



**Garden
Spot of
Colorado**

**MEETING OF THE TOWN BOARD
Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, January 23, 2024, 6:30 p.m.**

This is an IN-PERSON meeting at the location and time noted above.

You may also join virtually using Zoom: Phone: 1-346-248-7799 or 301-715-8592

Web: www.zoom.us/join

Use this Meeting ID: 210 035 9423

The Town Board may take action on any of the following agenda items as presented or modified prior to or during the meeting and items necessary or convenient to effectuate the agenda items.

1. Meeting Called To Order - Mayor William Karspeck
2. Pledge Of Allegiance - Mayor William Karspeck
3. Roll Call - Mayor William Karspeck
4. Citizen Participation
5. Scheduled Items And Estimated Time For Discussion

5.I. Consent Agenda

Introduction By: Christian Samora

Documents:

[MEMO RE CONSENT AGENDA.PDF](#)

[A. JANUARY 23, 2024 TOWN BOARD MEETING AGENDA.PDF](#)

[B. JANUARY 9, 2024 MEETING MINUTES.PDF](#)

[C. ANIMAL CONTROL SERVICES IGA AND SERVICE AGREEMENT
AMENDMENTS.PDF](#)

[D. HERON LAKES GATED ENTRANCE LICENSE AGREEMENT.PDF](#)

[E. JANUARY 2024 BOARD REPORT.PDF](#)

5.II. Berthoud Adaptive Park Project

Introduction By: Chris Kirk

Documents:

[MEMO RE BERTHOUD ADAPTIVE PARK.PDF](#)

5.III. Arboretum Design Presentation

Introduction By: Jeremy Olinger

Documents:

MEMO RE ARBORETUM DESIGN.PDF
A. 2024-01-03_BERTHOUD ARBORETUM PORT MEETING.PDF
B. ABBREVSURVEYARBORETUM.PDF
C. BERTHOUD ARBORETUM SPREADSHEET.PDF

- 5.IV. Consideration Of Approval Of The Form Of An Agreement For Reimbursement Associated With Farmstead Filing 3 For Construction Of A Roundabout
Introduction By: Chris Kirk

Documents:

MEMO RE FARMSTEAD ROUNDABOUT REIMBURSEMENT.PDF
AGREEMENT REGARDING ROUNDABOUT COSTS.PDF
EXHIBITS A.PDF

- 5.V. Consideration Of Approval Of The Form Of An Agreement For Reimbursement Associated With Farmstead Filing 2 For Construction Of Sanitary Sewer Infrastructure
Introduction By: Chris Kirk

Documents:

MEMO RE FARMSTEAD SANITARY SEWER.PDF
AGREEMENT REGARDING FARMSTEAD SEWER LINE EXTENSION COSTS.PDF
EXHIBITS A.PDF

- 5.VI. General Marijuana Code Amendments - Public Hearing
Introduction By: Christian Samora

Documents:

MEMO RE GENERAL MARIJUANA CODE CHANGES.PDF
ORDINANCE 1333 AMENDING CODE REGARDING MARIJUANA BUSINESSES.PDF
EXHIBIT A.PDF

6. Elected Official Reports

1. Town Board - Tim Hardy, May Albrecht, Mike Grace, Sean Murphy, Karl Ayers, and Chris Kurtz.
2. Mayor - William Karspeck
3. Staff - Town Administrator, Attorney

7. Adjourn

The order of agenda items listed above is approximate and intended as a guideline for the Town Board. Individuals needing special accommodation may request assistance by contacting the Town Clerk 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-2643 at least 24 hours in advance.

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Consent Agenda
Type of Item:	Regular Item
Purpose:	The Consent Agenda contains routine items that can be approved with a single action by the Board.
Presented by:	Christian Samora

ATTACHMENTS:

- a) January 23, 2024, Meeting Agenda
- b) January 9, 2024, Meeting Minutes
- c) Animal Control Services IGA and Service Agreement Amendments
- d) Heron Lakes Gated Entrance License Agreement
- e) January 2024 Board Report

BACKGROUND:

"Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The mayor will ask if any Board Member wishes to remove an item for separate discussion. Items removed from the consent agenda should be considered immediately following adoption of the amended Consent Agenda.

UPDATE/NEXT STEPS:

Any updates or next steps for the items on the Consent Agenda will be articulated in the information sheet provided for each item on the Consent Agenda.

FISCAL IMPACT AND FUND SOURCE:

Any fiscal information for the items on the Consent Agenda will be articulated in the information sheet provided for each item on the Consent Agenda.

COMMUNITY TOUCHSTONES:

Any Community Touchstones for the items on the Consent Agenda will be articulated in the information sheet provided for each item on the Consent Agenda.

RECOMMENDED ACTION(S):

"Move to combine and approve the items on the Consent Agenda."

Followed by a second and a vote.



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Please note that you will need to call into the meeting if you wish to speak and do not have a microphone on your computer. If you are using a mobile device, it is highly recommended that you download the Zoom app.

The Town Board may take action on any of the following agenda items as presented or modified prior to or during the meeting and items necessary or convenient to effectuate the agenda items.

- I. REGULAR MEETING CALLED TO ORDER** – Mayor William Karspeck
- II. PLEDGE OF ALLEGIANCE** – Mayor William Karspeck
- III. ROLL CALL** – Mayor William Karspeck
- IV. CITIZEN PARTICIPATION**
- V. SCHEDULED ITEMS and ESTIMATED TIMES FOR DISCUSSION**
 1. **Consent Agenda** (Christian Samora) (5 Min)
Consent Agenda items are considered to be routine by the Town Board and will be enacted with a single vote. There will be no separate discussion of these items. If discussion is deemed necessary, that item should be removed from the Consent Agenda and considered separately.
 - a) January 23, 2024, Meeting Agenda
 - b) January 9, 2024, Meeting Minutes
 - c) Animal Control Services IGA and Service Agreement Amendments
 - d) Heron Lakes Gated Entrance License Agreement
 - e) January 2024 Board Report
 2. **Berthoud Adaptive Park Project** (Chris Kirk) (20 Min)
 3. **Arboretum Design Presentation** (Jeremy Olinger) (45 Min)
 4. **Consideration of Approval of the form of an Agreement for Reimbursement associated with Farmstead Filing 3 for construction of a Roundabout** (Chris Kirk) (10 Min)
 5. **Consideration of Approval of the form of an Agreement for Reimbursement associated with Farmstead Filing 2 for construction of sanitary sewer infrastructure** (Chris Kirk) (10 Min)

January 23, 2024, Meeting Agenda

The order of agenda items listed above is approximate and intended as a guideline for the Town Board. Individuals needing special accommodation may request assistance by contacting the Town Clerk 807 Mountain Avenue, Berthoud, Colorado 80513, 970-532-2643 at least 24 hours in advance.

- | | | | |
|----|--|--------------------|----------|
| 6. | General Marijuana Code Amendments – Public Hearing
Ordinance 1332 – An ordinance amending Chapters 13 and 30 of the Berthoud Municipal Code regarding marijuana businesses | (Christian Samora) | (10 Min) |
|----|--|--------------------|----------|

VI. ELECTED OFFICIAL REPORTS (10 Min)

1. Town Board – Tim Hardy, May Albrecht, Mike Grace, Sean Murphy, Karl Ayers, and Chris Kurtz
2. Mayor – William Karspeck
3. Staff – Town Administrator, Attorney

VII. ADJOURN

Town Clerk or Deputy Town Clerk

William Karspeck, Mayor



MEETING MINUTES OF THE TOWN BOARD

**Town Board Room
807 Mountain Avenue
Town of Berthoud, Colorado
Tuesday, January 9, 2024, 6:30 p.m.**

1/9/2024 - Minutes

1. Meeting Called To Order - Mayor William Karspeck

Mayor Karspeck called the meeting to order at 6:30 pm.

2. Pledge Of Allegiance - Mayor William Karspeck

Mayor Karspeck led the Pledge of Allegiance.

3. Roll Call - Mayor William Karspeck

The following Board members were present:

May Albrecht, Trustee
Chris Kurtz, Trustee
Tim Hardy, Trustee
Karl Ayers, Trustee
Mike Grace, Mayor Pro-Tem
Will Karspeck, Mayor

The following Board members were absent:

Sean Murphy, Trustee

The following staff members were present:

Chris Kirk, Town Administrator
Erin Smith, Town Attorney
Christian Samora, Town Clerk
Lexi Weissman, Deputy Town Clerk
Cindy Leach, Director of Finance
Jeremy Olinger, Deputy Town Administrator
Stephanie Horvath, Community Outreach Specialist

4. Citizen Participation

Linda Wilson spoke regarding the utility rate increase.

5. Scheduled Items And Estimated Time For Discussion

5.1. Consent Agenda

Items:

- a) January 9, 2024 Meeting Agenda
- b) December 12, 2023 Meeting Minutes
- c) Town Administrator Contract Amendment
- d) Resolution 2024-01 - Designating Official Posting Places of Meetings
- e) Resolution 2024-02 - Purchase Policy Update
- f) December 2023 Board Report

Trustee Kurtz moved to combine and approve the items on the Consent Agenda. Trustee Hardy seconded the motion. In a 6-0 roll call vote, THE MOTION CARRIED.

5.II. House Of Neighborly Service Utility Assistance Update

Administrator Kirk gave an introduction.

Jinger Tomassi with House of Neighborly Service gave some background information.

Mayor Karspeck opened it up to public comment.

No one spoke during public comment.

5.III. American Legion Funding

Administrator Kirk gave an introduction.

Kraig Patriquin gave some background information.

Mayor Karspeck opened it up to public comment.

No one spoke during public comment.

Trustee Hardy moved to authorize the Town Administrator to enter into a contract with the American Legion to provide veteran support services in our area totaling \$32,000. Trustee Albrecht seconded the motion. In a 6-0 roll call vote, THE MOTION CARRIED.

5.IV. Adoption Of Mill Levy - Public Hearing

Administrator Kirk gave an introduction.

Director of Finance, Cindy Leach, provided some background information.

Mayor Karspeck opened up the Public Hearing.

No one spoke during the Public Hearing.

Mayor Karspeck closed the Public Hearing.

Trustee Kurtz moved to approve Ordinance 1332, an ordinance of the Town of Berthoud, Colorado levying taxes for the year 2024 to defray the costs of the Municipal Government of Berthoud, Colorado, for the fiscal year beginning January 1, 2024 and ending December 31, 2024. Trustee Ayers seconded the motion. In a 6-0 roll call vote, THE MOTION CARRIED.

5.V. Welcome Signage Update

Deputy Town Administrator, Jeremy Olinger, gave an update on the welcome signage.

Community Outreach Specialist, Stephanie Horvath, gave some background information.

The Board was supportive of the welcome sign design with the adjustment that the background color is changed from green to blue.

Mayor Karspeck called for a 5 minute break.

5.VI. Oil And Gas Tranche 3

Attorney Mike Foote, gave a presentation on updates to the Oil and Gas regulations document.

The Board provided feedback on proposed changes and Attorney Foote will bring back a revised draft for consideration.

Mayor Karspeck opened it up to public comment.
No one spoke during public comment.

5.VII. General Marijuana Code Amendments - Introduction

Clerk Samora gave an introduction.

The Board was supportive of staff bringing the item back for consideration at the January 23, 2024 meeting.

6. Elected Official Reports

Trustee Ayers:

Trustee Ayers reported on the PORT Committee meeting and upcoming park plans, inquired about shade structures in the Bike Park, and provided an update on the pickleball court completion date.

Trustee Hardy:

Reported on the HPAC meeting and their upcoming plans and inquired about stop sign placement.

Trustee Albrecht:

Trustee Albrecht suggested the idea of adding an outdoor ice rink in town.

Mayor Pro-Tem Grace:

Mayor Pro-Tem Grace reported on the upcoming Youth Advisory meeting and inquired about railroad crossing and CDOT updates, as well as trail connections.

Mayor Karspeck:

Mayor Karspeck expressed appreciation for Administrator Kirk in speaking with CDOT about the upcoming passenger rail.

Administrator Kirk:

Administrator Kirk inquired about Board interest in examining RV Park zoning, and reported on the sidewalk replacement program and the mow down pollution grant.

7. Executive Session

Mayor Pro-Tem Grace moved to enter into Executive Session pursuant to C.R.S. § 24-6-402(4)(e)(I) to determine positions relative to matters that may be subject to negotiations, developing a strategy for negotiations, and instructing negotiators. And the following details are provided: Potential Property Acquisition. Trustee Ayers seconded the motion. In a 6-0 roll call vote, THE MOTION CARRIED.

8. Adjourn

The meeting was adjourned at 9:55 pm.

Town Clerk or Deputy Town Clerk

William Karspeck, Mayor

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Animal Control Services IGA and Service Agreement Amendments
Type of Item:	Consent Agenda
Purpose:	To approve amendments to the existing IGA and Service Agreement, ultimately reducing the cost to the Town of Berthoud
Presented by:	Christian Samora

ATTACHMENTS:

- Second Amendment to Animal Control Services IGA
- First Amendment to the Joint Animal Control Service Agreement

BACKGROUND:

The Town of Berthoud, Town of Timnath, and the Town of Wellington have coordinated in drafting proposed amendments to the Animal Control IGA and Service Agreements. The proposed amendment would add the Town of Wellington as a participating party in the agreements. This would allow Wellington to also benefit from animal control services provided by NOCO Humane while reducing cost for participating municipalities.

UPDATE/NEXT STEPS:

- If approved, no additional steps are needed.

FISCAL IMPACT AND FUND SOURCE:

If approved, the change would reduce the animal control cost for the Town of Berthoud for 2024. The overall cost of service would be divided between the municipalities, proportionate to the call volume for each community.

RECOMMENDED ACTION(S):

Approve these amended agreements as part of the Consent Agenda.

**SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF BERTHOUD AND THE TOWN OF TIMNATH
CONCERNING A JOINT AGREEMENT FOR ANIMAL CONTROL SERVICES
WITH LARIMER HUMANE SOCIETY**

THIS SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BERTHOUD AND THE TOWN OF TIMNATH CONCERNING A JOINT AGREEMENT FOR ANIMAL CONTROL SERVICES WITH LARIMER HUMANE SOCIETY (the “Second Amendment”) is entered into on this ____ day of _____, 2024, by and between the TOWN OF BERTHOUD (“BERTHOUD”), the TOWN OF TIMNATH (“TIMNATH”), and the TOWN OF WELLINGTON (“WELLINGTON”). BERTHOUD, TIMNATH, and WELLINGTON are referred to herein collectively as the “Parties” or the “Towns” or individually as a “Party” or a “Town”.

RECITALS:

WHEREAS, BERTHOUD is a municipality located in both Larimer County, Colorado and Weld County, Colorado;

WHEREAS, TIMNATH is a municipality located in both Larimer County, Colorado and Weld County, Colorado;

WHEREAS, WELLINGTON is a municipality located in Larimer County, Colorado;

WHEREAS, at the present time, BERTHOUD, TIMNATH, and WELLINGTON provide some of their own animal control services, and each Town also has an arrangement with NOCO HUMANE (formerly known as the Larimer Humane Society) that NOCO HUMANE will provide certain animal-related services to the Town the Towns;

WHEREAS, NOCO HUMANE is a non-profit entity under 501(c)(3) of the Internal Revenue Code serving Northern Colorado communities through a broad range of animal-related issues, such as animal control, care, sheltering, impound, lost and found, and licensing;

WHEREAS, the Parties want to achieve shared efficiencies and benefits by collaborating and cost-sharing as to the animal control services described herein, as well as state their intent, agreement, rights, and obligations related thereto;

WHEREAS, the Colorado Constitution (Article XIV, Section 18) and Colorado statutes (Title 29, Article 1, Part 2) permit and encourage governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other;

WHEREAS, under C.R.S. § 29-1-203, the Parties entered into an Intergovernmental Agreement Between the Town of Berthoud and the Town of Timnath Concerning a Joint Agreement for Animal Control Services with Larimer Humane Society in 2022 (the Original Agreement”) as amended by the First Amendment to Intergovernmental Agreement Between the Town of Berthoud and the Town of Timnath Concerning a Joint Agreement for Animal Control Services with Larimer Humane Society entered into in or around December 2022 (“First Amendment” and together with the Original Agreement, the “Agreement”);

WHEREAS, the Town of Berthoud and the Town of Timnath wish to include the Town of Wellington as a party to the Agreement;

WHEREAS, the Agreement states that the Towns will annually agree on how to split the costs of Animal Control Services from the NOCO Humane (the “Society”); and

WHEREAS, the Parties would like to agree to an updated split of fees for 2024. Any provisions of the Agreement not addressed in this Second Amendment shall remain unchanged.

Now therefore for good and valuable consideration, the Parties agree as follows.

1. The Title of the Agreement is hereby amended to read: THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BERTHOUD, THE TOWN OF TIMNATH, AND THE TOWN OF WELLINGTON CONCERNING A JOINT AGREEMENT FOR ANIMAL CONTROL SERVICES WITH LARIMER HUMANE SOCIETY (NOW KNOWN AS NOCO HUMANE).

2. Paragraph 4 of the Agreement is hereby amended to read in its entirety:

4. Cost and information sharing. The Parties shall each fund the total annual obligation set forth in the Joint Agreement in their respective annual budget based on a split to which they will agree annually, with the split in 2024 as follows:

Berthoud	\$52,256.00
Timnath	\$27,353.00
Wellington	\$19,694.00

Any report that the NOCO Humane provides a Party pursuant to the Joint Agreement is not confidential and shall be shared between the Parties.

3. The Agreement shall continue in full force and effect except as hereby amended.

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to be executed the day and year first written above.

TOWN OF BERTHOUD

By _____
William Karspeck, Mayor

ATTEST:

Christian Samora, Town Clerk

APPROVED AS TO FORM:

Erin Smith, Attorney for Town

TOWN OF TIMNATH

By _____
Mark Soukup, Mayor

ATTEST:

Milissa Peters-Garcia, Town Clerk

APPROVED AS TO FORM:

Carolyn R. Steffl, Attorney for Town

TOWN OF WELLINGTON

By _____
Patti Garcia, Town Administrator

ATTEST:

Ethan Muhs, Town Clerk

APPROVED AS TO FORM:

Dan Sapienza, Legal Advisors LLC,
Attorney for Town

**AMENDED AND RESTATED JOINT AGREEMENT
FOR ANIMAL CONTROL SERVICES**

THIS AMENDED AND RESTATED JOINT AGREEMENT ("Agreement") is made and entered into effective the 1st day of January, 2024 (the "Effective Date"), by and between the Parties, who are: the TOWN OF BERTHOUD ("BERTHOUD"), the TOWN OF TIMNATH ("TIMNATH"), and the TOWN OF WELLINGTON ("WELLINGTON") together on the one hand, and NOCO Humane, formerly known as Larimer Humane Society, a Colorado non-profit corporation, on the other hand. BERTHOUD, TIMNATH and WELLINGTON are referred to collectively as "the Towns" and individually as "Town."

WHEREAS, NOCO Humane is dedicated to the safe and humane treatment of animals consistent with each Town's respective Municipal Code ("the applicable Municipal Code") and policies; and

WHEREAS, the NOCO Humane employs trained, qualified persons to handle animals within its custody; and

WHEREAS, Berthoud and Timnath desired to jointly engage NOCO Humane to furnish animal-control services for the Towns within their respective borders and entered into a Joint Agreement for Animal Control Services with NOCO Humane in February of 2022 ("Joint Agreement"), as well as a corresponding Intergovernmental Agreement between Berthoud and Timnath to share the cost of the Joint Agreement for Animal Control Services ("the IGA"), and the Joint Agreement and the IGA have been in effect since February 2022;

WHEREAS, Wellington recently expressed interest in becoming a party to the Joint Agreement and to the IGA;

WHEREAS, Berthoud, Timnath, and NOCO Humane have agreed that Wellington may become a party to the Joint Agreement and to the IGA and therefor enter into this Agreement, which shall replace the Joint Agreement as to any actions and responsibilities from and after the Effective Date;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. Initial Term and Renewal. This Agreement shall be effective, nunc pro tunc, from January 1, 2024 until December 31, 2024 ("the Initial Term"), unless earlier terminated or extended as provided herein. Upon expiration the Initial Term, this Agreement will be deemed to automatically renew for four (4) successive one-year terms subject to paragraphs 16 and 20.a, unless any Town gives written notice to NOCO Humane of intent not to renew at least ninety (90) days prior to expiration. Upon termination, NOCO Humane shall be due and owing all amounts due for services rendered in accordance with this Agreement through the effective date of termination.
2. Services. During the term of this Agreement, NOCO Humane shall:

- a. Provide the Towns with animal shelter services as set forth in paragraph 6, below.
- b. Engage the services of a doctor of veterinary medicine licensed to practice in the State of Colorado to provide twenty-four (24) hour emergency services to animals impounded from the Towns.
- c. Provide an animal control officer to serve the Towns per an enforcement schedule described in paragraph 5.
- d. Provide the animal-control officer with a uniform that clearly identifies the officer as such.
- e. Provide and maintain equipment, instruments, and supplies necessary to the effective, efficient performance of the animal control officer and operation of the shelter.
- f. Provide a public education program in each Town to its residents regarding NOCO Humane's services and each Town's animal-control ordinances.
- g. Furnish to each Town's residents humane animal traps for trapping domestic animals, and, at the discretion of NOCO Humane, trapping wild animals, subject to the residents' payment of a deposit, daily rental fee, and availability.
- h. Retrieve and dispose of dead animals weighing less than one hundred pounds (100 lbs) from public areas, including streets and parks. For purposes of this Agreement, public areas include Town owned property held open and made accessible to the public for recreational activities. Private property and open spaces owned and maintained by private citizens, businesses, associations, and corporations are specifically excluded from this paragraph.
- i. Upon the payment of a pre-determined fee based on the animal's weight, dispose of dead dogs, cats, and other animals of similar size that are brought to NOCO Humane's facilities by each Town's residents.
- j. Respond to calls regarding livestock within each Town and remove livestock from roadways and temporarily confine or restrain livestock, if possible, pending action by the applicable Town's Police Department or State Brand Inspector.
- k. Retrieve sick, injured, and orphaned wildlife of a size smaller than an adult coyote.
- l. Establish procedures to address each Town's residents' complaints regarding NOCO Humane's services and correct deficiencies, if any. Such procedures shall provide that complaints be reviewed by NOCO Humane's personnel not directly involved in the situation giving rise to the complaint and, if a satisfactory resolution cannot be reached, for mediation by a disinterested third party. Each Town shall immediately forward all residents' complaints to

NOCO Humane for resolution according to the procedures established pursuant to this subparagraph.

