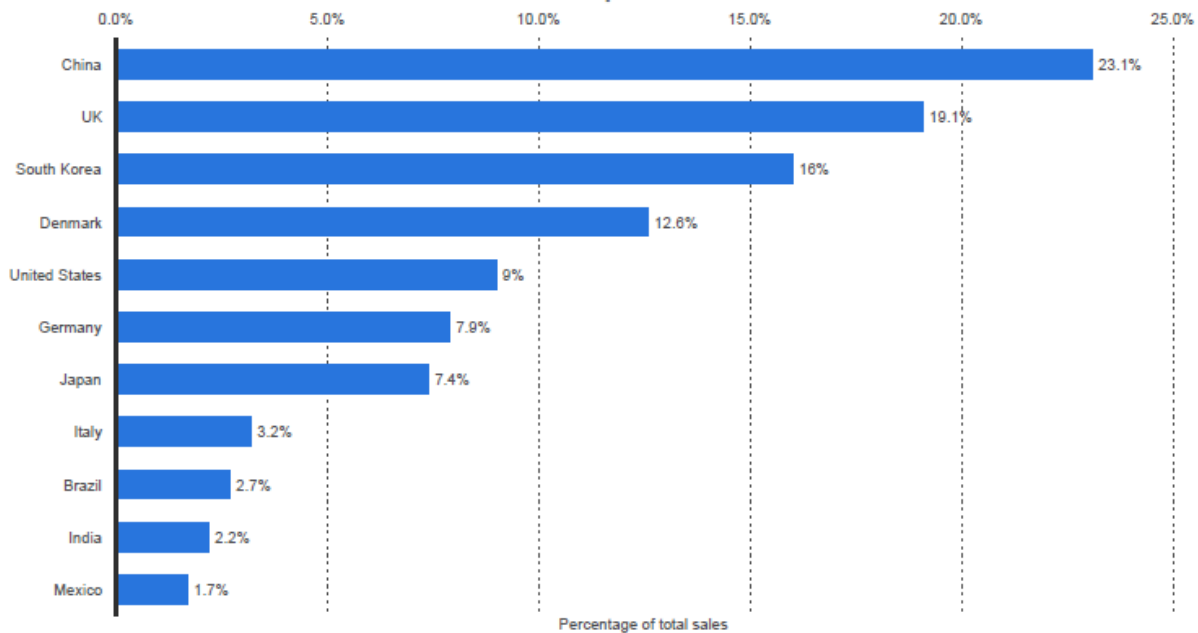
Rank	Name
1	Amazon.com Inc
4	Zappos.com Inc
6	Fanatics Inc
8	Chewy Inc (Chewy.com)
9	Overstock.com Inc
12	1-800-Flowers.Com Inc
24	VitaCost.com Inc
25	1-800 Contacts Inc
28	Chegg Inc
31	Bonobos Inc
33	Rent the Runway
38	AG Interactive Inc
N/A	Audible Inc *
N/A	Jet.com Inc *
N/A	Spotify *

*Revenue not reported

Amazon represents 43 percent of online sales according to the National Federation of Retailers. Two of the top 10, Overstock and Fanatics, recently obtained a Fort Collins sales tax license. Of the top 10, Liberty Interactive, Wayfair, Newegg, Bluestem Group and Eventbrite are not licensed with the City.

E-commerce Sales as percentage of Total Retail Sales in 2017

In 2017, e-commerce sales were 9 percent of the total retail sales in the United States.



Source: Statista 2017

The estimate for online sales tax collected in Fort Collins in 2017 is \$6M to \$7M. Important to note is that this figure includes brick and mortar business with online sales. Also, the largest online retailers are already licensed with the City.

Options

1. Proceed without Colorado Municipal League collaboration
2. Collaborate with the Colorado Municipal League

Option 2 – Collaborate with the CML

If the City collaborates with the CML, the next Tax Simplification Committee meeting is scheduled for December 3rd. The plan is to further discuss options with a goal to get to a uniform agreement in 2019. The CML is planning to post on their Legislative Matters blog reasons for self-collecting municipalities to be patient and move together uniformly. In the meantime, large online retailers may continue to get licensed - this summer two of the top 10 online retailers obtained a Fort Collins sales tax license.