3. Compensation. In consideration of the services provided by NOCO Humane hereunder, the Towns shall pay NOCO Humane the total sum of ninety-nine thousand three hundred and three dollars (\$99,303), per the terms of the IGA. Said sum shall be paid in twelve (12) monthly installments of eight thousand two hundred and seventy-five dollars and twenty-five cents (\$8,275.25) on or before the 15th day of the month for which such installment is owed.
4. Commission to Enforce Ordinances. Each Town's Chief of Police, or its equivalent, shall commission NOCO Humane's animal-control officers to enforce the Town's animal-control ordinances in the applicable Municipal Code. All costs associated with such commissions shall be paid by the applicable Town. The commissioned animal-control officers shall be authorized to serve summonses and complaints, which shall be filed in the local municipal court. Each Town shall instruct said officers regarding enforcement of the Town's animal-control ordinances. Said officers shall not enforce or be authorized to enforce any Town ordinance other than those related to animal control.
5. Enforcement Schedule.
 - a. Regular Schedule. One (1) animal-control officer and vehicle shall be in service eight (8) hours per day, five (5) days per week on a schedule mutually agreed upon by the Parties (the "Regular Schedule"), provided, however, that this requirement may be waived for exigent circumstances (e.g., weather conditions). NOCO Humane shall notify the Towns as soon as practicable when unable to place an animal control officer in service due to exigent circumstances. Service schedules shall be based upon call load studies of NOCO Humane's animal control activities within the Towns and shall be flexible to enable NOCO Humane to provide animal control services to the Towns in the most effective and efficient manner. Notwithstanding anything herein to the contrary, NOCO Humane shall not be required to provide services on Christmas, Thanksgiving, or New Year's Day if designated as a holiday pursuant to subparagraph 5.c, below.
 - b. Emergencies. As set forth below, NOCO Humane shall provide the Towns with services outside of the Regular Schedule for Emergencies, as defined below. Time spent on Emergencies may be flexed from regular duty hours. An animal control officer shall not be required to be within the Towns while on call to provide emergency services, provided, however, that such officer must be able to respond to Emergencies within the Towns in a timely manner. The following shall constitute Emergencies requiring services:
 - (i) Injured domestic animals. NOCO Humane shall attempt to provide emergency medical treatment to all injured domestic animals. Injured animals that, in the opinion of a licensed veterinarian, have sustained terminal injuries and are suffering may be euthanized prior to the end

of the impoundment period set forth by applicable statute or Municipal Code.

- (ii) Animals acting in a vicious manner, if defined in the applicable Municipal Code.
- (iii) An animal whose owner has been detained by law-enforcement officials or any governmental agency and whose welfare depends on being placed into protective custody. If the owner is arrested, impoundment fees may apply. Where protective custody is taken of an animal in the event of an emergency or natural disaster, impoundment fees may be waived.
- (iv) Any other situation reasonably deemed to be an emergency by the applicable Police Chief or its equivalent and approved by NOCO Humane's Chief Executive Officer or Director of Animal Protection and Control and reasonably related to the services provided hereunder.
- (v) Pick up of stray domestic animals in custody when another solution cannot be found.
- (vi) Pick up sick and/or injured wild animals (coyote or smaller) which pose a health or safety risk to the public.

- c. Holidays. NOCO Humane may designate up to ten (10) days per year as holidays on which calls relating to animal control shall be handled on an emergency basis only, provided, however, that no two days in a row shall be designated as holidays unless one of the two days is Christmas Day or Thanksgiving Day, and provided further, that the Fourth of July shall not be designated as a holiday due to the many animal-related problems that occur on that day.

6. Animal Shelter Operation.

- a. NOCO Humane shall operate an animal shelter at 3501 East 71st Street, Loveland, Colorado. In operating the shelter, NOCO Humane shall:
 - (i) Comply with all applicable laws, regulations, ordinances, and administrative directives.
 - (ii) Provide and maintain such facilities, instruments, and equipment necessary to operate the shelter in a sanitary, safe, and efficient manner.
 - (iii) Accept from the Towns dogs, cats, and other animals of similar size for impoundment.
 - (iv) Establish, keep, and maintain a daily register and case history of all animals impounded from the Towns and released from the shelter on

forms mutually acceptable to the Parties. Said registry shall meet the requirements of the applicable Municipal Code.

- b. NOCO Humane shall not release or otherwise dispose of any non-suffering animal impounded at the shelter before the impoundment periods prescribed by the applicable statute or Municipal Code have been satisfied.
- c. In the event any animal is held for the purpose of observation for the presence of rabies, the animal shall be held for such time as directed by the Town, which time shall not be less than ten (10) days or such greater time as may be provided in the applicable Municipal Code and Colorado Revised Statutes. Any compensation received by a Town from an owner for the holding of an animal as provided in this paragraph shall be paid to NOCO Humane.
- d. No animal shall be released to its owner by NOCO Humane unless all requirements of the applicable Municipal Code, including owner's payment of impoundment fees and license fees, have been complied with. Notwithstanding the above, NOCO Humane shall be entitled to waive impoundment fees in the case of hardship or protective custody.
- e. NOCO Humane shall submit reports to the Towns on a quarterly and annual basis that include the following information, by Town, in regard to the previous quarter or year, as applicable:
 - (i) Number of licenses issued.
 - (ii) Number of calls for NOCO Humane services.
 - (iii) Average response time per call for non-priority calls and priority calls.
 - (iv) Number of animals impounded.
 - (v) Number of impound days for animals impounded.
 - (vi) Number of hours spent by NOCO Humane personnel on priority and non-priority calls.
 - (vii) Number of animals euthanized on premises.
 - (viii) Number of residents participating in NOCO Humane educational programs.
 - (ix) Number of complaints received from residents regarding enforcement or other services provided by NOCO Humane and the disposition of such complaints.
- f. NOCO Humane shall provide the Towns with quarterly and annual financial reports by Town that shall include, without limitation, an accounting of all license and impoundment fees collected hereunder.

- g. NOCO Humane shall routinely send to the Towns copies of all special reports or studies that NOCO Humane provides to its members or the public.
- 7. Audits.
 - a. NOCO Humane shall cause an independent accounting audit to be performed by a certified public accountant on an annual basis at NOCO Humane's sole cost. A copy of the audit shall be available to the Towns.
 - b. NOCO Humane agrees to make its financial and statistical records available to the Towns upon request for the purpose of conducting an audit to assess NOCO Humane's performance of the terms of this Agreement. Such audit shall be conducted during NOCO Humane's normal business hours on NOCO Humane's premises at the sole cost of the Towns.
- 8. Weapons.
 - a. The animal control officer shall not carry guns, rifles, or firearms, other than tranquilizer guns, while working within the Towns. In the event the animal control officer finds it necessary to use a weapon to destroy a vicious animal, the officer shall notify the applicable Police Department to respond and assist prior to the animal's destruction.
 - b. The animal-control officer may carry collapsible batons and pepper spray for the sole purpose of defending themselves against vicious animals. Said officer shall be required to attend and successfully complete training on the use of collapsible batons and pepper spray.
- 9. License and Impoundment Fees. NOCO Humane shall charge and collect all license fees established by each Town's Board or Council. All other fees, including impoundment fees and cost of care fees, related to NOCO Humane's operation shall be established pursuant to the applicable Municipal Code, as amended from time to time. NOCO Humane shall be entitled to retain all license, impoundment, and cost of care fees collected hereunder.
- 10. Legal Process. When appropriate, NOCO Humane shall write and serve legal process upon persons desiring to reclaim impounded animals.
- 11. Court Fines. The parties understand and agree that all fines collected by the applicable Municipal Court resulting from a criminal violation of the applicable Municipal Code shall be retained by the Towns.
- 12. Timely Performance. The parties understand and agree that the timely performance of the provisions of this Agreement is of the essence, and the failure of any party to so perform shall constitute a breach of this Agreement.
- 13. Applicable Municipal Code. NOCO Humane shall comply with all provisions of the Municipal Code applicable in each Town, as amended from time to time, and available

via the Town's website. The parties acknowledge that the terms and conditions of this Agreement are, in part, based upon NOCO Humane's expectation that the Town's ordinances in the applicable Municipal Code authorizing license and impoundment fees shall remain in effect and that NOCO Humane may retain said fees in accordance with paragraph 9 above.

14. Monitoring and Evaluation. The Towns reserve the right to monitor and evaluate NOCO Humane's performance to ensure that the terms of this Agreement are being satisfactorily met in accordance with their and other applicable monitoring and evaluating criteria and standards. NOCO Humane shall cooperate with the Towns relating to such monitoring and evaluation.
15. Independent Contractor. The parties agree that NOCO Humane shall be an independent contractor and shall not be an employee, agent, or servant of the Towns. **NOCO Humane is not entitled to workers' compensation benefits from the Towns and is obligated to pay federal and state income tax on any money earned pursuant to this Agreement, if applicable.** NOCO Humane shall be solely responsible for NOCO Humane's employees' compensation and benefits.
16. Appropriation. This Agreement shall be subject to annual appropriation and budget by each Town. The Towns shall have no obligation to continue this Agreement in any fiscal year in which no such appropriation is made. NOCO Humane shall have no obligation to continue this Agreement in any fiscal year in which any Town fails to make such appropriation.
17. Insurance.
 - a. Comprehensive General Liability Insurance. NOCO Humane shall procure and keep in force during the duration of this Agreement a policy of comprehensive general liability insurance insuring NOCO Humane and naming each Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the performance of the services with at least Two Million Dollars (\$2,000,000) each occurrence.
 - b. Comprehensive Automobile Liability Insurance. NOCO Humane shall procure and keep in force during the duration of this Agreement a policy of comprehensive automobile liability insurance insuring NOCO Humane and naming each Town as an additional insured against any liability for personal injury, bodily injury, or death arising out of the use of motor vehicles and covering operations on or off the site of all motor vehicles controlled by NOCO Humane which are used in connection with this Agreement, whether the motor vehicles are owned, non-owned, or hired, with a combined single limit of at least Two Million Dollars (\$2,000,000).
 - c. Other Insurance. During the term of this Agreement, NOCO Humane shall procure and keep in force workers' compensation insurance and all other insurance required by any applicable law.
 - d. Terms of Insurance.

- (i) Insurance required by this Agreement shall be with companies qualified to do business in the State of Colorado with a general policyholder's financial rating of not less than A+ as set forth in the most current edition of "Best's Insurance Reports" and may provide for deductible amounts as NOCO Humane deems reasonable for the Services, but in no event greater than Twenty Thousand Dollars (\$20,000). No such policies shall be cancelable or subject to reduction in coverage limits or other modification except after thirty (30) days prior written notice to the Towns. NOCO Humane shall identify whether the type of coverage is "occurrence" or "claims made." If the type of coverage is "claims made," which at renewal NOCO Humane changes to "occurrence," NOCO Humane shall carry a 182 day tail. NOCO Humane shall not do or permit to be done anything that shall invalidate the policies.
 - (ii) The policies described in subparagraphs 17.a and b above shall be for the mutual and joint benefit and protection of NOCO Humane and the Towns. Such policies shall provide that the Towns, although named as an additional insured, shall nevertheless be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents by reason of negligence of NOCO Humane, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage the Towns may carry.
- e. Evidence of Coverage. Before commencing work under this Agreement, NOCO Humane shall furnish to the Towns certificates of insurance policies evidencing insurance coverage required by this Agreement. NOCO Humane understands and agrees that the Towns shall not be obligated under this Agreement until NOCO Humane furnishes such certificates of insurance.
- 18. Governmental Immunity Act. Nothing herein shall be deemed to be a waiver of any sovereign immunity or the limitations on liability or the protections afforded each Town as set forth in the Colorado Governmental Immunity Act or other applicable laws granting similar protection.
- 19. Termination.
 - a. For Convenience. Upon expiration the Initial Term, this Agreement will be deemed to automatically renew for four (4) successive one-year terms subject to paragraphs 16 and 20.a, unless the Towns give written notice to NOCO Humane of intent not to renew at least ninety (90) days prior to expiration. Upon termination, NOCO Humane shall be due and owing all amounts due for services rendered in accordance with this Agreement through the effective date of termination.
 - b. For Cause. If, through any cause, any party fails to fulfill its obligations under this Agreement in a timely and proper manner, violates any provision of this

Agreement, or violates any applicable law, any non-breaching party shall have the right to terminate this Agreement for cause upon thirty (30) days written notice; provided, however, that the breaching party shall have the right to cure such breach within said thirty (30) day period. In the event of such termination by any Town or by NOCO Humane, the Towns shall be liable to pay their respective payment amounts pursuant to the IGA to NOCO Humane for services performed as of the effective date of termination. In no event shall any Town be liable to pay amounts owed by another Town pursuant to this Agreement.

20. Renewal.

- a. The Towns and NOCO Humane shall annually renegotiate the compensation due under paragraph 3 based upon the prior year's experience so that the Towns can budget and appropriate for the next fiscal year.
- b. If the parties are unable to reach an agreement for the next year by the end of the year covered by this Agreement, then upon the expiration of the term of this Agreement, and notwithstanding the requirement in Sec. 19.a. for 180 days notice, the parties may agree to extend this Agreement on a month-to-month basis, and the Towns shall pay to NOCO Humane their respective payment amounts (pursuant to the IGA) of the monthly sum set forth in paragraph 3 above for each month the services are performed.

21. Notices. Written notices required under this Agreement, and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the Towns:

Chris Kirk, Town Administrator
Town of Berthoud
807 Mountain Avenue
Berthoud, CO 80513
Phone: (970) 344-5819
E-Mail: CKirk@berthoud.org

Aaron Adams, Town Manager
4750 Signal Tree Drive
Timnath CO, 80547

Patti Garcia, Town Administrator
Town of Wellington
P.O. Box 127
Wellington, CO, 80549

If to NOCO Humane:

Chief Executive Officer
NOCO Humane
3501 East 71st Street
Loveland, CO 80538

22. Miscellaneous.

- a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.
- b. Assignability. NOCO Humane shall not assign this Agreement without the prior written consent of the Towns.
- c. No Waiver. No waiver of any breach of this Agreement shall be held or construed to be a waiver of any subsequent breach thereof.
- d. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- e. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- f. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.
- g. Entire Agreement. This Agreement contains the entire agreement and supersedes any prior agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.
- h. No Third-Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

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

(Signature page to follow)

TOWN OF BERTHOUD

By _____
Christopher Kirk, Town Administrator

ATTEST:

Christian Samora, Town Clerk

APPROVED AS TO FORM:

Erin Smith, Attorney for Town

TOWN OF TIMNATH

By _____
Aaron Adams, Town Manager

ATTEST:

Milissa Peters-Garcia, Town Clerk

APPROVED AS TO FORM:

Carolyn Steffl, Attorney for Town

TOWN OF WELLINGTON

By _____
Patti Garcia, Town Administrator

ATTEST:

Ethan Muhs, Town Clerk

APPROVED AS TO FORM:

Dan Sapienza, Legal Advisors LLC,
Attorney for Town

NOCO HUMANE

By: _____
Judy Calhoun, CEO

ATTEST:

Rigo Neira,
Director of Animal Protection & Control

APPROVED AS TO FORM:

Tracy Oldemeyer, Attorney for NOCO Humane

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("Agreement") is effective the ____ day of _____, 2024, by and between the Town of Berthoud, Colorado (the "Town"), Heron Lakes Investments, LLC (the "Developer") and the Berthoud-Heritage Metropolitan District Nos. 1-17, quasi-municipal corporations and political subdivisions of the State of Colorado (collectively, the "District") (the District, Developer its heirs, affiliates, successors and assigns are collectively referred to herein as the "Licensees" and with the Town as the "Parties").

For and in consideration of the sum of ten dollars (\$10) paid by the Licensees to the Town, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. THE LICENSE

Licensees own certain real property more particularly described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"), and desire to obtain a License to occupy and use the property more particularly described and depicted in Exhibit B, attached hereto and incorporated herein by this reference (the "Licensed Area"), which is owned or will be owned by the Town. Subject to all the terms and conditions hereto, the Town hereby grants to Licensees a license to occupy and use the Town Property for the purpose set forth in Section 2 herein.

SECTION 2. TERMS OF AGREEMENT

The Licensed Area may be used and occupied by the Licensees for the sole purposes of accessing, installing, operating, and maintaining a gate (the "Gate") and gate posts (the Gate and gate posts are referred to herein as the "Gate Facilities") as well as maintaining the Licensed Area as required by this License Agreement; *provided that reasonable access will be granted to persons who wish to visit properties or facilities within the boundaries of the District so long as entry to such persons will not pose a threat to the health, safety and welfare of residents or visitors of the Districts or to the District amenities and improvements.*

The Gate shall remain open or if not open, then reasonable access shall be provided to the public, at all times, except when Licensee has been notified by law enforcement that there exists a threat from a person or persons at or approaching the Gate who is/are intending on causing bodily harm to the persons residing on the Property or property located within the boundaries of Berthoud-Heritage Metropolitan District Nos. 1-17; and further provided that Licensees the gate attendant or monitoring and access system shall open the Gate immediately upon law enforcement reporting and determination that such threat is over.

SECTION 3. TERMINATION

Any party may terminate this Agreement by giving written notice to the other Parties specifying the date of termination, such notice to be given not less than thirty (30) days prior to the date specified therein. No later than the thirtieth day following the date of the notice, Licensees shall have removed the Gate Facilities and shall have returned the Licensed Area to its original condition.

SECTION 4. MAINTENANCE

Licensees shall, at no expense to the Town, keep and maintain the Licensed Area in good condition during the term of this Agreement. It is the intent of the Parties, that upon completion and dedication to the District, the District shall own, operate and maintain the Gate and related improvements, facilities and shall provide for ongoing maintenance.

SECTION 5. DAMAGE TO LICENSED AREA

Licensees shall be jointly and severally responsible for all damage to the Licensed Area arising out of or resulting from the use of the Licensed Area by the Parties or any of Licensees' employees, contractors or agents. Upon dedication of the facilities and improvements to the District, the District shall be responsible for ownership, operation and maintenance of all facilities and improvements in the Licensed Area dedicated to and accepted by the District. The Town will notify the District upon discovery of any damage to the Licensed Area. Licensees shall correct and repair the damage within two (2) weeks of notification or knowledge of the damage unless otherwise directed by the Town.

SECTION 6. INDEMNIFICATION

To the fullest extent permitted by law, Licensees shall indemnify, defend and hold harmless the Town, its officers, employees, and insurers from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, expenses (including attorney's fees) and liabilities of, by, or with, respect to, third parties ("any claims"), to the extent they arise from acts or omissions of the Licensees, Licensees' contractors and/or contractors' employees, arising under this Agreement, or in any way relate to the District owned facilities and improvements within the Licensed Area or the Gate Facilities.

SECTION 7. INSURANCE

Licensees each agree to procure an insurance policy, which includes and covers the Licensed Area that is the subject of this Agreement, and to name the Town of Berthoud as an additional insured thereon. Such insurance policies shall at a minimum include liability and property damage insurance, with a combined single limit for bodily injury and property damage of a minimum of six hundred thousand dollars (\$600,000.00) per person and a minimum of one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) in the aggregate. A Certificate of Insurance showing the Town as an additional insured thereon shall be provided to the Town within fifteen (15) days of execution of this Agreement. The failure to provide the Certificate of Insurance shall be grounds for immediate revocation of this Agreement. Licensees shall include in all contracts with any of either Licensee's contractors or subcontractors who do work in the Licensed Area a provision substantially similar to this Insurance provision obligating every one of Licensees' contractors or subcontractors who do work in the Licensed Area to purchase the type of insurance policies with the minimum limits provided for hereunder and to list the Town as an additional insured.

SECTION 8. COMPLIANCE WITH APPLICABLE LAW

Licensees shall, at all times during the term of this Agreement, comply with all applicable federal, state and local laws and regulations.

SECTION 9. NOTICES

Any notices or communications required or permitted to be given by this Agreement must be given in writing and personally delivered or mailed, by prepaid U.S. mail or overnight courier, or transmitted by email to the party to whom such notice or communication is directed, to the mailing address or email address of such party as set forth below. Any such notice or communication shall be deemed to have been given three (3) days after such notice or communication is sent by overnight courier, on the day such notice or communication is personally delivered, or the day such notice or communication is sent by email. Either Party by notice so given may change the address or email address to which future notices shall be sent.:

To the Town:
Town Administrator
807 Mountain Avenue
Berthoud, CO 80513
Email: ckirk@berthoud.org and ajohnson@berthoud.org

To Developer:
Heron Lakes Investments, LLC
444 Mountain Avenue
Berthoud, Colorado 80513
c/o jim@tbggroup.us and jon@hillsidegroup.com

To District:
Berthoud-Heritage Metropolitan District Nos. 1-17
c/o Berthoud-Heritage Metro Districts "BHMDs"
2375 TPC Parkway
Berthoud, CO 80513
E-mail: Manager@bhmds.com
Phone: 970-488-2828

with copy to:

Spencer Fane LLP
c/o David S. O'Leary
1700 Lincoln Street, Suite 2000
Denver, CO 80203
Email: doleary@spencerfane.com
Phone: 303-839-3952

SECTION 10. SPECIAL PROVISIONS

A. The District is permitted to operate the Gate Facilities in the Licensed Area in accordance with the terms and conditions of this Agreement.

B. The District shall, at no cost to the Town, perform all road maintenance of the roads from and beyond the Gate Facilities, including but not limited to snow plowing and street sweeping, but excluding asphalt repair.

C. Licensees shall ensure that the Gate shall not require access control to enter, and the public shall be allowed to enter at all times, subject to the terms of Section 2 of this Agreement. A sign shall be permanently attached to the Gate that states: "This gate shall remain open and/or passable to the public without restriction. Notwithstanding the foregoing, a gate attendant may limit access at the gate if in their reasonable opinion that access to the community may be limited if there exists a threat from a person or persons at or approaching the gate to persons or property located within the Berthoud Heritage and/or Heron Lakes community at all times."

D. The Town shall not be responsible for any costs of constructing or maintaining the Gate Facilities.

E. The Developer and its successors and assigns hereby indemnifies, releases and holds harmless the Town from any liability for damage or repairs to the Gate Facilities for what was constructed by or on behalf of the Developer. The Licensees indemnify, release and hold harmless the Town for any claims related to the construction, operation and use of the Gate Facilities and any security equipment or cameras used by the Licensees.

SECTION 11. MISCELLANEOUS

A. License Personal. This License granted herein is personal to the Licensees.

B. Applicable Law. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines shall govern this Agreement. The Parties further agree that any litigation arising out of this contract shall be tried in the Larimer County, Colorado District Court, or the United States District Court for the District of Colorado and not elsewhere.

C. Amendment. This Agreement may not be amended except in writing by mutual agreement of the Parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

D. Headings. The headings of the sections of this Agreement are inserted for reference purposes only and are not restrictive as to content.

E. Assignment. Licensees may not assign or transfer this Agreement without the written permission of the Town.

G. Counterparts. This Agreement may be executed in three (3 or more counterparts,

each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

H. Governmental Immunity. The Town and the District, their respective officers, and their employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to the Town and the District and their respective officers or employees.

I. Severability. In the event any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining provisions shall not be affected. Should any of the Parties fail to enforce a specific term of this Agreement, it shall not be a waiver of a subsequent right of enforcement, nor shall it be deemed a modification or alteration of the terms and conditions contained herein.

[The remainder of this page is intentionally left blank.]

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

TOWN OF BERTHOUD, COLORADO

By: _____
William Karspeck, Mayor

ATTEST:

Christian Samora, Town Clerk

APPROVED AS TO FORM:

Erin M. Smith, Town Attorney

HERON LAKES INVESTMENTS, LLC

Signed: _____
By: _____, Authorized Agent

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this day
_____ of _____, 2024 by _____, an authorized agent on of Heron Lakes
Investments, LLC.

My commission expires: _____

(SEAL)

Notary Public

**BERTHOUD-HERITAGE
METROPOLITAN DISTRICT NOS. 1-17,**

President

ATTEST:

Secretary

EXHIBIT “A”
TO REVOCABLE LICENSE AGREEMENT
Legal Description of Property

EXHIBIT “B”
TO REVOCABLE LICENSE AGREEMENT
Legal Description of Licensed Area

Berthoud Board Update

January 2024



RECREATION

Submitted By Amanda Gustafson, Director of Recreation | Cultural Services

Operations, Memberships & Marketing

This month's focus was on organizing content for the spring/summer activity brochure, hosting the winter craft show, and finalizing the new onboarding system for full-time and part-time staff. The operations team has been working to complete 2024's spring and summer activity brochure.

New this year, the team combined spring and summer activities into one digital copy that will cover programs from February through June. Also, the team hosted the 2nd annual winter craft show which had 65 vendors and saw over 1800 customers. Lastly, the customer service representative updated the process used to onboard full-time and part-time staff.

In the month of December, the Recreation Center sold 83 new memberships, had 4,526 drop-in customers, and 6,417 members check-in.



Sports & Programs

December kept the sports team busy as they ran the youth futsal clinic and closed out the 1st-2nd grade basketball program while preparing for 2024. The futsal clinic went well, with 29 participants enjoying the 3-day offering. 2024 preparations are underway, with registration closing for the Little Dribblers and Little Spikers programs and the youth basketball program (grades 3-6).

Adult sports programs are looking good with our co-ed & women's volleyball leagues having multiple teams signed up and ready to participate this spring season. The men's basketball program will have enough participating teams to run our first adult basketball program since spring of last year.

Fitness & Active Adults

In December we continued unveiling the Wellbeats virtual class system that individuals can utilize in our Aerobics room. We were excited to see an increase in use, which we will be tracking throughout the year. The Forever Fit and Bootcamp classes saw an average of over 25 participants per class. With such large classes utilizing so much of our equipment, we added new dumbbells, resistance bands, and small fitness balls. We have also begun to prep and update the weight room area for three new pieces of equipment coming in 2024.

ACTIVE ADULTS (50+)

In December, we hosted our first Cookie Exchange. There was a fantastic turnout including individuals who had never visited the Berthoud Recreation Center before this event. There were a ton of smiles and many satisfied customers who are looking forward to this event returning in December of 2024.



Aquatics

The beginning of the December ran normally with the kids still in school. The last half of the month saw higher numbers. Seven more part-time employees were certified in CPR and First Aid along with eight new lifeguards. Seven of the lifeguards passed the class with three of them being promoted from slide attendants to lifeguards.



STREETS

Submitted By Brandon Keegan, Streets Supervisor

Throughout December, the Streets Department accomplished various tasks, such as snow removal, sign replacement, and the installation of four new Radar speed limit signs.

Overall, the department replaced a total of 438 signs in 2023, including 71 stop signs, 8 yield signs, 25 speed limit signs, and 334 street name signs.



Snow cleanup- After clearing the priority 1 roads, the street crew cleaned up the icy areas throughout town.

Radar signs- The Streets department installed radar signs on CR14, Berthoud Pkwy & Bunyan, Berthoud Pkwy & Bluebell, and 1st Street & Bunyan Ave in the hopes of slowing down motorists.



Berthoud Pkwy and Woodcock St.- Streets crew installed a new yield sign at the roundabout intersection known for being hit during snowstorms.

Peak View- The signage in Peak View neighborhood was replaced after 22 years due to fading.



COMMUNITY DEVELOPMENT

Submitted By Anne Johnson, Planning Director

Building Division data for 2022 and year-to-date in 2023:



New Single Family

24 in December, 2023
223 total in 2022
221 total in 2023



New Commercial

5 in November, 2023
58 total in 2022
70 total in 2023



Number of "other"

27 in December, 2023
525 total in 2022
464 total in 2023



Total Valuation, December 2023

\$9,215,186.34



Engineering

Construction Site Inspections: 44
Town Projects Inspected: 35
Response to Citizen Questions: 4
MS4 Inspections: 10
ROW Inspections: 7

Planning



Public Assistance (calls, emails, site visits)

Walk-ins : 3
Emails : 800
Phone calls : 70
Site Visits : 2



Pre-Application meetings : 0
Public Hearings/Applications presented : 6
Applications in-process: 22
Codes/Comp Plan Action Items in-process: 19



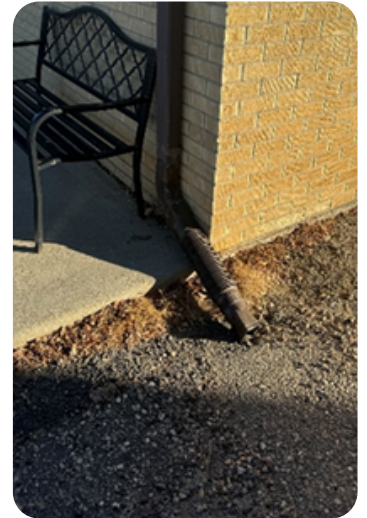
PARKS & CEMETERY

Submitted By Sami Kouns, Parks Supervisor

December marked an interesting month for the Parks and Cemetery Departments as the weather was rather warm, which presented us with the opportunity to continue to work outside instead of being forced indoors. Both departments were able to continue with maintenance logs on vehicles and equipment, but they were also able to tackle some projects that they hadn't had time for until now. The Bein Park concessions stand and foul poles at the ballpark were repainted for the first time in years. Mulch was added to the ornamental beds at Pioneer Park to give those areas a much-needed aesthetic lift. Repairs were made to the Old Town Hall building to keep it safe and functional for its inhabitants.

Baby changing tables were finally added to both restrooms at the Waggener Farm Park pavilion after receiving numerous requests for them. Signage for the Greenlawn Cemetery was discussed in-depth to address issues and rules for the area. All these projects and jobs have needed to be addressed for a while; the last month of 2023 just happened to be perfect time to knock them off our list.

The Parks Department spent some time at the Old Town Hall building making repairs both inside and outside. Some light bulbs had to be replaced inside, but on the exterior of the building more repairs had to be done. The downspouts were fixed to redirect water away from the building, the soffit on the north side was reattached and concrete mix was purchased to fill some of the larger cracks around the building.



Baby changing tables with support legs that can accommodate over five hundred pounds of weight were installed in each of the Waggener Farm Park pavilion restrooms.

The Bein Concession stand was repainted to give it a new, fresh look. The foul poles at Bein ballpark were also repainted after they were first sanded and stripped of all the old paint.



FORESTRY / OPEN SPACE

Submitted By Paul Furnas, Town Forester

The primary objectives for the Forestry and Open Space departments for the month of December were updating tree inventory data, removal of dead trees, and adjustments to the bike park. With the winter snow holding off, the Open Space department was able to install more boulders at the bike park parking lot to keep traffic on the road. Forestry staff visited Ash trees in the “A” rotation of EAB treatments to get updated measurements and adjust the measurements for treatments in 2024. Forestry staff kept up with winter watering practices on newly planted trees around town. Tree City USA applications for Berthoud were submitted in December.

Forestry and Open Space staff teamed up to remove a few dead trees around town. Locations of the removals were the Bein baseball fields, Nielson Trail and the Cemetery. Two Honey Locust, three oaks, and one maple were removed.

Both Honey Locust trees seemed to be succumbing to compounding disease and insect pressures. Oozing sap from the trunks and branches might indicate a bacterial wetwood infection. The larger honeylocust removed at Bein had many borer holes from boring insects that further attacked the struggling tree.



Fixing large emerging cracks and testing new soils for repair. Custom soil mixes are being trialed at the Bike Park to find the best uses for their characteristics. Here a more clay-heavy soil mix was used to fill a large emerging crack on the riding surface.



COMMUNITY DEVELOPMENT

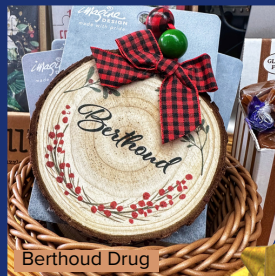
Submitted By Walt Elish, Economic Development Manager

The Town held its second annual Holiday Shop Local Program; by all measures, the three-week event was a great success. Calculation of the entered receipts indicates that the program generated over \$40,000 in direct spending for Berthoud businesses. Every shop owner from whom a \$75 gift card was purchased was happy to hear we were running the program again and was excited to help promote it. The community enthusiastically stuffed the drop box with their receipts every week and is already looking forward to next year.

Shop Local This Holiday Season and You Could Win One of 44 \$75 Gift Cards!

When you visit
Berthoud's shops,
restaurants, and
services from
November 25 -
December 18, save
your receipts. Drop
them off at Town Hall
for a chance to win
one of 40 \$75 gift
cards!

Visit Berthoud.org for
more information.



Berthoud Drug



Rancher's Wife



Wishful Living



You & Me Floral



Grand Prize Winner
Kathleen Henning



Grand prize basket
worth \$500



NEIGHBORHOOD SERVICES

CONGRATULATIONS !!

To the winners of the 2023
Neighborhood Services Holiday Lights Contest



People's Choice: 660 Great Plains Ave



Best Traditional: 216 S 3rd Street



Best Use of Inflatables: 1524 Sun River Rd



Magnificent Mini: 227 N 2nd St



Brightest Berthoud Business: Owens Dental



The award-winning Neighborhood Services Holiday Lights Contest was held for the second year late this fall.

The contest had 33 entries, and 185 people voted for their favorites.

On top of prizes given to the top-voted homes and business, a random voter was selected to win a \$50 gift card to the Berthoud business of their choice.

It was very well received, and people are already looking forward to next year.



WATER & WASTEWATER

Submitted By Marie Mitchell, Administrative Technician, Water

No Matter the Weather... Water Utilities is on the Job

Water System Operators continued their work on the Town's Park Redevelopment Project. For instance, a hydrant was undersized so was replaced and relocated for better efficiency. New valving was performed on the water main for better isolation and response control during emergency calls. Plus, work on the water main lowering project will enable proper clearance between sewers lines at Berthoud Park.

A Gate Valve Treasure Hunt

Finding the Gate Valve in Vantage was a treasure hunt that took time because it had been buried for decades. The importance of this gate valve helps Water Utilities isolate one of the Town's main transmission lines. Once this valve was found, initial findings discovered that the valve currently does not work and will need to be rehabilitated. Replacement work has begun and is in progress.



Scuba Divers during the Winter

Water Tank Inspections were scheduled with Inland Potable Services, who had SCUBA divers on site on 12/28/23. The Divers inspected the 3 MG tank and will complete their detailed tank inspection report in a few weeks.

The hydrant replacement/re-location and new valving on the water main at Berthoud Park for better isolation control.



A new gate was installed at the water treatment plant.



Welcome
WELCOME



Welcome to the Water/Wastewater Team Ian Greer, Water Utilities new Engineer Tech
Ian Greer has a background in local government, working in planning/zoning for the City
and County of Denver and the Town of Lyons. Most recently, Ian was a Land Survey
Instrument Operator with Northern Engineering in Greeley, CO. "I look forward to being
part of the Water Utilities Team and serving the Berthoud community." ~ Ian Greer



BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Berthoud Adaptive Park
Type of Item:	Regular Item
Purpose:	Consider request for financial support of the Berthoud Adaptive Park project in the Farmstead subdivision
Presented by:	Lauren Bowling

BACKGROUND:

As the Board may recall, a private effort to construct Berthoud's first public inclusive playground has been underway for several years. According to the project website, the Adaptive Park Project, "seeks to construct a destination playground in our community for children and parents with a wide range of disabilities; ultimately bringing greater accessibility and inclusion closer to home for many in the mid-northern Colorado area".

Through the hard work and dedication of Mrs. Lauren Bowling (the project's primary proponent) and many other committed volunteers and donors, the project has raised over \$600,000 in funding for the playground. The playground's total cost is estimated at over \$1,000,000. The Farmstead developer has committed several hundred thousands of dollars to support the construction of the playground and the Town is now in a position to possibly fill the funding gap. As this playground will be open to the public and will fill an important needs for inclusive play in our community, Town staff believes a request for funding should be considered.

FISCAL IMPACT AND FUND SOURCE:

There is no money currently budgeted for the project but the Town is in a financial position to support the project. If the Board believes that financial support for the project is warranted, staff will prepare a budget supplement request for the mid-year budget adjustment later this year.

RECOMMENDATIONS:

DIRECT STAFF

BOARD OF TRUSTEES INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Arboretum Conceptual Design
Type of Item:	Regular Item
Purpose:	Present Concept Design
Presented by:	Administration

ATTACHMENTS: Presentation, Survey results

BACKGROUND:

In April of 2023, Staff kicked off meetings with WENK Consultant group to create a design concept Arboretum to be located at Waggener Farm Park. For the last several months, staff have gathered input from multiple sources: our Parks and Forestry Departments, several TAC (Tree Advisory Committee) and PORT committee meetings and worked with Colorado Opens Lands for collective input and support as the design progressed along in 2023. A design will be put forth that is not only beautiful and a benefit to our community, but also meets the deed restrictions on the land. The plan was put out for public comment using Survey Monkey promoted on Facebook. The survey was conducted for two weeks and received an overwhelming number of positive responses and support pf over 440 responses.

The arboretum will serve as a living showcase of the area's diverse plantings providing a space for residents and visitors to connect with nature. By preserving and displaying local area trees and plant species, the arboretum will educate the community about the importance of biodiversity and the need to protect and conserve natural resources. Staff believes it'll also serve as a place to try out the sustainability of new trees.

In addition to promoting environmental awareness, the arboretum will also contribute to the community's economic vitality. As more people visit Berthoud to explore the arboretum, our local Restaurants, markets, and shops will benefit from the increased foot traffic, creating jobs and boosting the local economy.

The construction of the arboretum will also have long-term sustainability benefits. The project can incorporate sustainable building practices and use environmentally friendly materials. Additionally, water conservation techniques can be implemented along with native plant landscaping that require less irrigation. The arboretum will also serve as an educational hub, where workshops and programs on sustainable gardening and landscaping practices can be held. By promoting sustainable ways of gardening and landscaping, the community can reduce water consumption, minimize the use of chemical fertilizers and pesticides, and create a more environmentally friendly community overall. The arboretum will also further demonstrate our dedication to the Town's pollinator pledge (*touchstone*).

A representative with WENK will present the design and help answer questions.

FISCAL IMPACT AND FUND SOURCE:

The 2023/2024 Budget has appropriated the following funding for Arboretum design:

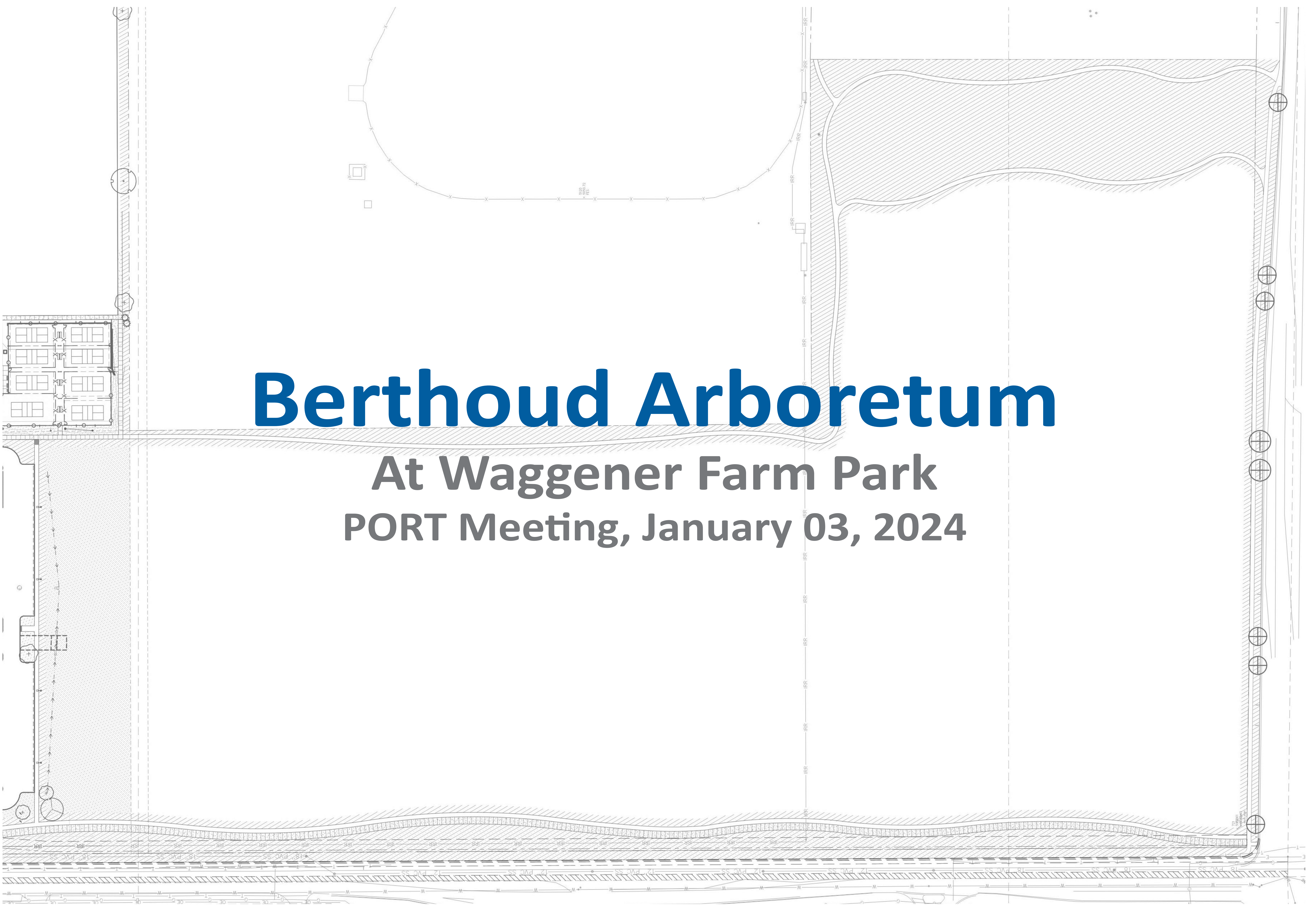
\$40,000 in 2023 for work on the design and \$15,000 in 2024 to support finishing the design concept. Not all Funds were spent in 2023. 34-00-5266 CT Forestry and Open Space.

COMMUNITY TOUCHSTONES:

Berthoud's **Community Identity** is rooted in its commitment to *sustainability* and preserving its natural environment. The construction of an arboretum aligns perfectly with this identity and further establishes Berthoud as a garden spot and environmentally conscious community.

RECOMMENDED ACTION(S):

Presentation and board discussion on this item. Staff will be asking for Trustee feedback on the design concept and direction on the next steps to the project.

The background of the slide is a detailed landscape architectural plan for the Berthoud Arboretum. The plan shows a large rectangular area with various features: a building footprint on the left side, a winding path or stream in the upper left, a large hatched area representing a field or meadow in the upper right, and a series of circular features (possibly trees or plantings) along the right edge. The plan is overlaid with a grid of dashed lines. The title text is centered over the plan.