ATTACHMENTS

1. Internet Sales Tax Update CFC 2018-11-19



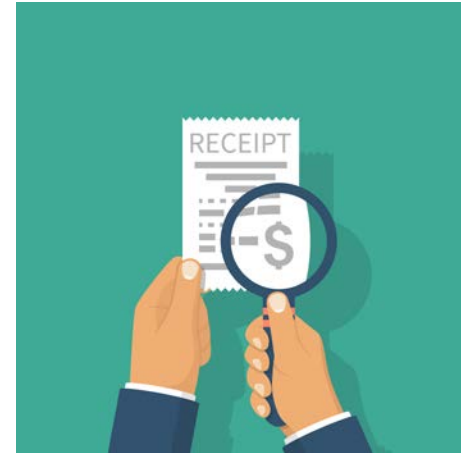
- *Wayfair* Background
- Current Status
- Options
- Council Finance Committee Direction



The Supreme Court held that an out-of-state retailer does not need a physical presence in a state before the state can require the retailer to collect and remit sales tax. However, a substantial nexus is needed.

The Supreme Court held that South Dakota's tax law properly identified when a retailer had a substantial nexus with the state for tax purposes:

- Annual **minimum sales of \$100,000**; or
- A minimum of **200 separate sales transactions** of any amount





**Remote sellers above
the de minimis level**
(same as South Dakota)

Obtain a state sales tax license
in November
Begin collecting and remitting
sales tax starting December 1st



**The state of Colorado
will collect state sales
tax and local sales tax
for entities it collects
for**



**Responsible for approx.
265 jurisdictions**

150 statutory cities
All but two counties
24 home rule (state collected)

Colorado Municipal League (CML) meeting October 23rd



71 self-collected municipalities

Largest population centers



Consensus – risks to self-collecting proceeding independently:

- Lawsuit or
- Undue burden prohibited by *Wayfair*



Agreement that CML and its members should lead the **discussion and propose the solution**, along with Department of Revenue, rather than let the legislature decide

Risks discussed

- Single state vs. numerous taxing jurisdictions
- Colorado not part of Streamlined Sales & Use Tax Agreement (South Dakota is)
- If one jurisdiction proceeds alone, could bar other jurisdictions until court case is resolved

Top Internet Retailers Licensed in Fort Collins

- Of the top 84 Online Shopping, B2B and B2C Sales on the internet, 15 licensed
 - 30% of top 40 licensed
- Amazon represents 43% of sales online
- Overstock & Fanatics recently licensed
- Top 10 not licensed: Liberty Interactive, Wayfair, Newegg, Bluestem Group, Eventbrite

Rank	Name
1	Amazon.com Inc
4	Zappos.com Inc
6	Fanatics Inc
8	Chewy Inc (Chewy.com)
9	Overstock.com Inc
12	1-800-Flowers.Com Inc
24	VitaCost.com Inc
25	1-800 Contacts Inc
28	Chegg Inc
31	Bonobos Inc
33	Rent the Runway
38	AG Interactive Inc
N/A	Audible Inc *
N/A	Jet.com Inc *
N/A	Spotify *

*Revenue not reported, rank in order of 2017 revenue

Source: Plunkett Research Online, E-Commerce & Internet Industry Report, National Federation of Retailers

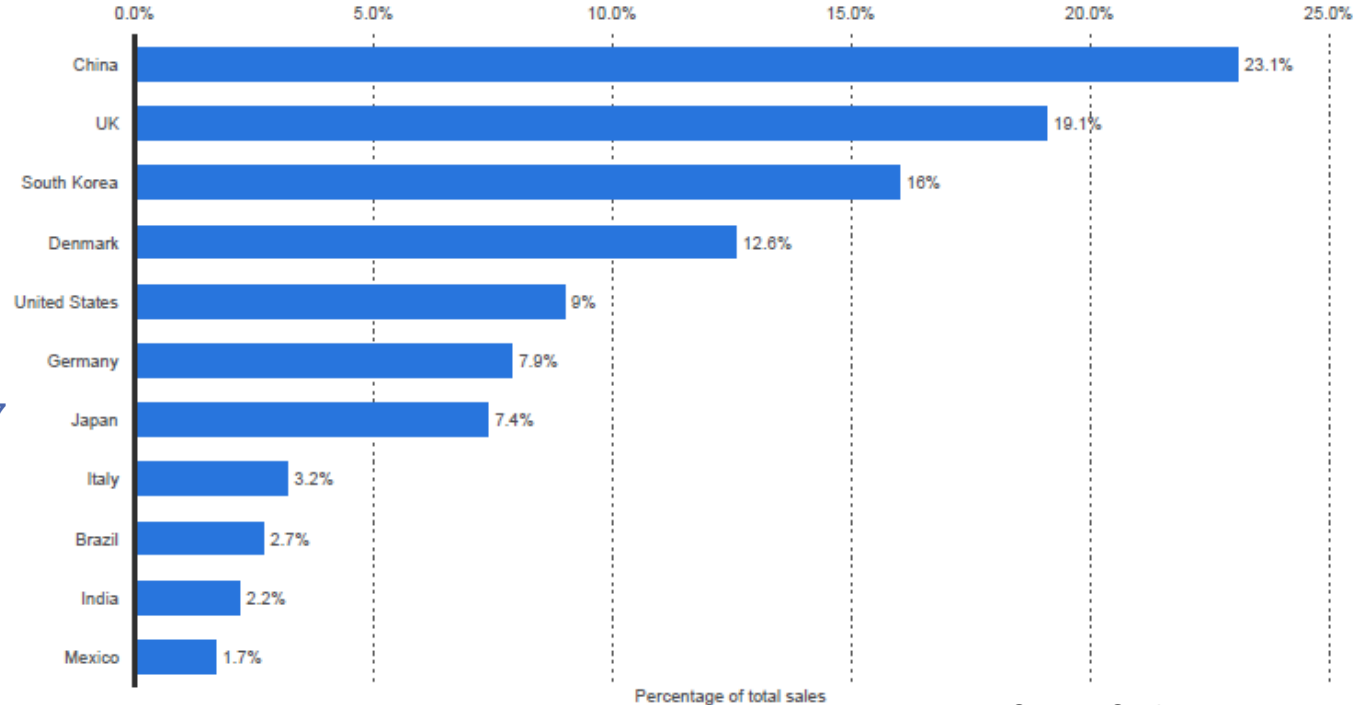
E-commerce Sales as percentage of Total Retail Sales in 2017