Berthoud Arboretum

At Waggener Farm Park
PORT Meeting, January 03, 2024

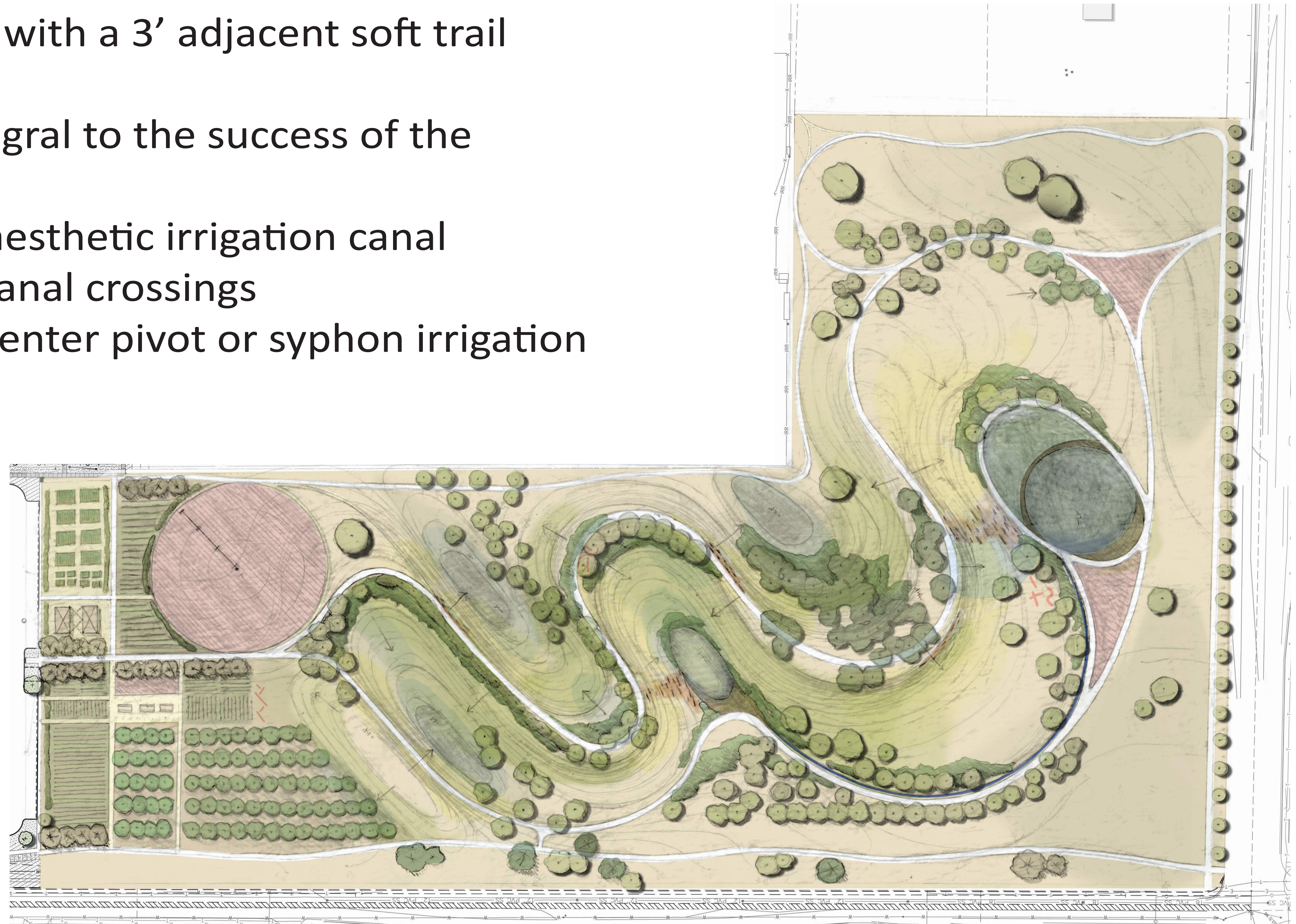
What We Heard at the July 19th Joint Committee Meeting

- Design concept and proposed layout was acceptable
- Refine the grading to minimize fill, create a, microclimates and keep the view corridor open
- Continue the agricultural theme established in the north side of the park
- Native and low water plants and pollinator habitat is encouraged



What We Heard at the July 19th Joint Committee Meeting

- Preference for the memorial to be located close to the north entrance to the arboretum
- 8' wide primary trail with a 3' adjacent soft trail
- Irrigation will be integral to the success of the arboretum
 - Liked the natural aesthetic irrigation canal concept, consider canal crossings
 - Lean on historical center pivot or syphon irrigation practices



What We Heard After the September PORT Meeting

- Trail layout and hierarchy was acceptable
- The Tree Nursery was visible from Berthoud Parkway/ HWY 17, can it be relocated?
- Is there interest in a community garden?
- Right size the lawn in the Community Hub to accommodate 200 person events. Enclose the lawn/event space for additional privacy
- Maintain the buffer between the existing pickleball courts and the garden



Plan Layout

Legend

- 1

Northern Community Hub
- 2

Irrigation Pond
~0.5-acre at 5'-10' deep, observation deck
- 3

Irrigation Canal
~1' deep and 2-3' wide
- 4

Stone Feature in Irrigation Canal
- 5

Ped Bridge Over Irrigation Canal
- 6

Nature Play
- 7

Art Opportunity
- 8

High Point Overlook
- 9

Primary Trail
- 10

Secondary Trail
- 11

Fishing/Observation Deck
- 12

Riverine Trees and Shrubs
willow, hackberry, cottonwood (farther from trails)
- 13

Pine Forest
- 14

Specimen Tree
cottonwood, fruiting, linden, oak
- 15

Gamble Oak Hillside
- 16

Conifer and Evergreens
- 17

Trees and Shrubs - Native
serviceberry, hackberry, hawthorn
- 18

Native Prairie
- 19

Wildflower Meadow
sunflower, clover, seed, mowable
- 20

Street Tree Planting
- 21

Fragrance Walk
linden, fruiting, catalpa
- 22

Maples
- 23

Oaks
- 24

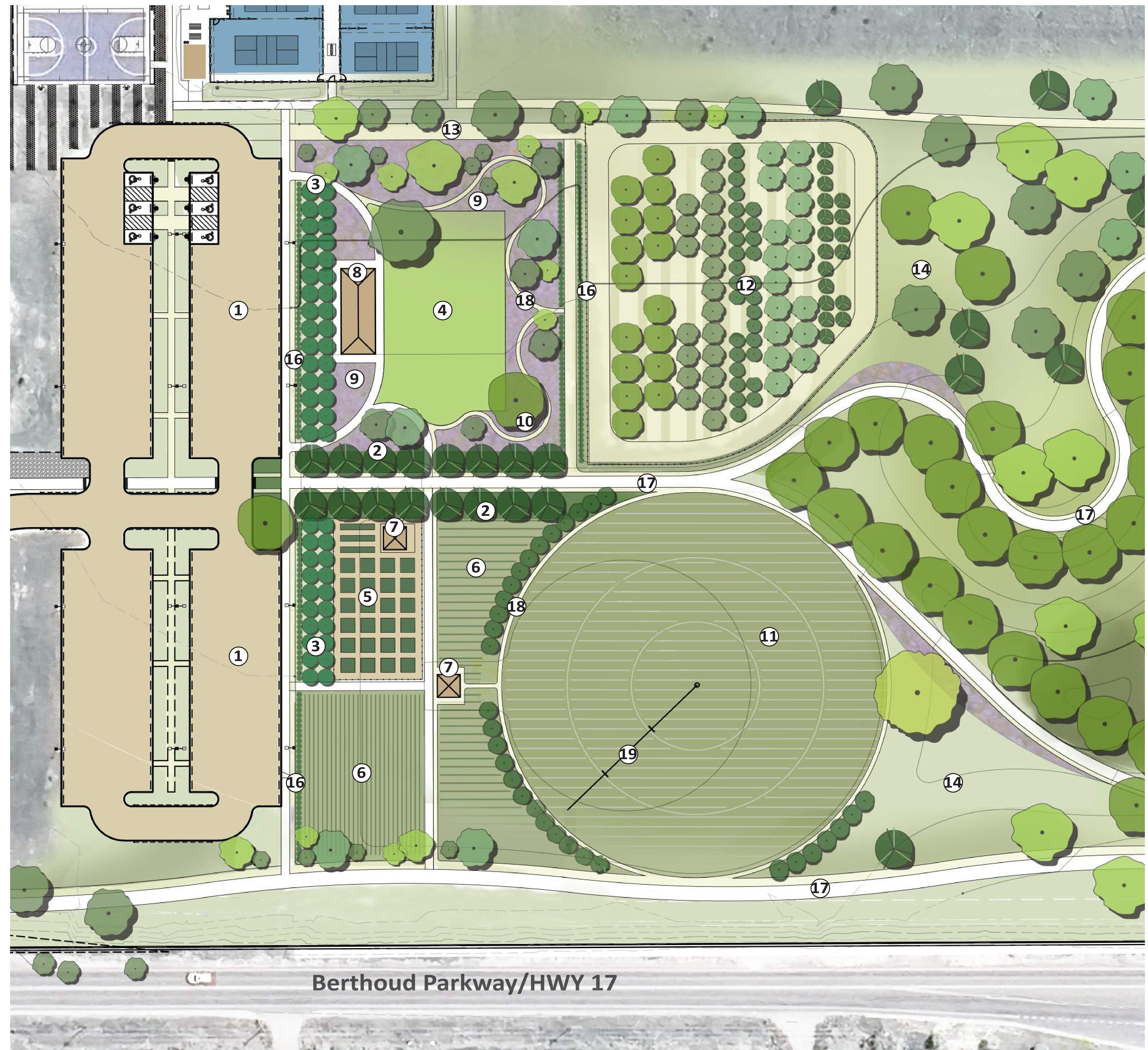
Shrub Planting



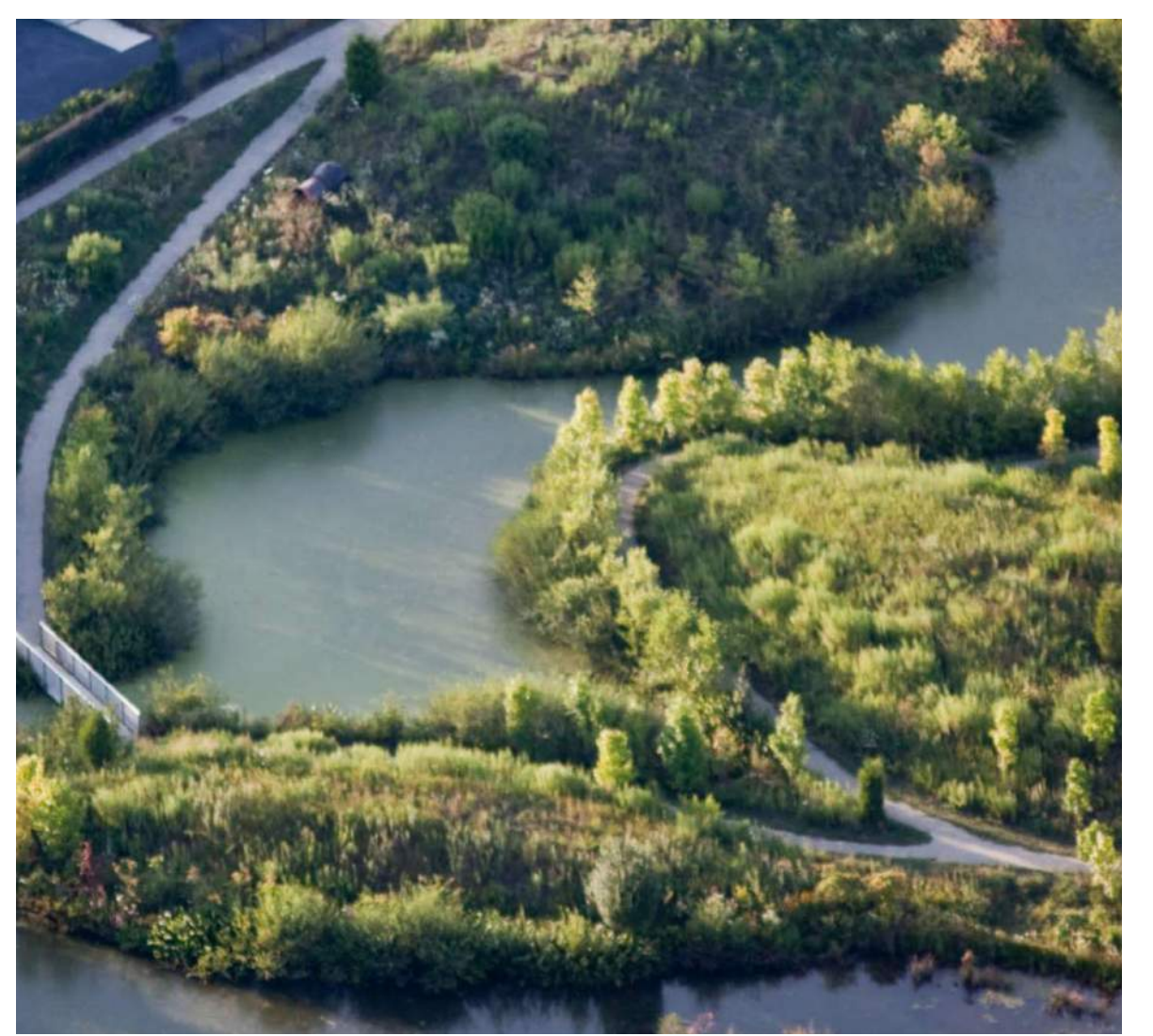
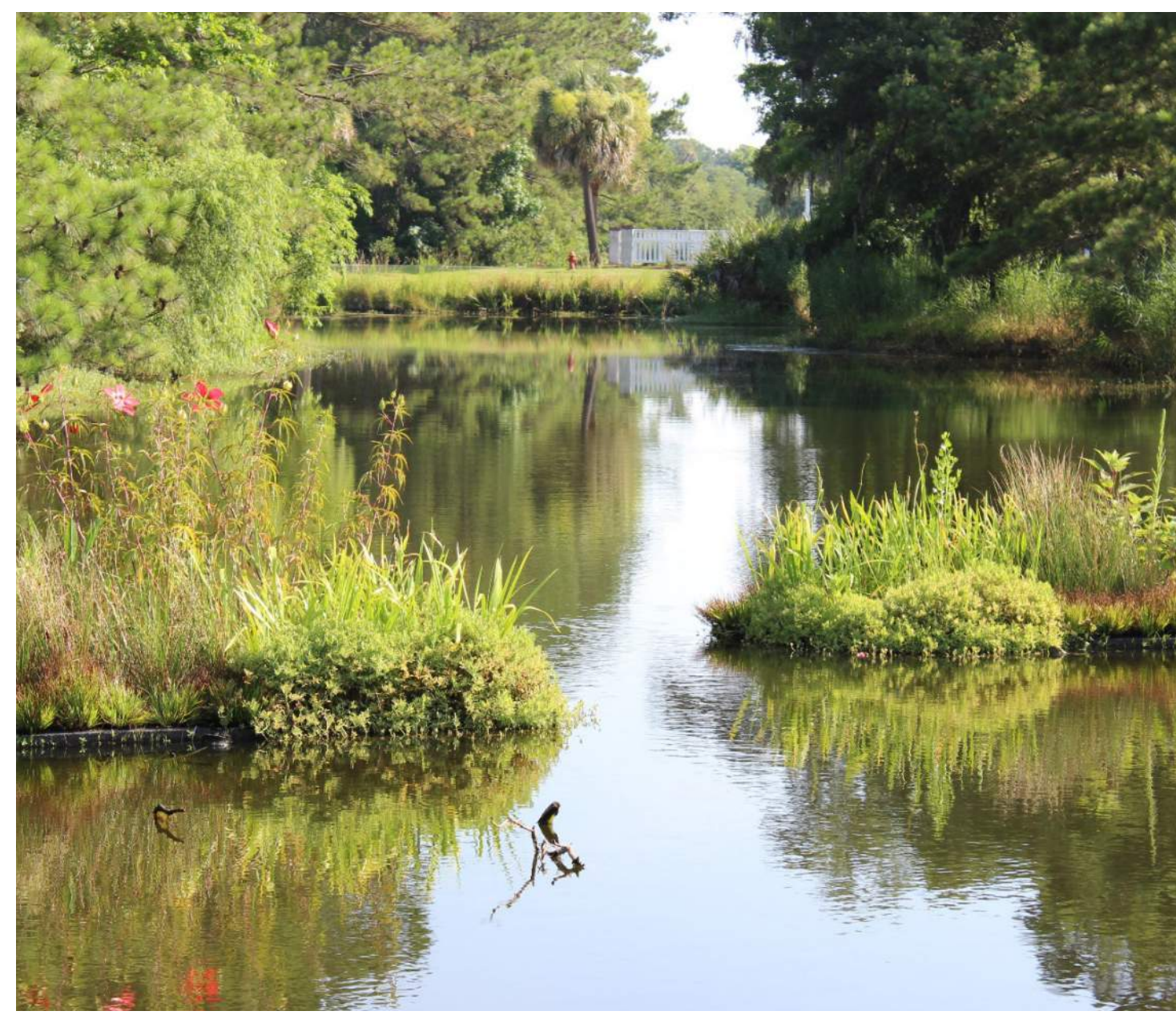
Plan Layout - North Community Hub

Legend

- ① Existing Gravel Parking Lot
- ② Pine Allee
- ③ Fruit Orchard
~0.15-acres, fruit & flower trees
- ④ Turf Lawn
~0.3-acre, programmable space, event opportunity
- ⑤ Community Garden
~0.15-acres, compost, community beds, picnic, shade, solar
- ⑥ Community Plots
~0.65-acres, pumpkin patch, sunflower, lavender
- ⑦ Picnic Shelter & Restroom
- ⑧ Picnic Shelter
- ⑨ Perennial/Native Garden
~0.5-acres, native plant display, espalier
- ⑩ Memorial Opportunity
- ⑪ Crop Circle Meadow
~1.3-acres, sunflower, clover, seed, goats, mowable, center-pivot irrigation?, mowed path perimeter
- ⑫ Tree Nursery
~1-acre, always changing, different sized trees, experimental, possible Miyawaki Forest, split rail fence around the exterior
- ⑬ Tree Nursery Access Path
- ⑭ Native Seed Area
- ⑮ Speciman Tree
- ⑯ Windbreak/Hedgerow
- ⑰ Primary Path
- ⑱ Secondary Path/Access Path
- ⑲ Intrepretative Center Pivot Irrigation Relic
art or swing structure opportunity



A photograph of a dirt path winding through a field of tall grass and yellow wildflowers. A wooden plank lies on the path, and a small white object is visible near the bottom left.



January 03, 2024

Trails Diagram

Legend

-  **Primary Trail**
8' Wide Concrete Trail, 3' Wide Attached Crusher Fines
-  **Secondary Trail**
Concrete Trail, Width Varies From 6' To 10'
-  **Tertiary Trail and Access/Maintenance Path**
Crusher Fines Trail, Width Varies from 3' to 6'



Trails



Primary Trail

- 8' Wide Concrete Path With A 3' Wide Attached Crusher Fines Path



Secondary Trail

- 3' Wide Attached Crusher Fines Path

Views of the Arboretum

- 1 - Looking Southeast
- 2 - Community Hub/Community Garden
- 3 - Nature Play and Irrigation Canal Crossing
- 4 - Looking Northwest
- 5 - Community Lawn
- 6 - Pine Forest and Crop Circle



View 1 - Looking Southeast



View 2 - Community Hub, Community Garden



View 3 - Nature Play and Irrigation Canal Crossing



View 4 - Looking Northwest



View 5 - Community Lawn



View 6 - Pine Forest and Crop Circle



Irrigation Canal



Irrigation Canal

“Natural” Canal - Adjacent to the Trail



Irrigation Canal

Stone Feature - Canal Adjacent to the Trail



Irrigation Canal

“Natural” Canal Separate from the Trail



Tree List

1st phase: Initial installation – Tree varieties that are ‘tried and true’ to Colorado’s climate. These will be trees able to stand every kind of weather that Colorado throws at them, and hopefully start to establish microclimates for other more sensitive future trees.

Coniferous trees-	
With water and soil considerations taken into account, these trees might be good to develop a more protected area from high winds at the site.	
<i>Abies concolor</i> -White fir	Needs more moisture and well drained soil
<i>Juniperus scopulorum</i> – Rocky Mountain Juniper	Low water requirements
<i>Picea pungens</i> – Colorado Blue Spruce <i>Picea pungens glauca</i> – ‘Fastigiata’ , ‘Colorado Weeping’ , ‘Bakeri’	Med-high water requirements
<i>Pinus aristate</i> – Bristlecone pine	Low water requirements
<i>Pinus edulis</i> – Pinyon pine	Low water requirements
<i>Pinus nigra</i> – Austrian pine	Average water requirements
<i>Pinus ponderosa</i> – Ponderosa pine	Prefers drier sites
Deciduous Trees-	
Some of these trees might require some protection to aid in their establishment and development. Most trees will be hardy enough to withstand the site conditions.	
Acer- Maples	
<i>Acer gaudinatum</i> – Big Tooth Maple	Smaller, shrub type maple, 35-50 tall. Drier soil
<i>Acer tataricum</i> – Tatarian Maple, ‘Hot Wings®’	Smaller, shrub type maple, Drier soil
Aesculus- Buckeye/Horsechestnut	
<i>Aesculus hippocastanum</i> - Common Horsechestnut	Medium water requirements, flowers in spring.
Catalpa – Catalpas	
<i>Catalpa speciosa</i>	Low to medium water, flowering, seed pods
Celtis - Hackberry	
<i>Celtis occidentalis</i>	Low to medium water
Crataegus – Hawthorn	
<i>Crataegus crusgalli</i> – Thornless Cockspur	Low to medium water
<i>Crataegus ambigua</i> – Russian Hawthorn	Low water
<i>Crataegus phaenopyrum</i> – Washington Hawthorn	Medium water
<i>Crataegus viridis</i> - ‘Winter King’	Low to medium water
<i>Crataegus x mordenensis</i> – ‘Toba’	Medium water
Gleditsia – Honeylocust	
<i>Gleditsia triacanthos v inermis</i> – ‘Imperial’, ‘Shademaster’, ‘Skyline’	
Gymnocladus- Kentucky Coffee Tree	
<i>Gymnocladus dioicus</i> - Kentucky Coffee	Low to medium water
<i>Gymnocladus dioicus</i> – ‘Espresso’	Low to medium water
Malus- Crabapple	
<i>Malus</i> – ‘Spring snow’	Low to medium
Populus – Poplars	
<i>Populus sargentii</i> – Plains Cottonwood	Medium to high water *even though these trees can be quite big and dangerous as they grow old I think it would be a good native to have at the arboretum. Preferably in the middle of the park to reduce the possibility of dropping branches over a sidewalk or road.

<i>Populus x acuminata</i> – ‘Lanceleaf’	Medium water
Quercus- Oaks	
	I would like to see a lot of oaks planted at the start of the park as they take a while to start to grow but will be very hardy and stately when they mature.
<i>Quercus gambelii</i> - Gambel oak	Small tree/shrub like oak – low water requirement
<i>Quercus macrocarpa</i> -Bur oak	Low to medium water
<i>Quercus muehlenbergii</i> - Chinkapin oak	Low to medium water
<i>Quercus robur</i> - English oak	Low to medium water
<i>Quercus undulata</i> - Wavyleak oak	Low water
<i>Quercus alba x robur</i> – Crimson Spire oak	Low to medium water
Syringa – Tree Lilac	
<i>Syringa reticulata</i> – Japanese tree lilac	Low to medium Small flowering tree
Tilia – Lindens	
<i>Tilia americana</i> – American Linden	Medium water
<i>Tilia cordata</i> – Littleleaf Linden	Medium water
<i>Tilia tomentosa</i> – Silver Linden	Medium water
<i>Tilia x flavescens</i> – ‘Glenleven’	Medium water
<i>Tilia x euchlora</i> – ‘Redmond’	Medium water

What is the Cost?

Site Preperation and Earthwork • Surveying • Site and Soil Prep • Import Fill Material*	\$1,500,000
Utilities • Storm Utilities • Electrical for the Structures and Irrigation	\$150,000
Pavements and Walks • Concrete Trails and Walks • Crusher Fines Trails	\$800,000
Landscape • Lawn • Native Seed • Shrubs and Grasses • Stone Boulders	\$500,000
Irrigation • Irrigation Canal • Irrigation Pond and Pump House • Irrigation Throughout the Site	\$1,500,000
Site Furnishings + Play • Picnic Tables and Benches • Bicycle Racks • Trash, Recycling and Pet Waste Stations • Nature Play Structures • Center Pivot Structure	\$275,000
Structures • Dock at Irrigation Pond • Pedestrian Bridges • Community Garden Raised Beds • Picnic Shelters (2) • Picnic Shelter and Restroom (1)	\$750,000
Hard CostsTotal:	\$5,475,000
Contingency (15%):	\$547,500
Grand Total:	\$6,022,500



*Assumes all soil to be imported fill material

A photograph of a row of trees with vibrant autumn foliage in shades of yellow, orange, and red. The trees are set against a clear blue sky. The text "Thank You" is centered over the image.

Thank You

Here is the concept for the arboretum as it stands now, Berthoud Arboretum. What do you like most about the concept plan? (Scroll all the way through. It's worth it.)	Understanding that the arboretum is in its planning stages, what would you like to see added, or adjusted? Berthoud Arboretum.
Open-Ended Response	Open-Ended Response
None of it	The necessity, the enormous cost
I like the pond and canal, but question water availability for recreation purposes	Less grass and water intensive ground cover
Many plants	Koi fish pond, bonsai trees, Japanese themes, zen type events, places to sit, meditate
The variety of vegetation along the walking trails	Add in several sitting benches and trash/waste containers adjacent to the trail system
The irrigation canal	More water
I love the diversity and the park-like theme it will give to Berthoud!	I appreciate the planning to get to this stage and like it all!
The walking trails amongst nature	
The trails, and theme tribute to Berthoud's ag roots	Design looks great, concerns are maintenance costs and the cost of water to maintain such a large space as well and where the initial funding for this will come from
All the trees, nature canal, and play structure	No thoughts
bringing experiential Trees and greenscape into that part of town	consideration for winter use spaces - ice rink near the parking lot (as an option before the full indoor ice rink comes to town!)
Love the shaded walks and variety of trees.	Support the concept of a community garden
Love the thought of a community garden and introducing native plant species back into a dedicated space.	N/A
Too many pathways and not enough useable passive areas.	More useable space for passive recreation and Town events.
Native plants	Looks awesome
	Water feature or fountain.

I think it is wonderful to see this coming here! The idea of a community garden would be great. I would propose a minimal if any use of pesticides to help keep our air a water cleaner.	
I couldn't get it to open	Anything that helps bring the birds and bees to our town is welcomed.
We should get a better library	
Open space! Nature! Walking paths with native trees! Yes, yes, yes	Bathroom, out house or porta potty on the south side. Ample places to park and lock bikes up.
I love it all, I love gravel running trail!	Benches?
All of it. Walking, greenery, trees.	I wonder about the impact of traffic on Mountain and Bpkwy.
I like all the different areas	More variety of trees, a glass greenhouse
I like that this space is providing accessible walking paths in a fairly natural environment for our community. I also appreciate the town's efforts to grow trees and other plants for the physical, environmental and emotional benefits to our community.	Bathroom facilities should be provided.
Yes	
Green space not houses.	Maze
Features on the canal that make the water accessible to play.	Flower garden for pollinators.
The diversity of the plan and how great this will be for the community.	
The winding pathways through the various microclimates	Not sure about the giant crop circle. I understand the farm theme but it seems like a lot of dead space.
I like the accessibility/ trail availability	The path should be wide enough for walkers/ bikers/ strollers/ roller blading

All of the walking paths and the variety of trees. The overall layout is very pretty	I like it
Adding permanent green space to town.	More natural high plains plantings and design. All produce grown in community garden to be donated to local food bank.
Paved paths, water canals with area for kids to play in it, event space	Auditorium seating? Gaga ball pit
I love the idea of the tree shaded walking path and picnic tables. This is definitely something my family will use.	I would love to see the community garden and a small orchard
None! Not worth it.	Not happen
The walkway through the trees!	I understand the irrigation canal and its importance, but also know that mosquitoes will be abundant along the trail. Bat houses? Will stars be more visible from this area with less light pollution?
I love the community garden and focus on native species.	I'd love to see a section dedicated to pollinators!
Everything!!!	Lots of benches. Lots of pollinators.
Looks like a well thought out design	Possibly some Rose bushes
It should be a wonderful place to walk and decompress. I just hope that it does not get too crowded.	Mabey a park bench or two along the way for the older person who may get tired and need a place to rest for a few moments.
Water play near irrigation canal, community garden	Less lawn, add a fully native demonstration garden
Nature play area, the irrigation ditch with access for kids, community garden	Maybe information signs throughout that explain what things are or fun facts
Use of wild/native plants	Choose no or minimal irrigation- yes it can be done!
Native plants/pollinator habitat	Make this is accessible for horseback riding.
Making the canal usable.	
As a homeowner that borders the east boundary of the park we enjoy what has been done thus far, Except for the native grasses idea. It is 50%weeds most , along Bunyan has died because it is never watered or mowed. It is ugly , a breeding ground for mosquitoes etc. The concept looks nice but consider how it going to look in real life not just on a piece of paper.	No native grasses
Anything that maintains open space in Berthoud, I am in favor of.	I'd like to see where the funds are coming from.

Love the layout & multiuser aspects	
Natural beauty, not another horrid eyesore of tract homes that are being allowed to overtake our town,, preservation of land.	Keep the integrity of the "garden spot" and history/beauty of our town. Don't let it get overrun by housing developments!
two types of walkways, how it would add to the town aesthetic overall	The community gardens are a great idea in theory, but in practice, may be challenging to manage. We have them in Prairie Star and it is just overrun with weeds. There may be a better use of that space.
The diverse plants and landscaping	
It's ok.	Pedestrian bridge / crosswalk 10E/Berthoud Pkwy
Trails, all the foliage	Native plants and trees to promote pollinators growth and sustainability
The irrigation canal	Lots of picnic tables... tall trees or shade Summers around here are brutal.
The fruit trees and community garden	More fruit trees
Looks beautiful and a great place to visit	Trail from neighboring towns that lead to this
I like the amount of trees and plants and the variety.	It would be great if a bike path ran through here. But there would need to be a designated lane or dedicated bike path to separate walkers from cyclists.
Trees and garden, picnic spaces	Way, way, way less money.
The amount of trees planned, we need them.	A variety of shrubs and other foliage native to this area.
I'm a big fan of anything that isn't high-density housing. This also looks beautiful!	Disc Golf! Just need to anchor 9-18 baskets and we'll have a fantastic course
	Community gardens for local food sources.
Trails. Community garden.	
The pathways with shade and a pond for those who exercise in the area. The community garden is also wonderful. Maybe get the school kids involved.	
I love that it is a learning opportunity for everyone	I have no changes
It's an open area with no housing. I love the idea.	I think the plan is good as is.

The meandering trails and the canal	I don't care for community plots. I think the housing communities in the area have those.
	Dog park
Tree variation	Teaching stations, dedicated bee facilities
I like the water features	more elevation variability
Walking paths through beautiful foliage	Arboretum itself looks great! Biking/walking paths from north Berthoud (42nd/Shields) to the Arboretum would be incredible
Everything. Please do it.	
The trails	A rose garden
Nothing. If you would of left agriculture in place there would be no need of this.	Your buying into thinking you can control the environment
Walking paths, gardens, fruit trees	
The nature play area for kids	Start ASAP!
A	All the greenery, natural playground, and canal
It looks great	Some sculptures would be awesome
Love all the trees	
Playing in the irrigation canal!	
I love the idea of keeping it natural as possible	What are the use opportunities? Events ie concerts, weddings etc? We have such a growing population, I feel like we need more opportunities for multi use areas, who will maintain it?
Irrigation canal seems really cool, especially with kids.	Maintenance is well planned for. Looks cool and would like it to stay cool in future.
The thoughtful nature of the trail paths	Easier paths across town to get there
Community garden	
Community garden	The crop circle thing is a neat idea, but seems to take up too much area.
I love the play areas for children! This is a beautifully laid out plan!	I do not live in the community but am active in the community with meals on wheels. The area needs to remember people with limited mobility love to be able to explore. They also like to feel off the beaten path even with wheelchairs and walkers.
pond! And it shows great features for photo opportunities for prom, homecoming and graduation	more seating areas, I might have missed them but just thought a good bench to possibly sit and read a book while enjoying the outdoors and arboretum
The size and variety. The walking paths are great too.	Sidewalks connecting to the Prairie Star community

Pathways are both crusherfine and concrete. Picnic areas, play areas	Any drinking fountains or water bottle fill stations? Any agricultural interpretative signs about Berthoud in the area?
I like the overall concept and plan. The integration of agriculture is amazing here which is very valuable.	Maybe a bigger running section, so you can run with dogs. However, I think this should also be horse friendly for trail rides.
The plans look fantastic, what a wonderful addition for Berthoud and Northern Colorado	
Love the idea of a small fruit orchard, focus on native plants, and playable irrigation canal.	Honestly, I thought I would have a lot to add, but after double checking all my ideas have been covered, and I have no major concerns.
Water play area for kids	Actual fruit bearing trees which would be open to the public to harvest from. Same with the veggie beds or any community garden.
Trees	Use native plants
The canal feature for kids to play in. Both hard and soft trails.	Benches near the canal crossing/play area. Make the play area larger so more kids can use it. More picnic areas available.
Water features and lots of trees	
So much diversity	Make sure water is used wisely and explain in signs how people in the area can use those ideas.
I love that it's green space with trees.	I might have missed it, but flower gardens would be nice.
This is a very bad idea	Berthoud should be recruiting new business that will provide tax revenue for the town, not wasting funds on nice to have attractions like arboretums.
Beautiful outdoor space.lots of	A lot of flowering bushes and trees.
I like the incorporation of native plants and community garden.	I think it's very important to really focus on native plants in all areas of the garden.
I like the path concept. It would be a peaceful place to walk and meditate.	No
I love the idea of the native prairie and wildflower meadow	As much xeroscaping as possible. No cottonwoods

Trees, pollinator friendly and water wise plants, natural play area, walking trails	Use of grass. I think with all the other grass areas available near the rec center we should focus on water wise and native plants, herbs, trees and shrubs. Let's model how a sustainable and water wise area can be both beautiful and beneficial to the environment.
Abundance of trees and natural areas	No pavement. Keep it natural.
tree	Surveys should be neutral. This is very leading and as such I will not support this project.
The trails through the park and the community garden!	More water features.
trails open space to play in the grass. the community gardens usually become an eyesore..	no private areas keep it all public to the Town of Berthoud
Walking trails	A crossing from Lake Ave (Gateway Park) to the arboretum. Very dangerous to cross and NO sidewalks on the west side of Berthoud Parkway!
Love the idea of trails and water for everyone to play on	Some Abororetum have fun little scavenger hunt plaques for kids.
The community growth area and the walkways. The fun river part where kids can play in the water.	There has to be one or two more uses for this wonderful property that benefit the public. It's large so let's maximize the space. People are always looking for wedding and even venues. What about providing a part of it that includes hookups and water and all of the things an event planner needs and charge for it, so you can bring money in. A beautiful place where people can take photos and lush backdrops, etc. Maybe a small learning center for kids to learn about the flora and fauna and history of Berthoud and Colorado?
	Native plants and trees. Conservation of water.
Native trees	Water conservation methods (less lawn/grass)
View, maintaining view corridor, access, conservation of natural resources, addition of beauty and peaceful places, and much more, I'm sure. Thank you for the thought and planning! So happy to know of this.	

It WAS worth it! A beautiful overall layout, and I love the trail plan and the tree diversity.	Note: contingency number is 10% not 15%.
Love all of it! It would make our town so beautiful!	Perhaps a small amphitheater for music
Providing habit and shade for those that use the space. I love the environmental impact that it would have!	
So many trees! Community garden, playgrounds, canal areas to play in	As much shade as possible. Pollinator plants away from children's play areas.
Not much, really wish we would get an outdoor pool or other amenities for kids.	More parking at Wagner farm park, existing is not adequate . Also better ways to cross roads to get here. As it stands it is not safe for my family to get to this park
I love most of it and think it's a GREAT idea	You need a wind break for the fruit trees. Our westerly winds can blow all the blooms off trees in the Spring - meaning the trees bear no fruit, and usually die young. Switching 3 with 16, OR planting a wind break for the fruit trees would be beneficial
Love the diversity of experiences on what is now a blank slate. Also, love the potential for community gardens/plots - but somewhat unsure how those would be managed?	It'll obviously take time to establish the trees/plantings. Excited for the future of this space, if this comes to fruition. Identification of trees/plantings would be great, from an educational aspect.
Concrete walking trails	I love the idea for a community garden! I would definitely participate in this. However, I would like to see a clear plan of accountability for maintaining the garden. The garden by Pioneer Park always struggles to get volunteers and the garden in Prairie Star is a complete dump. How is this garden going to be kept up and looking nice?
shaded walkways, more greenery, native plant species	This plan looks great
The open space and garden feel	
It's hard to choose "most", but I love all the walking trails everywhere so you can have access to and see everything.	
Walking trails and community garden.	Nothing!
offers a variety of experiences	Just want to make sure this will allow for Berthoud's July 3rd Fireworks to continue at this site?
pond and trees	sculptures
All the trees!	

It has a nice wandering through the field feel.	I would not want concrete walkways. I would like to see a highly comparable alternative that still meets wheel chair accessibility requirements
The ability to have a place for my kids to explore without being confined to designed playgrounds and pocket parks. Plus the views	The crop circle seems rather irrelevant and not sure what purpose it serves aside from a living museum of sorts to capture the farming history of the town. What will the products be used for? Will it work or will the pivot be for decoration? Is there a maintenance plan developed or will this be yet another good idea (not specifically an insult to Berthoud) that gets built and left to squalor?
Bringing nature to urban	More learning opportunities for plant/tree varieties and native animals
Trails and Trees	Security for pedestrians - any alert posts?
Shaded walkways and water play options	
Yes!	Yes!
All of it! Love love the shaded walkways, a potential community garden walkable from many neighborhoods, a nature play area.	Would love the inclusion of an accessible community garden. Also maybe a small hut near the nature area for hosting small classes/ workshops.
Community Garden	This is a great idea!
Nothing, it's too close to residential neighborhoods.	The location to be moved east towards I-25.
Pollinators, low water plants, lots of trees, walking in nature.	
It looks amazing so far. I love all the trees being planted. I can't wait to walk through it when the trees get big in 10-20 years. Would be great if you could source bigger trees or fast growing trees so we didn't have to wait for the full effect 10-20 years down the road.	Possible a dog park we could stop at when walking our dog.
The community garden/fruit trees and the tree nursery	Educational resources throughout describing types of plants and planting styles, opportunity to volunteer the help with maintenance
Trees, plants and a path. Love it!	Fragrant trees and bushes please
Fruit Orchards and the walking paths	
It's beautiful! Complex and stunning.	Even more walking paths would be great! Hard to tell how long the trails are, but as much walkability as possible would be great.

I'd love to be able to walk through this area! I love trees and plants and honestly love everything about this plan!	Nothing I can think of.
I love the community gardens and the community lawn. A place to gather and appreciate what god made!	I'd love to see a beautiful gazebo area or something of the like. Somewhere family photos could be taken or weddings could be hosted!
It isn't houses	Yes
The nature walk	No input
	I'm against building the Arboretum or at least cut the size in half
Everything it looks amazing!	
Plants, historical aspect, nature, walking trails.	Cost effective.
Love that it's a nature area that people can go and enjoy.	Make it visually appealing and as little man made items as possible. If there are man made items try to make the rustic looking so blends in with nature.
The nature play, safe water play canal	1. I wish the nature play area was set further back from the pond. With multiple little ones its challenging to keep them safe. 2. For kids who are terrified of bees/wasps (or allergic) I wish the fruit orchard/trees were set further away from the parking lot, basketball court and main playground. Having to walk through those at the beginning is not ideal in preventing stings. 3. Are there public bathrooms anywhere on the south side by the pond/nature area? To pull several young kids from that area to weave through the trails to get to the north side, especially while potty training would be horrible!
The water area	-
The wide trails and focus on nature play	
Great concept and well thought out	Water features that could double for fishing recreation (possible stocking program with CPW)

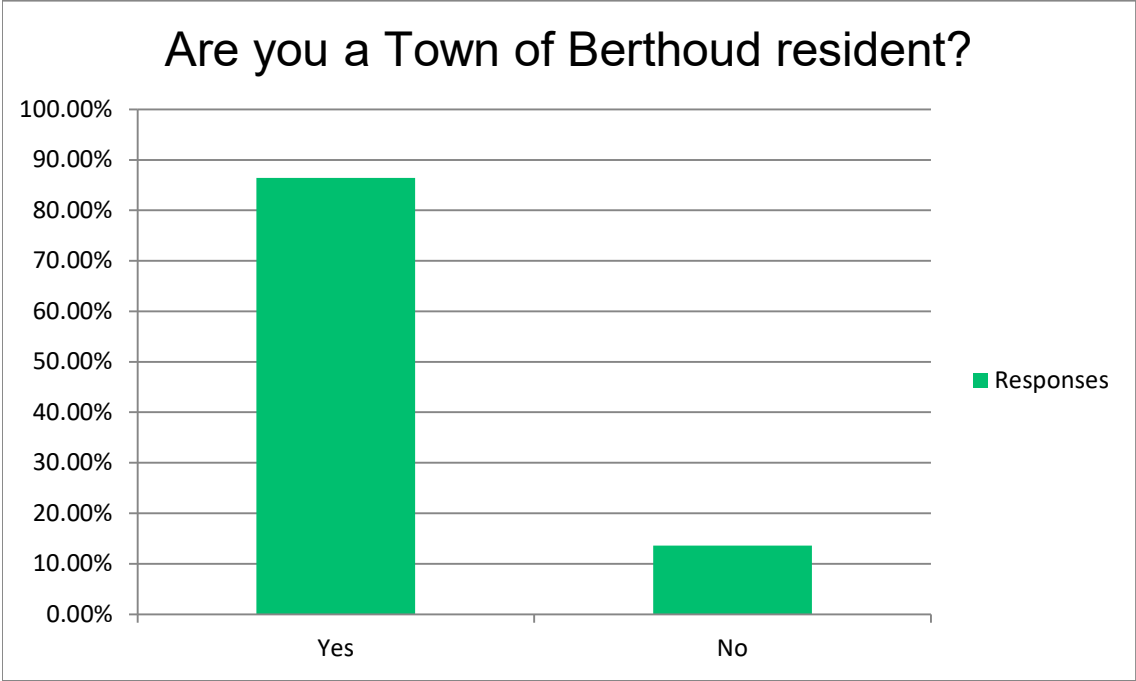
Paths, trees and relaxation spots	
Nothing	Scrapped, waste of money
Nothing	How about not wasting the money and instead fixing the infrastructure etc
Love the idea of more trees, embracing the farm aspect of the community.	More trees, pond, as little irrigation as possible, some sustainability practices
The aesthetic and concept of having more greenery especially trees in Berthoud!	If dogs are allowed or not and if there will be poop stations with bags and leash enforcement
Looks amazing	Nothing
looks good	lavender field and a rose garden or walk way
It beautifies that field amazingly! We live just across the street in Gateway Park and look forward to walking through it.	Nothing I can see.
Water conservation and native plants, somewhere to enjoy nature in town	More open space where are we going to watch and sit for fireworks? How much is this going to cost? Berthoud needs to stop the excessive housing and work on our infrastructure.
I like the variety of areas and different purposes for each area	I would like the arboretum to include both a community garden available for rec center members, and a series of educational activities for young and old about the plants and gardens in the arboretum. This educational effort could be a joint venture with CSU and perhaps even offer class credit. I would also like the arboretum to include a garden labyrinth https://www.onlyinyourstate.com/wisconsin/labyrinth-garden-earth-wi/
More trees	More trees
Community garden, making the corner beautiful rather than adding commercial space.	Think it looks great!
I love the trails	Maybe not what you're looking for but kids gardening activities would be fantastic. Gardening with a farm to table course would be amazing.
I love it all. I'm excited for walking paths and greenery and flowers!!!	
The design keep with the farm theming and the water canals for kid play.	

I.... Think I like the plan itself, but this seems like a weird use of funds when we could be doing an expanded library, outdoor pool, and should have done a more robust rec center to begin with.	
Trails!	Small open area?
I definitely like it, just make sure to keep it maintained and keep the trash kids from destroy like they have done to the bathrooms at the play ground that you can't use.	
I love the natural play area for kids. Including water structures and streams that can be used by a range of ages. The logs and natural pathways.	Make sure there is shade! Even if adding sails to make shade until the trees grow l.
Native plantings, diversity, natural play area, trails, community garden	The plans should focus almost exclusively on native plantings, low water (no irrigation), and creating awareness around biodiversity. Minimize water hungry trees or non-native species. No pivot irrigation! While agriculture has been a large part of our history, we should be focusing on living in a way that reduces our footprint and encourages better understanding around the importance of regenerative practices (both in ag and residential)..
The community garden and fruit trees.	Some more art in the form of bronze sculptures similar to the sculpture garden in Loveland.
Several places to walk, sit, and play. Features for young children to play.	
A place to relax and enjoy nature	Take some ideas Central Park it is a beautiful place to visit
Sounds like a waste of taxpayer money.	Nothing. Get rid of it.
The community lawn	The scope is too big, you can't even paint lines on roads. How do you expect to maintain a project like this.
	community garden was mentioned, that would be neat

Berthoud Arboretum

Are you a Town of Berthoud resident?