Nationally

- 2017 e-commerce sales 9% of total retail sales

Fort Collins

- Estimate \$6M to \$7M online sales tax in 2017
- Largest online retailers already licensed



Percentage of total sales

Source: Statista 2017

*Retail categories of City's month end report



1. Proceed without Colorado Municipal League collaboration
2. Collaborate with the Colorado Municipal League

Option 2 – Collaborate with CML

- Next meeting scheduled for December 3rd
 - Further discuss options
 - Goal to get to a uniform yes in 2019
 - Staff to attend meetings
- CML to post on their Legislative Matters blog* reasons to be patient and move together uniformly
 - Strongly caution against proceeding alone
- In the meantime, large online retailers may continue to get licensed
- Other upcoming CML meetings
 - December 7th CML Policy Committee
 - December 14th CML Board Meeting

*Not published as of November 14th



Does Council Finance Committee support collaborative efforts with the Colorado Municipal League? (Option 2)

**COUNCIL FINANCE COMMITTEE
AGENDA ITEM SUMMARY**

Staff: Travis Storin, Accounting Director

Date: November 19, 2018

SUBJECT FOR DISCUSSION: 2018 Financial Policy Review

EXECUTIVE SUMMARY: Once a year a portion of Financial Policies are reviewed and updated is needed. Staff is committed to reviewing each policy no less than every 3 years. With Metro Districts having already been reviewed and adopted by Council in August 2018 and with the formation of the URA Finance Committee, the only policy up for review is #9 Economic Development. At the request of Council, staff will be making substantial modifications to this intends to work through this process in 2019.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

1. Does Council wish to bring any specific policy or policies forward sooner than currently scheduled?

BACKGROUND/DISCUSSION

The current catalog and review schedule for all Council-adopted financial management policies is displayed below. With the deferral of Economic Development to 2019, there are no additional policies up for review. Further, staff is not recommending an early review or change of the remaining policies reviewed in 2016 or 2017.

#	Policy	Last Modified	Last Reviewed	Next Reviewed
1	Budget	2017	2017	2020
2	Revenue	2016	2016	2019
3	General	2017	2017	2020
4	Not used			
5	Reserves (Fund Balance)	2017	2017	2020
6	Not used			
7	Debt	2013	2016	2019
8	Investments	2012	2017	2020

9	Economic Development	2015	2015	Up for review; Industry Cluster Funding to be revised substantially in 2019
10	Metro District	2008	2017	Adopted 8/21/2018
20	URA - TIF Assistance	2014	2014	Will incorporate input from URA Committee & Board in 2019

ATTACHMENTS

- Presentation Slides



- Per Charter, Council adopts policies to guide administration, management, deposit, and investment of City funds.
- Scope and content are guided by Gov't Finance Officers Association (GFOA), National Advisory Council on State and Local Budgeting (NACSLB), and International City/County Managers Association (ICMA).
- Not intended to supersede anything in Charter or Code

Staff brings forward for review at least every 3 years, or upon request

Policy Catalog and Schedule

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1	Budget	2017	2017	2020
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No policies for review or modification at today's meeting

- Does Council wish to bring any specific policy or policies forward sooner than currently scheduled?
- Are there any other comments, concerns, or requests?