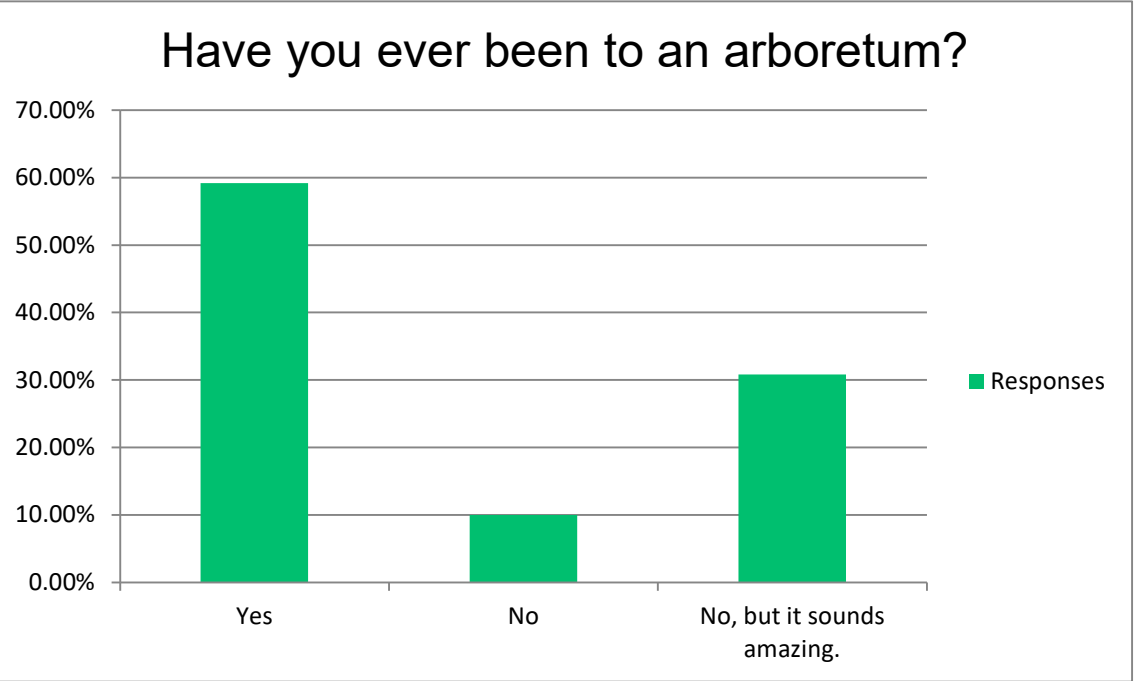
Answer Choices	Responses	
Yes	86.44%	389
No	13.56%	61
Answered		450
Skipped		1



Berthoud Arboretum

Have you ever been to an arboretum?

Answer Choices	Responses	
Yes	59.20%	267
No	9.98%	45
No, but it sounds amazing.	30.82%	139
Answered		451
Skipped		0



Berthoud Arboretum

Here is the concept for the arboretum as it stands now. What do you like most about the concept plan?

Answered 384

Skipped 67

Berthoud Arboretum

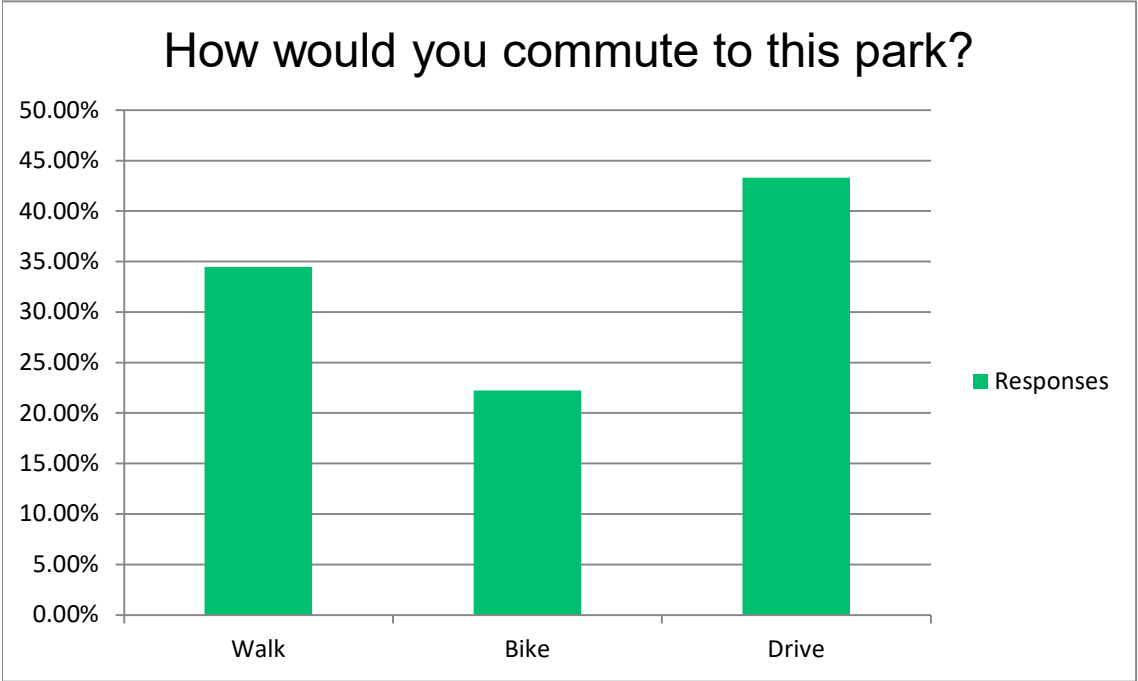
Understanding that the arboretum is in its planning stages, what would you like to see added, or adjusted?

Answered	321
Skipped	130

Berthoud Arboretum

How would you commute to this park?

Answer Choices	Responses	
Walk	34.47%	152
Bike	22.22%	98
Drive	43.31%	191
Answered		441
Skipped		10



BOARD OF TRUSTEES INFORMATION



COMMUNITY DEVELOPMENT DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Consideration of approval of the form of an Agreement for Reimbursement associated with Farmstead Filing 3 for construction of a Roundabout
Type of Item:	Regular Item
Purpose:	Consideration of approval of an Agreement for Reimbursement of portion of the costs association with construction of a Roundabout associated with Farmstead Filing 3 at Mountain Avenue and County Line Road
Presented by:	Chris Kirk, Town Administrator

ATTACHMENTS:

Draft of An Agreement by and between the Town of Berthoud and LGI Homes – Colorado LLC regarding Town participation in Roundabout Costs

BACKGROUND:

The Town Board of Trustees agreed at their December 12, 2023 meeting to consider an agreement to pay a proportionate share in the costs associated with construction of a Roundabout at the intersection of Mountain Avenue and County Line Road.

The list below provides a description of the exhibit materials, inclusive of the preliminary engineer's estimate for the total project costs as well as an estimate of the eligible costs.

- Exhibit A: Legal description of Farmstead Phases 2 and 3
- Exhibit B: Vicinity map identifying the location of the Roundabout in relationship to Farmstead Phases 2 and 3
- Exhibit C: Preliminary Roundabout Design
- Exhibit D: The total estimated cost of construction with an engineer's estimate
- Exhibit E: The estimated sum of eligible costs

For the purpose of discussion, the most recent version of the Agreement is included. The Town is in agreement to reimburse the Developer for 57% of the eligible construction costs contained in Exhibit E. The timing of payment needs to be finalized prior to the Mayor signing the agreement. The source of the funds will come from the Transportation Impact Fund collected from building permits issued to construction within the Farmstead development.

UPDATE/NEXT STEPS:

The Developer and the Town will finalize the agreement. Should the Town Board of Trustees agree to the form of the Agreement, the Mayor may sign with the Town Attorney

and Town Administrator approval.

FISCAL IMPACT AND FUND SOURCE:

The Town's share of the total estimated eligible costs are to be reimbursed to the Developer once a month from the traffic impact fees collected at the time of building permit issuance, to be solidified in the final draft Agreement.

COMMUNITY TOUCHSTONES:

Consideration of this request does support the Touchstones of Resilience, Sustainability and Community Identity. Efficient movement of traffic supports the resilience and sustainability touchstones while creating an attractive landscaped feature in the center of the proposed roundabout enhances not only the community identity for the Farmstead development and also the Town.

RECOMMENDED ACTION(S):

Staff, the Town Attorney, and the Developer have collaborated on the Agreement presented to you for consideration this evening and recommend the Town Board of Trustees approve and authorize the Mayor to execute the Agreement subject to final edits by the Town Attorney.

**AN AGREEMENT BY AND BETWEEN THE TOWN OF BERTHOUD
AND LGI HOMES--COLORADO LLC
REGARDING TOWN PARTICIPATON IN ROUNDABOUT COSTS**

This Agreement Regarding Town Participation in Roundabout Costs ("**Agreement**") is entered into this ____ day of _____, 2024 (the "Effective Date") by and between the Town of Berthoud, Colorado, a Colorado statutory town (the "**Town**"), and LGI Homes – Colorado LLC, a Colorado limited liability company (the "**Developer**"). The Town and Developer may be referred to herein collectively as "**Parties**" or individually as "**Party**."

RECITALS

WHEREAS, the Developer intends to develop a 95.10-acre site at the northwest corner of Highway 56 and County Line Road platted as The Farmstead Second Filing and to develop property located east of County Line Road as The Farmstead Third Filing, such subdivisions, depending on the context, being referred to herein as the "**Property**" or the "**Project**". The Property is more specifically described **Exhibit A**; and

WHEREAS, in connection with developing the Project, the Developer intends to make significant investments in certain Public Improvements as required by the Town, including the Roundabout Improvements (as such term is defined below), the general location of which are shown on **Exhibit B**; and

WHEREAS, pursuant to Ordinance No. 1277, the Town collects development impact fees from new development, including transportation impact fees for the purpose of assisting in the upgrading and expanding of public transportation facilities to accommodate such new development for the purpose of assuring that new development bear an appropriate share of the cost of capital expenditures necessary to provide such public transportation facilities as are required to serve the needs arising out of new development; and

WHEREAS, pursuant to Berthoud Municipal Code Section 30-2-129 (the "Oversizing Policy"), where the Town requires installation of infrastructure, a portion of which is for providing service to the Town's existing customers, the Town is authorized to participate in the eligible costs of such infrastructure; and

WHEREAS, consistent with the Oversizing Policy, the eligible costs of the Roundabout Improvements include those costs to furnish and install the Roundabout Improvements, but not costs to design the Roundabout Improvements, surface repairs, developer overhead, maintenance required during the warranty period, which warranty period is described in the applicable Development Agreement, and other exclusions shown in **Exhibit D**; and

WHEREAS, the Traffic Impact Study Addendum (File 2187ME08) dated October 2, 2023, performed by Delich Associates on Developer's behalf concluded that 43% of the cost of the Roundabout Improvements should be allocated to the Project-related new

development and 57% of the cost of the Roundabout Improvements should be allocated to the Town's existing customers; and

WHEREAS, pursuant to the Oversizing Policy, Developer has obtained competitive bids for the construction of the Roundabout Improvements in accordance with State laws and Town procedures for capital projects, such bids being based on construction of the Roundabout Improvements in a reasonable but not accelerated time period, as agreed upon by the Town; and

WHEREAS, Developer's engineer has submitted to the Town an itemized estimate of the Roundabout Improvements costs, which estimate is attached as **Exhibit D**; and

WHEREAS, the itemized estimated costs as submitted by Developer's engineer have been segregated into eligible and non-eligible costs within the meaning of the Oversizing Policy and this Agreement and multiplied by 57% resulting in itemized estimated eligible costs equal to \$ _____ *{insert prior to signing}* and described and shown in **Exhibit E** (the "Estimated Eligible Costs"); and

WHEREAS, the completion of the Roundabout Improvements will improve safety, and utility efficiency and stimulate continued development in Berthoud, growing the Town's employment base and bringing new revenue to the Town; and

WHEREAS, pursuant to the Oversizing Policy, the Town may determine to participate in the costs of the Roundabout Improvements up to the amount of the (1) Estimated Eligible Costs, (2) the Actual Eligible Costs, as defined herein, or (3) the adjusted estimated eligible costs based on any new bid Developer obtains for the construction of the Roundabout Improvements (the "Adjusted Estimated Eligible Costs"), whichever amount is lower; and

WHEREAS, pursuant to the Oversizing Policy, the Parties enter into this Agreement setting forth the terms and conditions for the Town's reimbursement of Developer for the eligible costs of the Roundabout Improvements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Developer agree as follows:

1.00 DEFINITIONS. The following words and phrases shall be defined as follows. Terms not defined herein shall have the meaning ascribed to such terms in the Development Agreements.

1.01 "Approved Construction Drawings" shall mean plans for the construction of the Roundabout Improvements that will be reviewed and approved by the Town for compliance with Town Codes and the Standards and Specifications prior to Developer's

commencement of installation of the Roundabout Improvements.

1.02 "**Developer**" shall mean LGI Homes – Colorado LLC, a Colorado limited liability company.

1.03 "**Development Agreements**" shall mean the Farmstead Second Filing Development Agreement, the Farmstead Apartments Development Agreement, and any development agreement related to the Farmstead Third Filing, such Development Agreements shall become effective after execution by the Town and Developer and recordation in the real property records of Larimer County.

1.04 "**Infrastructure Reimbursement Payment**" shall mean payment in the lesser of: the amount of \$ _____ *{insert prior to signing}* (the Estimated Eligible Costs), or (2) the Adjusted Estimate Eligible Costs, or (3) the Actual Eligible Costs.

1.05 "**Initial Acceptance**" shall mean the written acknowledgement issued by the Town when, to the best of the Town's knowledge, the Roundabout Improvements have been completed in accordance with the Approved Construction Drawings, Standards and Specifications, Colorado Department of Transportation regulations and standards, and all punch list items.

1.06 "**Property**" shall mean the real property where the Project is to be located, the general location of which is south of the intersection of Highway 56 and bisected by County Line Road, and which is described more specifically in the attached **Exhibit A**.

1.07 "**Public Improvements**" shall include those physical facilities, structures and associated appurtenances intended to be publicly owned and maintained.

1.08 "**Reimbursement Maximum**" shall mean the lesser of the Infrastructure Reimbursement Payment or 57% of the funds deposited into the Transportation Impact Fee Fund from the period commencing with the first deposit and ending as of the date this Agreement terminates in accordance with Section 6.00.

1.09 "**Roundabout Improvements**" shall mean the Roundabout Improvements to be located at the intersection of Highway 56 and County Line Road which are described in **Exhibit C**.

1.10 "**Standards and Specifications**" shall mean the Engineering and Development Standards as adopted by the Town and amended from time to time.

1.11 "**Town**" shall mean the Town of Berthoud, Colorado, a Colorado statutory town.

1.12 "**Transportation Impact Fee Fund**" shall mean the fund into which the Town deposits and holds transportation impact fees collected from the Farmstead Second Filing and

the Farmstead Third Filing.

2.00 **PUBLIC PURPOSE.** The Town Board of Trustees hereby declares that provided the Infrastructure Reimbursement Payment is paid for over time from the Transportation Impact Fee Fund the purposes for which the Infrastructure Reimbursement Payment is to be made overcomes any individual interests incidentally served by the Town reimbursing the Developer for the Eligible Costs of the Roundabout Improvements. The Town Board finds that there will be a general benefit to the citizens of Berthoud of increased safety and efficiency that will indirectly enhance tax revenues and employment, long-term real property tax base growth, and related economic development benefits. In addition to these general public benefits, the Town Board finds that Roundabout Improvements will provide necessary services for existing customers; and the Town Board finds that these public purposes outweigh any incidental individual interests and are not a special aid, grant, or privilege.

3.0 **INFRASTRUCTURE REIMBURSEMENT.**

3.10 In consideration of the performance by Developer and its representations and covenants contained herein, the Town agrees to reimburse the Developer up to _____ DOLLARS (\$_____) (the "Infrastructure Reimbursement Payment") for those costs to furnish and install, as defined herein, the Roundabout Improvements depicted in **Exhibit C**. For purposes of this Infrastructure Reimbursement Payment, the following procedures will apply:

(A) The Parties shall amend **Exhibit D** and **Exhibit E** to this Agreement in the event Developer procures any new bid(s) in accordance with State laws and Town procedures for capital projects, such bids being based on construction of the Roundabout Improvements in a reasonable but not accelerated time period, as agreed upon by the Town, if the amount of any such bid is lower than the Bid. The amended Exhibit D shall replace the estimated costs shown therein with the lower costs. The amended Exhibit E shall replace the Estimated Eligible Costs with the Adjusted Estimated Eligible Costs.

(B) Developer shall design and construct the Roundabout Improvements in connection with developing the Project, they shall be constructed in accordance with the applicable Development Agreement, the Approved Construction Drawings, Standards and Specifications and all applicable local, state and federal laws, standards and regulations. Developer is responsible for obtaining the Town's approval of any changes to construction drawings required by the Colorado Department of Transportation.

(C) The maximum reimbursement from the Town shall not exceed the Reimbursement Maximum.

(D) Developer agrees, at its sole cost, to acquire as necessary and dedicate all real property interests to build the Roundabout Improvements (to the extent necessary). All dedications required by the Town (to the extent necessary) for construction of the Roundabout Improvements must comply with the requirements of the Town Code.

(E) The Developer agrees that the Roundabout Improvements are Public Improvements and are intended to be publicly owned and maintained.

(F) Determination of final costs. After the Town provides the Developer with written notice of Initial Acceptance of the Roundabout Improvements, the Developer shall deliver to the Town for the Town's approval the Developer's engineer's certified summary of the final costs and the final eligible costs for the Roundabout Improvements. Such certified summary of the final eligible costs when approved by the Town shall constitute the "Actual Eligible Costs". Upon approval, the Town will issue to Developer a written notice of approved Actual Eligible Costs. Issuance of a Notice of Approved Actual Eligible Costs shall not trigger the commencement of the warranty period for the Roundabout Improvements. Nothing in this Agreement shall affect the timing and terms of Developer's obligations with regard to the Roundabout Improvements under the applicable Development Agreement.

- (i) Developer shall not be entitled to collect reimbursement from other property owners for its share of the costs of installing and furnishing the Roundabout Improvements.
- (ii) No interest shall accrue on any sum owed to the Developer by the Town pursuant to this Agreement.

(G) In no event shall the Town be liable to the Developer or required to reimburse the Developer for any amounts in excess of the Reimbursement Maximum under this Agreement.

(H) Subject to the Town Board of Trustees annual appropriation and budgeting process, and subject to there being funds available, the Town will pay the Developer on or before the thirtieth day after the Town issues the Notice of Approved Actual Eligible Costs, and then monthly thereafter on or about the 30th day of the month, until this Agreement terminates in accordance with Section 6.00. The amount of each such monthly payment shall be equal to the amount of impact fees in the Transportation Impact Fee Fund as of the 15th day of that month.

3.20 Nothing herein shall in any way bind the Town to act on any rezoning, Conceptual Site Plan, Development Permit, Construction Permit, Building Permit or subdivision application related to the Project.

4.00 GENERAL OBLIGATIONS AND REPRESENTATIONS OF THE DEVELOPER AND TOWN.

4.01 DEVELOPER COVENANTS.

(A) Developer agrees to construct or cause to be constructed the Roundabout Improvements in material conformance with the applicable Development Agreement and the Approved Construction Drawings, subject to customary change orders.

(B) Developer agrees to comply with all Town codes, ordinances, resolutions and Standards and Specifications and all applicable local, state and federal laws, standards and regulations.

(C) Notwithstanding the foregoing, if the Roundabout Improvements are constructed by the Town, and Developer subsequently completes the remaining Public Improvements, as defined in the Development Agreements, the Town shall be entitled to not accept any building permit application unless prior to any such building permit application, Developer shall have paid to the Town 43% of the Town's actual costs to design, furnish, and install the Roundabout Improvements.

5.00 **ASSIGNMENT.** This Agreement is not assignable in part under any circumstances. As to the entire Agreement, this Agreement is not assignable by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Developer shall be permitted to assign its rights and obligations hereunder to an Affiliate. As used in this Agreement, an "**Affiliate**" shall mean an entity controlling, controlled by or under common control with Developer. Notwithstanding the foregoing, this Agreement shall not be assigned to a title 32 metropolitan district or any other quasi-municipal entity. Assigning this Agreement to a title 32 metropolitan district or other quasi-municipal entity renders this Agreement void. In the event the Town approves and effective as of the date of such approval of a service plan for a title 32 metropolitan district that will fund in whole or in part any Public Improvements for the Project, this Agreement shall terminate and be null and void.

6.00 **TERMINATION.** This Agreement, and the terms and provisions hereof, shall terminate upon the earliest to occur of: (1) the tenth (10th) anniversary of the Effective Date; (2) payment of the Infrastructure Reimbursement Payment; (3) approval of a service plan as described in Section 5.00; or (4) at the Town's option, if an Event of Default by Developer has occurred. An "**Event of Default**" shall have occurred if, after delivery of notice of any breach of this Agreement by the non-breaching party to the breaching party ("**Default Notice**"), such breaching party has failed to cure such breach on or prior to the date which is thirty (30) days after receipt of the Default Notice (or if such breach is of the nature that it cannot reasonably be cured during the aforementioned thirty (30) day cure period, if the breaching party has failed to commence and diligently pursue cure within such thirty (30) day cure period). If an Event of Default by Developer has occurred, the Town may, in its sole discretion, complete the Roundabout Improvements and terminate this Agreement. Upon termination of this Agreement, the Parties shall be relieved of any and all rights and obligations hereunder and the Town shall not be obligated to pay the Infrastructure Reimbursement Payment to Developer for Roundabout Improvements for which there has been no Initial Acceptance. Notwithstanding the foregoing, if the Roundabout Improvements are constructed by the Town, and Developer subsequently completes the remaining Public Improvements, as defined in the Development Agreements, the Town shall be entitled to not accept any building permit application unless prior to any such building permit application, Developer shall have paid to the Town 43% of the Town's actual costs to design, furnish, and install the Roundabout Improvements.

7.00. **INDEMNIFICATION.** Unless caused by the negligence or willful misconduct by the

Town and/or its employees or its contractors, Developer agrees to indemnify, defend and hold harmless the Town, its officers, officials, and employees, from and against all actions, claims, or demands on account of any injury, damage, loss or liability, including fines imposed by any applicable state or federal regulatory agency, court costs, expenses, and attorney fees, which arise out of any of the work to be performed by Developer or any officer, employee, agent, successor or assign of Developer or any of its subcontractors under this Agreement.

8.00 NOTICES. Any notice or communication required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given one business day after they are deposited in the United States Mail or other private mail service. Such notice or communications shall be given to the parties at their addresses set forth below:

Town:

Town of Berthoud
Attn: Town Administrator
807 Mountain Avenue
P.O. Box 1229
Berthoud, CO 80513-0604

Copy To:

Erin Smith
Maynes Bradford Shipps and Sheftel, LLP.
600 17th Street, Suite 2150 South
Denver, CO 80202

Developer:

LGI Homes—Colorado, LLC
A Colorado limited liability
company
3401 Quebec Street, Suite 4060
Denver, CO 80207
(425) 308-3519
Attn: Tim Bruggman, Vice President of Development

Copy To:

Jed Sonnenshein
Attorney at Law
Otten Johnson Robinson Neff + Ragonetti PC
Suite 1600, 950 17th Street
Denver, CO 80202
303-575-7568

Either party can change its address by written notice to the other given in accordance with this paragraph.

9.00. **BINDING EFFECT.** This Agreement shall be binding upon the Town and the Developer. This Agreement shall be binding upon the Parties, their respective legal representatives, assigns, successors, and heirs; provided, that nothing in this Article shall be construed to permit assignment unless the provisions of Section 5.00 have been met.

10.00. **VENUE.** This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Larimer County District Court, State of Colorado.

11.10. **GOOD FAITH.** The Parties shall exercise good faith in the performance and enforcement of this Agreement.

12.00. **LOCAL LABOR.** The Town encourages the use of local Berthoud residents and subcontractors in the performance of the construction work by the Developer. The Developer voluntarily agrees to use reasonable efforts to utilize qualified and available local labor and subcontractor businesses.

13.00. **ENTIRE AGREEMENT.** This Agreement embodies the whole agreement of the Parties with respect to reimbursement of Developer for furnishing and installing the Roundabout Improvements. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all provisions, communications, representations, or agreement, either verbal or written, with respect to reimbursement of Developer for furnishing and installing the Roundabout Improvements between the Parties hereto.

14.00. **WAIVER OF BREACH.** No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent to a breach of this Agreement, shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either Party by giving written notice to the other Party may, but shall not be required to, waive any of its rights or any condition or action to be undertaken by the other Party. A written waiver by either Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

15.00. **CAPTIONS.** The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

16.00. **DELAYS.** Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of strikes; lockouts or boycotts; embargoes or national shortages of material, energy, fuel, labor or other required materials if and to the extent caused solely by riot, insurrection, terrorism, war

(declared or undeclared) or other armed conflict; unusual delays in transportation; inclement weather; plague, epidemic or quarantine; fires, floods, strikes, orders of civil or military authorities, inclement weather beyond the typical seasonal norm, failure to obtain permits from state or federal agencies, casualty, unforeseen conditions, or other causes, which are beyond the reasonable control of such Parties.

17.00. **TOWN NOT A PARTNER.** Notwithstanding any language in this Agreement, the Town shall not be deemed to be a member, partner or joint venture of the Developer, and the Town shall not be responsible for any debt or liability of the Developer or its contractors or agents.

18.00. **INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

19.00. **NO THIRD PARTY BENEFICIARIES.** The Town shall not be obligated or liable under the terms of this Agreement to any person or entity not a Party hereto. Further, Town shall not be bound by any contracts or conditions that the Developer may negotiate with third parties related to the development of the Property. Nothing expressed or to be implied by this Agreement is intended or shall be construed to give to any person other than the Parties hereto any legal right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

20.00. **AUTHORITY TO EXECUTE.** The Developer hereby warrants that the Party signing below has full and lawful authority to execute this Agreement on behalf of the Developer.

21.00. **TIME OF ESSENCE.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

22.00. **SEVERABILITY.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement so long as the intent of the Parties as expressed in this Agreement may still be accomplished. To that end, any such provisions, covenants, agreements or portions of this Agreement are declared to be severable.

23.00. **NON-LIABILITY OF EMPLOYEES.** No commissioner, board member, official, employee, agent or consultant of the Town shall be personally liable to the Developer in the event of a default, or breach by the Town.

24.00 **INCORPORATION OF RECITALS AND EXHIBITS.** All recitals set forth in this Agreement and all exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

25.00 **SUBJECT TO ANNUAL APPROPRIATION.** Consistent with Article X, § 20 of the Colorado Constitution, financial obligations of the Town, if any, not performed during the

current fiscal year are subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

26.00 **GOVERNMENTAL IMMUNITY.** Nothing herein shall be construed as a waiver by the Town of any right, privilege or immunity afforded the Town pursuant to the Colorado Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.*, as the same may be amended from time to time.

IN WITNESS WHEREOF, the Town and the Developer have executed this Agreement as of the date first written above.

TOWN OF BERTHOUD

William Karspeck, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DEVELOPER – LGI HOMES-Colorado, LLC

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of _____, 2024 by _____, as _____ of _____.

My commission expires:

(SEAL)

Notary Public

EXHIBIT A

Property Description "Farmstead Second Filing"

A PORTION OF THE EAST HALF OF THE EAST HALF OF SECTION 24, TOWNSHIP 4 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, TOGETHER WITH OUTLOT "C", AND TRACTS 2, 3, 4, AND 5 OF THE FARMSTEAD SUBDIVISION AS RECORDED MARCH 1, 2019 AS RECEPTION NUMBER 20190016179 OF SAID LARIMER COUNTY RECORDS, ALL DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS USED IN THE PREPARATION OF THIS DESCRIPTION THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24 WAS ASSUMED TO BEAR SOUTH 00°05'09" EAST, BETWEEN THE MONUMENTS SHOWN AND DESCRIBED HEREON. WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 24; THENCE SOUTH 00°05'09" EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 143.67 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF- WAY OF COLORADO STATE HIGHWAY 56, AND THE **POINT OF BEGINNING**;

THENCE CONTINUING SOUTH 00°05'09" EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 2471.96 FEET, TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 24;

THENCE SOUTH 00°04'25" EAST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 324.92 FEET; THENCE DEPARTING SAID EAST LINE, SOUTH 89°22'43" WEST, ALONG THE NORTH LINE OF LOT 2 OF THE WYCOFF MRD S-138-92, A DISTANCE OF 511.89 FEET, TO THE EAST LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN A QUIT CLAIM DEED RECORDED AS RECEPTION NUMBER 93067042 OF SAID LARIMER COUNTY RECORDS; THENCE NORTH 15°04'50" WEST, ALONG SAID EAST LINE OF RECEPTION NUMBER 93067042, A DISTANCE OF 67.28 FEET;

THENCE CONTINUING ALONG SAID EAST LINE OF RECEPTION NUMBER 93067042, NORTH 02°00'29" WEST A DISTANCE OF 205.19 FEET, TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID WYCOFF MRD S-138-92;

THENCE SOUTH 89°59'43" WEST, ALONG THE NORTH LINE OF LOT 3 AND LOT 4 OF SAID WYCOFF MRD S-138-92, A DISTANCE OF 791.84 FEET;

THENCE DEPARTING SAID NORTH LINE, NORTH 00°05'41" WEST, ALONG THE WEST LINE OF OUTLOT J OF THE FARMSTEAD SUBDIVISION, A DISTANCE OF 146.44 FEET, TO A POINT ON THE NORTH LINE OF SAID OUTLOT J;

THENCE NORTH 46°03'50" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 286.11 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF NEBRASKA AVENUE;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

1. NORTH 43°56'10" EAST A DISTANCE OF 95.00 FEET;
 2. ALONG A TANGENT, CURVE TURNING TO THE RIGHT AN ARC LENGTH OF 23.56 FEET, A HAVING A DELTA OF 90°00'00", AND RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 88°56'10" EAST, A DISTANCE OF 21.21 FEET;
 3. NORTH 43°56'10" EAST A DISTANCE OF 58.00 FEET;
 4. ALONG A NON-TANGENT, CURVE TURNING TO THE RIGHT, AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00" AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 01°03'50" WEST, A DISTANCE OF 21.21 FEET;
 5. NORTH 43°56'10" EAST A DISTANCE OF 112.96 FEET;
- THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE, NORTH 00°05'41" WEST A DISTANCE OF 96.40 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF NEBRASKA AVENUE; THENCE SOUTH 43°56'10" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 182.27 FEET;

THENCE CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY, ALONG A CURVE TURNING TO THE RIGHT AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00

FEET, THE CHORD OF WHICH BEARS SOUTH 88°56'10" WEST, A DISTANCE OF 21.21 FEET, TO A POINT ON THE BOUNDARY OF TRACT 3 OF THE FARMSTEAD SUBDIVISION;
THENCE ALONG THE BOUNDARY OF SAID TRACT 3 THE FOLLOWING SIX (6) COURSES AND DISTANCES:

1. NORTH 43°56'10" EAST A DISTANCE OF 110.00 FEET;
 2. NORTH 46°03'50" WEST A DISTANCE OF 594.90 FEET;
 3. NORTH 54°40'01" WEST A DISTANCE OF 66.85 FEET;
 4. NORTH 35°16'11" WEST A DISTANCE OF 53.39 FEET;
 5. NORTH 00°10'08" EAST A DISTANCE OF 45.83 FEET;
 6. NORTH 89°49'52" WEST A DISTANCE OF 123.20 FEET, TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF DOROTHY DRIVE;
- THENCE ALONG THE EAST RIGHT-OF-WAY OF SAID DOROTHY DRIVE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES;

1. NORTH 00°03'40" WEST A DISTANCE OF 58.00 FEET;
 2. ALONG A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 44°49'52" WEST, A DISTANCE OF 21.21 FEET;
 3. NORTH 00°10'08" EAST A DISTANCE OF 229.98 FEET;
 4. ALONG A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 45°10'08" EAST, A DISTANCE OF 21.21 FEET;
 5. NORTH 00°10'08" EAST A DISTANCE OF 58.00 FEET;
 6. ALONG A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 44°49'52" WEST, A DISTANCE OF 21.21 FEET;
 7. NORTH 00°10'08" EAST A DISTANCE OF 95.00 FEET, TO A POINT ON THE NORTH BOUNDARY OF TRACT 2 OF THE FARMSTEAD SUBDIVISION;
- THENCE SOUTH 89°49'52" EAST, ALONG THE NORTH BOUNDARY OF SAID TRACT 2, A DISTANCE OF 720.38 FEET TO THE EAST LINE OF THE BEBO MRD S-76-87;
THENCE NORTH 00°05'41" WEST, ALONG THE EAST LINE OF SAID BEBO MRD S-76-87 A DISTANCE OF 946.33 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY 56, AS DESCRIBED IN BOOK 1168 AT PAGE 559 OF LARIMER COUNTY RECORDS;
THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY 56, THE FOLLOWING THREE (3) COURSES AND DISTANCES:
1. NORTH 89°38'36" EAST A DISTANCE OF 1249.27 FEET;
 2. SOUTH 44°27'54" EAST A DISTANCE OF 68.11 FEET;
 3. SOUTH 89°37'24" EAST A DISTANCE OF 31.58 FEET, TO THE **POINT OF BEGINNING**;

The above-described parcel of land contains 4,142,434 square feet or 95.10 acres more or less (±), and may be subject to easements and rights-of-way now on record or existing.

Property Description "Remainder of Property – TBD Filing Three"

PARCEL 1:

LOT 3, GREEN ACRES MINOR SUBDIVISION, COUNTY OF WELD, STATE OF COLORADO.

PARCEL 2:

LOT B, RECORDED EXEMPTION NO. 1061-19-2 RE 1472, RECORDED FEBRUARY 8, 1993 UNDER RECEPTION NO. 2321003, LOCATED IN THE NW 1/4 OF SECTION 19, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH P.M.,

EXCEPTING THEREFROM THAT PARCEL CONVEYED BY DEED RECORDED DECEMBER 26, 2002 UNDER

RECEPTION NO. 3018041,

AND ALSO EXCEPTING THAT PARCEL PLATTED AS GREEN ACRES MINOR SUBDIVISION, RECORDED

AUGUST 14, 2003 UNDER RECEPTION NO. 3095453, COUNTY OF WELD, STATE OF COLORADO.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (NOT A PART OF SAID TITLE COMMITMENT);

Considering the Westerly line of the Northwest Quarter of Section Nineteen (19) Township Four (4) North, Range Sixty-eight (68) West of the Sixth (6) Principal Meridian, County of Weld, State of Colorado, with the West Quarter Corner of said Section 19, being monumented by a 3.25" Aluminum Cap on a #6 Rebar stamped "LS 12374" in a monument box, and the Northwest Corner of said Section 19, being monumented by a 2.5" Aluminum Cap on a #6 Rebar stamped "LS 28285" in a monument box as bearing North 00°05'10" West and with all bearings contained herein relative thereto:

COMMENCING at the West Quarter Corner of said Section 19, THENCE along the Southerly line of the Northwest Quarter of said Section 19 to the Easterly right-of-way of North Weld County Line Road 1, also known as South Larimer County Line Road 13, North 88°58'53" East 30.00 feet also being the POINT OF BEGINNING; THENCE along said Easterly right-of-way line North 00°05'10" West 1630.80 feet to a #4 Rebar with Yellow Plastic

Cap bearing LS 32444, also being the Northwest Corner of Special Warranty Deed recorded under Weld County Clerk & Recorder Reception Number 4794857;

THENCE along the Northerly boundary of said deed South 89°55'50" East 20.00 feet to a #4 Rebar with an illegible Yellow Plastic Cap, also being the Southwest Corner of Lot 3, Green Acres, recorded under Weld County Clerk & Recorder Reception Number 3095453;

THENCE along the Easterly right-of-way of County Line Road 1, also being the Westerly line of said Lot 3, North 00°05'10" West 860.98 feet to a #4 Rebar with Yellow Plastic Cap bearing "LS 32444";

THENCE departing said right-of-way line and continuing along the Southerly right-of-way of E. State Highway 56, also being the Northwesterly line of said Lot 3, North 44°47'56" East 42.41 feet to a #4 Rebar with Yellow Plastic Cap bearing "LS 32444";

THENCE continuing along said right-of-way line, also being the Northerly line of said Lot 3 North 89°36'54" East 515.71 feet to a #5 Rebar with 2" Aluminum Cap stamped "LS 13446";

THENCE along a curve concave to the North 425.77 feet, said curve having a radius of 20412.46 feet, a central angle of 1°11'42", and whose chord bears North 89°02'47" East 425.76 feet to the Northwest Corner of Exception Lot A RE 1061-19-2-RE 1472, also being the Northeast corner of said Lot 3;

THENCE South 01°02'05" East 544.11 feet along the Easterly line of said Lot 3 to a #4 Rebar with Yellow Plastic Cap bearing LS 32444;

THENCE departing said Easterly line and continuing along the Southerly line of Lot A of Recorded Exemption 1061-19-2-RE 1472 recorded under Weld County Reception Number 2321003 North 88°12'10" East 399.98 feet to a #5 Rebar with 2" Aluminum Cap stamped LS 13446;

THENCE along the Southerly line of the excepted parcel described in Book 1609 Page 496 North 88°18'58" East 100.12 feet to a #5 Rebar with an illegible 1.5" Aluminum Cap, also being the Southwest Corner of Lot 2, Green Acres, recorded under Weld County Reception Number 3095453;

THENCE along the Southerly line of said Lot 2 North 88°10'49" East 509.18 feet to a #5 Rebar with an illegible 1.5"

Aluminum Cap, also being the Southeast Corner of said Lot 2 and the Southwest Corner of Lot 1, Green Acres recorded under Weld County Reception Number 3095453;

EXHIBIT B

Location of Roundabout Improvements

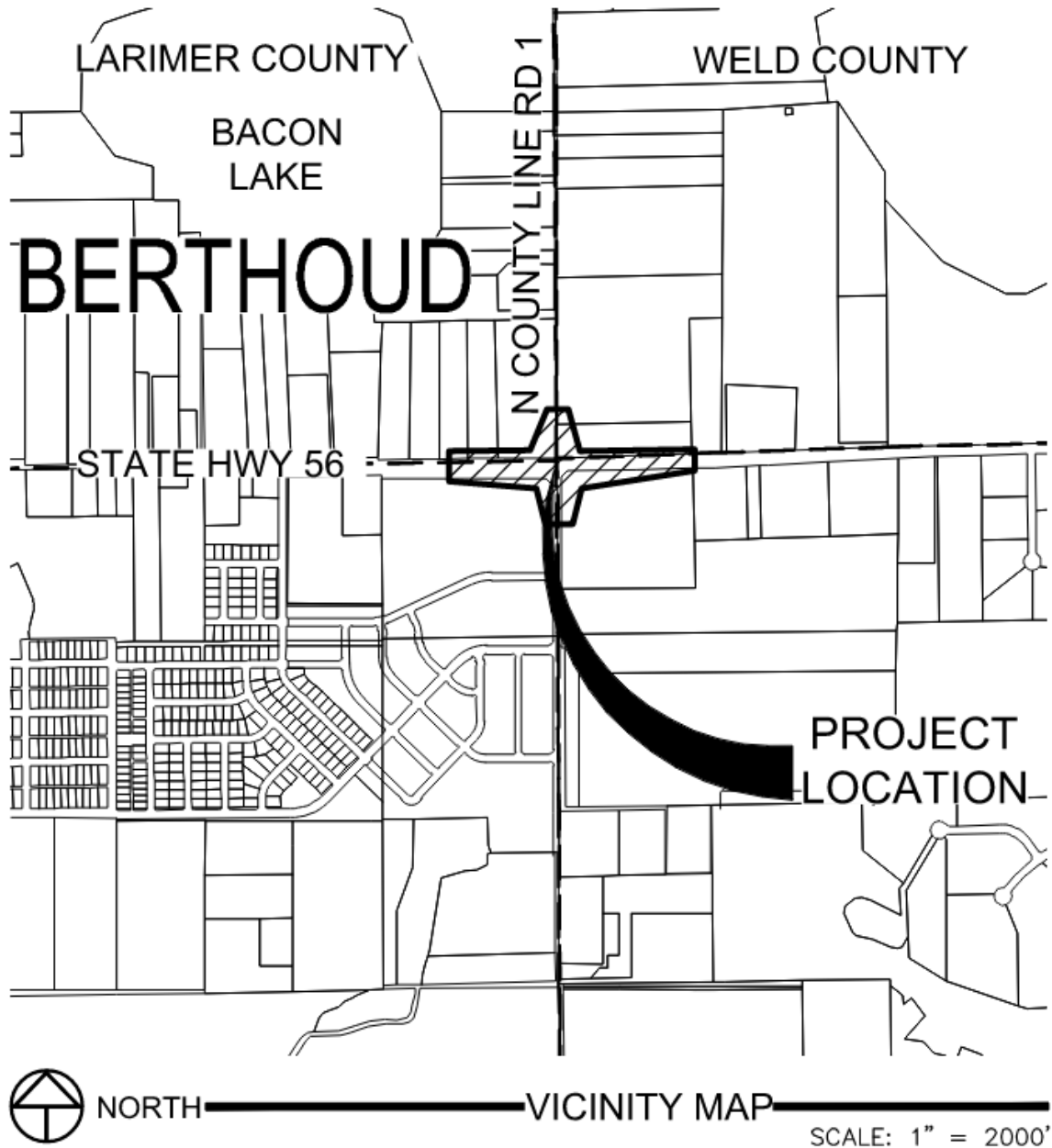


EXHIBIT C

Roundabout Improvements

Town and referral agencies will be required to review and approve the final engineered design for the Roundabout as part of the development review for Phase 3. Developer will obtain approval from CDOT prior to approval of the Final Plat for Phase 3.

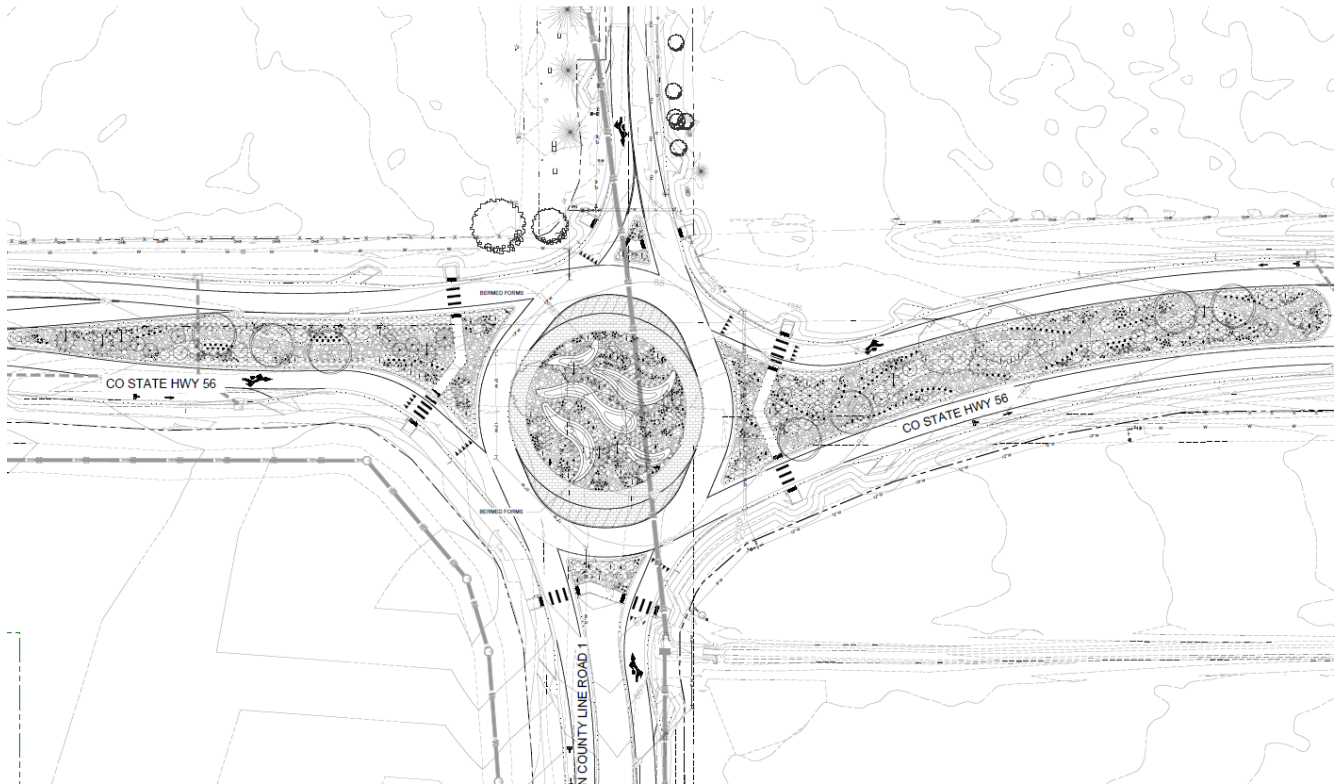


EXHIBIT D**Engineer's Estimated Costs for Roundabout Improvements**

		%	ESTIMATED
Highway 56 and County Line Rd. Roundabout Infrastructure Budget			2023
Infrastructure (based off hard bid)	Crow Creek Construction		5,420,499
Landscape & Irrigation	Budget		175,000
Remove & Relocate PVREA Overhead Power	Budget		75,000
Remove & Relocate Dry Utilities	Budget		50,000
Street Lights	Budget		75,000
Geotech Studies	EEC		3,500
Material Testing	Budget		35,000
Civil Engineering	Avant Civil Group		150,000
Landscape Architecture	TB Group		15,000
Traffic Study	Delich		7,500
Legal	Pless		25,000
Developer PM/Warranty/LOC Fees	Post Modern	15%	899,850
Total >>>			6,931,349
Contingency		10%	693,135
Total >>>			7,624,484

EXHIBIT E
Estimated Eligible Costs

		%	ESTIMATED
Highway 56 and County Line Rd. Roundabout Infrastructure Budget			2023
Infrastructure (based off hard bid)	Crow Creek Construction		5,420,499
Landscape & Irrigation	Budget		175,000
Remove & Relocate PVREA Overhead Power	Budget		75,000
Remove & Relocate Dry Utilities	Budget		50,000
Street Lights	Budget		75,000
Material Testing	Budget		35,000
Total >>>			5,830,499
Contingency		10%	583,050
Total >>>			6,413,549
Cost Sharing Per 2023 Updated TIS:			
Berthoud		57%	3,655,723
Farmstead		43%	2,757,826

BOARD OF TRUSTEES INFORMATION



COMMUNITY DEVELOPMENT DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Consideration of approval of the form of an Agreement for Reimbursement associated with Farmstead Filing 2 for upsizing the Sanitary Sewer line
Type of Item:	Regular Item
Purpose:	Consideration of approval of an Agreement for Reimbursement of a portion of the costs associated with construction of the Sanitary Sewer Line associated with Farmstead Filing 2
Presented by:	Chris Kirk, Town Administrator

ATTACHMENTS:

Draft of An Agreement by and between the Town of Berthoud and LGI Homes – Colorado LLC regarding Town participation in Sewer Line Extension Costs

BACKGROUND:

During development review for Farmstead Filing 2, the Town agreed to oversizing the sanitary sewer line to accommodate the Town's existing customers. The need to oversize the line was supported by the 2023 Tetra Tech review. The Municipal Code provides an Oversizing Policy in Section 30-2-129. This policy includes the costs associated with installation of the oversized pipe, fittings, valves and service saddles, and does exclude the cost to design the improvements, surface repairs, the installation, utility service covers, connection lines and appurtenances.

The list below provides a description of the exhibit materials, inclusive of the preliminary engineer's estimate for the total project costs as well as an estimate of the eligible costs.

- Exhibit A: Legal description of Farmstead Filing 2
- Exhibit B: Vicinity map identifying the location of Farmstead Filing 2
- Exhibit C: Cover Sheet for the Construction Drawings of Farmstead Filing 2
- Exhibit D: The total estimated cost of construction with an engineer's estimate
- Exhibit E: The estimated sum of eligible costs

For the purpose of discussion, the most recent version of the Agreement is included. The Town is in agreement to reimburse the Developer the price difference between the 12" Sewer Main and the 30" Sewer Main and in addition, boring under Mountain Avenue. The timing of payment needs to be finalized prior to the Mayor signing the agreement. The source of the funds will come from the Wastewater Impact Fee Fund and shall be paid over time.

UPDATE/NEXT STEPS:

The Developer and the Town will finalize the agreement. Should the Town Board of Trustees agree to the form of the Agreement, the Mayor may sign with the Town Attorney and Town Administrator approval.

FISCAL IMPACT AND FUND SOURCE:

The Town's share of the total estimated eligible costs are to be reimbursed to the Developer over time and shall be solidified in the final draft Agreement.

COMMUNITY TOUCHSTONES:

Consideration of this request does support the Touchstones of Resilience and Sustainability directly as adequately sized infrastructure to accommodate current residents is critical to service delivery.

RECOMMENDED ACTION(S):

Staff, the Town Attorney, and the Developer have collaborated on the Agreement presented to you for consideration this evening and recommend the Town Board of Trustees approve and authorize the Mayor to execute the Agreement subject to final edits by the Town Attorney.

**AN AGREEMENT BY AND BETWEEN THE TOWN OF BERTHOUD
AND LGI HOMES -- COLORADO LLC
REGARDING TOWN PARTICIPATION IN SEWER LINE EXTENSION COSTS**

This Wastewater Development Agreement ("**Agreement**") is entered into this ____ day of _____, 2024 (the "Effective Date") by and between the Town of Berthoud, Colorado, a Colorado statutory town (the "**Town**"), and LGI Homes – Colorado LLC, a Colorado limited liability company (the "**Developer**"). The Town and Developer may be referred to herein collectively as "**Parties**" or individually as "**Party**."

RECITALS

WHEREAS, the Developer intends to develop a 95.10-acre site at the northwest corner of Highway 56 and County Line Road platted as The Farmstead Second Filing (depending on the context, referred to herein as the "**Property**" or "**Project**"), as more specifically shown in **Exhibit A**; and

WHEREAS, in connection with developing the Project, the Developer intends to make significant investments in certain Public Improvements as required by the Town, including the Sewer Line Improvements (as such term is defined below) as shown in **Exhibit B**; and

WHEREAS, pursuant to Ordinance No. 1277, the Town collects development impact fees from new development, including wastewater impact fees for the purpose of assisting in the upgrading and expanding of public wastewater collection facilities to accommodate such new development for the purpose of assuring that new development bear an appropriate share of the cost of capital expenditures necessary to provide such public wastewater collection facilities as are required to serve the needs arising out of new development; and

WHEREAS, pursuant to Berthoud Municipal Code Section 30-2-129 (the "Oversizing Policy"), where the Town requires installation of infrastructure, a portion of which is for providing service to the Town's existing customers, the Town is authorized to participate in the eligible costs of such infrastructure; and

WHEREAS, pursuant to the Oversizing Policy, the eligible costs of the Sewer Line Improvements include those costs to furnish and install the oversized pipe, fittings, valves and service saddles, but not costs to design the Sewer Line Improvements, for surface repairs, and for design, and installation of service lines, manholes, connected lines and appurtenances; and

WHEREAS, the Water and Wastewater Master Plan dated November 2023 performed by Tetra Tech identified the appropriate oversizing of the Sewer Line Improvements necessary to serve the needs of the Project-related new development and the Town's existing customers; and

WHEREAS, pursuant to the Oversizing Policy, Developer has obtained competitive bids for the construction of the Sewer Line Improvements in accordance with State laws and Town procedures for capital projects, such bids being based on construction of the Sewer Line

Improvements in a reasonable but not accelerated time period, as agreed upon by the Town; and

WHEREAS, Developer's engineer has submitted to the Town an itemized estimate of the Sewer Line Improvements costs, which estimate is attached as **Exhibit D**; and

WHEREAS, the itemized estimated costs as submitted by Developer's engineer have been segregated into eligible and non-eligible costs within the meaning of the Oversizing Policy and the itemized estimated eligible costs equal \$_____ *{insert prior to signing}* and are described and shown in **Exhibit E** (the "Estimated Eligible Costs"); and

WHEREAS, the completion of the Sewer Line Improvements will improve safety, and utility efficiency and stimulate continued development in Berthoud, growing the Town's employment base and bringing new revenue to the Town; and

WHEREAS, pursuant to the Oversizing Policy, the Town may determine to participate in the costs of the Sewer Line Improvements up to the amount of the Estimated Eligible Costs or the Actual Eligible Costs, as defined herein, whichever amount is lower; and

WHEREAS, pursuant to the Oversizing Policy, the Parties enter into this Agreement setting forth the terms and conditions for the Town's reimbursement of Developer for the Existing Customers' Share of the eligible costs of the Sewer Line Improvements.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Developer agree as follows:

1.00 DEFINITIONS. The following words and phrases shall be defined as follows. Terms not defined herein shall have the meaning ascribed to such terms in the Development Agreements:

1.01 "**Approved Construction Drawings**" shall mean plans for the construction of the Sewer Line Improvements that will be reviewed and approved by the Town for compliance with Town Codes and the Standards and Specifications prior to Developer's commencement of installation of the Sewer Line Improvements.

1.02 "**Developer**" shall mean LGI Homes – Colorado LLC, a Colorado limited liability company.

1.03 "**Development Agreements**" shall mean the Farmstead Second Filing Development Agreement and the Farmstead Apartments Development Agreement, which such Development Agreements shall become effective after execution by the Town and Developer and recordation in the real property records of Larimer County.

1.04 "**Infrastructure Reimbursement Payment**" shall mean payment in the amount of \$_____ *{insert prior to signing}* (the Estimated Eligible Costs) or the Actual Eligible Costs, whichever is lower; and

1.05 "**Initial Acceptance**" shall be the written acknowledgement issued by the Town when, to the best of the Town's knowledge, Sewer Line Improvements have been completed in accordance with the Approved Construction Drawings, Standards and Specifications and all punch list items.

1.06 "**Property**" shall mean the real property where the Project is to be located, the general location of which is southwest of the intersection of Highway 56 and County Line Road, and which is described more specifically in the attached **Exhibit A**.

1.07 "**Public Improvements**" shall include those physical facilities, structures and associated appurtenances intended to be publicly owned and maintained.

1.08 "**Reimbursement Maximum**" shall mean an amount not to exceed _____ DOLLARS (\$_____) *{insert prior to signing}*.

1.09 "**Sewer Line Improvements**" shall mean the 1ST Street Sewer Line Improvements which are described in **Exhibit C**.

1.10 "**Standards and Specifications**" shall mean the Engineering and Development Standards as adopted by the Town and amended from time to time.

1.11 "**Town**" shall mean the Town of Berthoud, Colorado, a Colorado statutory town.

1.12 "**Wastewater Impact Fee Fund**" shall mean the fund into which the Town deposits and holds wastewater impact fees.

2.00 **PUBLIC PURPOSE.** The Town Board of Trustees hereby declares that provided the Infrastructure Reimbursement Payment is paid for over time from the Wastewater Impact Fee Fund the purposes for which the Infrastructure Reimbursement Payment is to be made overcomes any individual interests incidentally served by the Town reimbursing the Developer for the Eligible Costs of the Sewer Line Improvements. The Town Board finds that there will be a general benefit to the citizens of Berthoud of increased safety and efficiency that will indirectly enhance tax revenues and employment, long-term real property tax base growth, and related economic development benefits. In addition to these general public benefits, the Town Board finds that Sewer Line Improvements will provide necessary services for existing customers; and the Town Board finds that these public purposes outweigh any incidental individual interests and are not a special aid, grant, or privilege.

3.0 **INFRASTRUCTURE REIMBURSEMENT.**

3.10 In consideration of the performance by Developer and its representations and covenants contained herein, the Town agrees to reimburse the Developer up to _____ DOLLARS (\$_____) (the "Infrastructure Reimbursement Payment") for those costs to furnish and install, as defined herein, the Sewer Line Improvements depicted in **Exhibit C**. For purposes of this Infrastructure Reimbursement Payment, the following procedures will apply:

(A) To the extent the Developer designs and constructs the Sewer Line Improvements in connection with building the Project, they shall be constructed in accordance with the Standards and Specifications and all applicable local, state and federal laws.

(B) The maximum reimbursement from the Town shall not exceed the Reimbursement Maximum.

(C) To the extent Developer constructs the Sewer Line Improvements, Developer agrees, at its sole cost, to acquire as necessary and dedicate all real property interests to build the Sewer Line Improvements (to the extent necessary). All dedications required by the Town (to the extent necessary) for construction of the Sewer Line Improvements must comply with the requirements of the Town Code.

(D) The Developer agrees that the Sewer Line Improvements are Public Improvements and are intended to be publicly owned and maintained.

(E) Determination of final costs. After the Town provides the Developer with written notice of Initial Acceptance of the Sewer Line Improvements, the Developer shall deliver to the Town for the Town's approval the Developer's engineer's certified summary of the final eligible costs for the Sewer Line Improvements. Such certified summary of the final eligible costs when approved by the Town shall constitute the "Actual Eligible Costs". Upon approval, the Town will issue to Developer a written notice of approved Actual Eligible Costs. Issuance of a Notice of Approved Actual Eligible Costs shall not trigger the commencement of the warranty period for the Sewer Line Improvements. Nothing in this Agreement shall affect the timing and terms of Developer's obligations with regard to the Sewer Line Improvements under the Development Agreements.

(i) Developer shall not be entitled to collect reimbursement from other property owners for its share of the costs of constructing the Sewer Line Improvements.

(ii) Provided that and conditioned upon the Developer receiving written notice of Initial Acceptance of the Sewer Line Improvements the Town will waive in perpetuity the right to collect any reimbursement for the costs of furnishing and installing the Sewer Line Improvements from the Developer, its related partners, affiliates or any of their successors or assigns in ownership or occupancy of any portion of the Project or Property (each of whom the Developer is paying their share of the costs of the Sewer Line Improvements). This Section 3.01(E)(i) shall survive termination of this Agreement.

(iii) No interest shall accrue on any sum owed to the Developer by the Town pursuant to this Agreement.

(F) In no event shall the Town be liable to the Developer or required to reimburse the Developer for any amounts in excess of the Reimbursement Maximum under this Agreement.

(G) Subject to the Town Board of Trustees annual appropriation and budgeting

process, the Town will pay the Developer the Infrastructure Reimbursement Payment on or before the thirtieth day after the Town issues the Notice of Approved Actual Eligible Costs.

3.20 Nothing herein shall in any way bind the Town to act on any rezoning, Conceptual Site Plan, Development Permit, Construction Permit, Building Permit or subdivision application related to the Project. Nothing herein shall in any way bind or obligate the Developer to construct the Project or the Sewer Line Improvements.

4.00 **GENERAL OBLIGATIONS AND REPRESENTATIONS OF THE DEVELOPER AND TOWN.**

4.01 DEVELOPER COVENANTS.

(A) Developer agrees to construct or cause to be constructed the Sewer Line Improvements in material conformance with the Approved Construction Drawings, subject to customary change orders.

(B) Developer agrees to comply with all Town codes, ordinances, resolutions and Standards and Specifications applicable to the same.

(C) In the event Developer commences construction and installation of the Sewer Line Improvements, as evidenced by providing notice to the Town pursuant to the Notice to Town and Inspection Section of the Development Agreements, the Developer shall complete the Sewer Line Improvements. Notwithstanding the foregoing, if the Sewer Line Improvements are constructed by the Town, and Developer subsequently completes the remaining Public Improvements, as defined in the Development Agreements, the Town shall be entitled to not accept any building permit application unless prior to any such building permit application, Developer shall have paid to the Town the Town's actual costs to design, furnish, and install the Sewer Line Improvements attributable to designing, furnishing and installing a 12" line.

5.00 **ASSIGNMENT.** This Agreement is not assignable in part under any circumstances. As to the entire Agreement, this Agreement is not assignable by the Developer without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Developer shall be permitted to assign its rights and obligations hereunder to an Affiliate. As used in this Agreement, an "**Affiliate**" shall mean an entity controlling, controlled by or under common control with Developer. This Agreement shall not be assigned to a title 32 metropolitan district or any other quasi-municipal entity. Assigning this Agreement to a title 32 metropolitan district or other quasi-municipal entity renders this Agreement void.

6.00 **TERMINATION.** This Agreement, and the terms and provisions hereof, shall terminate upon the earliest of to occur of: (1) expiration of the Vesting Term (subject to delay as provided in Section 16), (2) the tenth (10th) anniversary of the Effective Date; (3) payment of the Infrastructure Reimbursement Payment, or (4) at the Town's option, if an Event of Default by Developer has occurred. An "**Event of Default**" shall have occurred if, after delivery of notice of any breach of this Agreement by the non-breaching party to the breaching party ("**Default Notice**"), such breaching party has failed to cure such breach on or prior to the date which is thirty (30) days after receipt of the Default Notice (or if such breach is of the nature that it cannot reasonably be

cured during the aforementioned thirty (30) day cure period, if the breaching party has failed to commence and diligently pursue cure within such thirty (30) day cure period). If an Event of Default by Developer has occurred, the Town may, in its sole discretion, complete the Sewer Line Improvements and terminate this Agreement. Upon termination of this Agreement, the Parties shall be relieved of any and all rights and obligations hereunder and the Town shall not be obligated to pay the Infrastructure Reimbursement Payment to Developer for Sewer Line Improvements for which there has been no Initial Acceptance.

7.00. **INDEMNIFICATION.** Unless caused by the negligence or willful misconduct by the Town and/or its employees or its contractors, Developer agrees to indemnify, defend and hold harmless the Town, its officers, officials, and employees, from and against all actions, claims, or demands on account of any injury, damage, loss or liability, including fines imposed by any applicable state or federal regulatory agency, court costs, expenses, and attorney fees, which arise out of any of the work to be performed by Developer or any officer, employee, agent, successor or assign of Developer or any of its subcontractors under this Agreement.

8.00 **NOTICES.** Any notice or communication required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given one business day after they are deposited in the United States Mail or other private mail service. Such notice or communications shall be given to the parties at their addresses set forth below:

Town:

Town of Berthoud
Attn: Town Administrator
807 Mountain Ave.
P.O. Box 1229
Berthoud, CO 80513-0604

Copy To:

Erin Smith
Maynes Bradford Shipps and Sheftel, LLP.
600 17th Street, Suite 2150 South
Denver, CO 80202

Developer:

LGI Homes--Colorado LLC

_____, _____

Attn: _____

Either party can change its address by written notice to the other given in accordance

with this paragraph.

9.00. **BINDING EFFECT.** This Agreement shall be binding upon the Town and the Developer. This Agreement shall be binding upon the Parties, their respective legal representatives, assigns, successors, and heirs; provided, that nothing in this Article shall be construed to permit assignment unless the provisions of Section 5.00 have been met.

10.00. **VENUE.** This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Larimer County District Court, State of Colorado.

11.10. **GOOD FAITH.** The Parties shall exercise good faith in the performance and enforcement of this Agreement.

12.00. **LOCAL LABOR.** The Town encourages the use of local Berthoud residents and subcontractors in the performance of the construction work by the Developer. The Developer voluntarily agrees to use reasonable efforts to utilize qualified and available local labor and subcontractor businesses.

13.00. **ENTIRE AGREEMENT.** This Agreement embodies the whole agreement of the Parties with respect to reimbursement of Developer for furnishing and installing the Sewer Line Improvements. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all provisions, communications, representations, or agreement, either verbal or written, with respect to reimbursement of Developer for furnishing and installing the Sewer Line Improvements between the Parties hereto.

14.00. **WAIVER OF BREACH.** No failure by either party hereto to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement, or to exercise any right or remedy consequent to a breach of this Agreement, shall constitute a waiver of any such breach or of such or any other covenant, agreement, term or condition. Either Party by giving written notice to the other Party may, but shall not be required to, waive any of its rights or any condition or action to be undertaken by the other Party. A written waiver by either Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

15.00. **CAPTIONS.** The captions of the articles and sections of this Agreement are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

16.00. **DELAYS.** Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of strikes; lockouts or boycotts; embargoes or national shortages of material, energy, fuel, labor or other required materials if and to the extent caused solely by riot, insurrection, terrorism, war (declared or undeclared) or other armed conflict; unusual delays in transportation; inclement weather; plague, epidemic or quarantine; fires, floods, strikes, orders of civil or military authorities, inclement weather beyond the typical seasonal norm, failure to obtain permits from state or federal

agencies, casualty, unforeseen conditions, or other causes, which are beyond the reasonable control of such Parties.

17.00. **TOWN NOT A PARTNER.** Notwithstanding any language in this Agreement, the Town shall not be deemed to be a member, partner or joint venture of the Developer, and the Town shall not be responsible for any debt or liability of the Developer or its contractors or agents.

18.00. **INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.

19.00. **NO THIRD PARTY BENEFICIARIES.** The Town shall not be obligated or liable under the terms of this Agreement to any person or entity not a Party hereto. Further, Town shall not be bound by any contracts or conditions that the Developer may negotiate with third parties related to the development of the Property. Nothing expressed or to be implied by this Agreement is intended or shall be construed to give to any person other than the Parties hereto any legal right, remedy or claim under or in respect to this Agreement or any covenants, conditions and provisions hereof.

20.00. **AUTHORITY TO EXECUTE.** The Developer hereby warrants that the Party signing below has full and lawful authority to execute this Agreement on behalf of the Developer.

21.00. **TIME OF ESSENCE.** Time is of the essence of this Agreement. The Parties will make every reasonable effort to expedite the subject matters hereof and acknowledge that the successful performance of this Agreement requires their continued cooperation.

22.00. **SEVERABILITY.** If any provision, covenant, agreement or portion of this Agreement, or its application to any person, entity or property, is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement so long as the intent of the Parties as expressed in this Agreement may still be accomplished. To that end, any such provisions, covenants, agreements or portions of this Agreement are declared to be severable.

23.00. **NON-LIABILITY OF EMPLOYEES.** No commissioner, board member, official, employee, agent or consultant of the Town shall be personally liable to the Developer in the event of a default, or breach by the Town.

24.00 **INCORPORATION OF RECITALS AND EXHIBITS.** All recitals set forth in this Agreement and all exhibits attached to this Agreement are incorporated into and made a part of this Agreement.

25.00 **SUBJECT TO ANNUAL APPROPRIATION.** Consistent with Article X, § 20 of the Colorado Constitution, financial obligations of the Town, if any, not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the Town hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

26.00 **GOVERNMENTAL IMMUNITY.** Nothing herein shall be construed as a waiver by the Town of any right, privilege or immunity afforded the Town pursuant to the Colorado

Governmental Immunity Act, C.R.S. Section 24-10-101, *et seq.* as the same may be amended from time to time.

[Signature Page Follows]

IN WITNESS WHEREOF, the Town and the Developer have executed this Agreement as of the date first written above.

TOWN OF BERTHOUD

William Karspeck, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

DEVELOPER – LGI HOMES-Colorado, LLC

By: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of _____, 2024 by _____, as _____ of _____.

My commission expires:

(SEAL)

Notary Public

EXHIBIT A

Legal Description for The Farmstead Second Filing Plat

As recorded on June 16, 2023, at Reception 20230025105 with the Larimer County Clerk and Recorder

A PORTION OF THE EAST HALF OF THE EAST HALF OF SECTION 24, TOWNSHIP 4 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, TOGETHER WITH OUTLOT "C", AND TRACTS 2, 3, 4, AND 5 OF THE FARMSTEAD SUBDIVISION AS RECORDED MARCH 1, 2019 AS RECEPTION NUMBER 20190016179 OF SAID LARIMER COUNTY RECORDS, ALL DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS USED IN THE PREPARATION OF THIS DESCRIPTION THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 24 WAS ASSUMED TO BEAR SOUTH 00°05'09" EAST, BETWEEN THE MONUMENTS SHOWN AND DESCRIBED HEREON. WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 24; THENCE SOUTH 00°05'09" EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 143.67 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF- WAY OF COLORADO STATE HIGHWAY 56, AND THE **POINT OF BEGINNING**; THENCE CONTINUING SOUTH 00°05'09" EAST, ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 2471.96 FEET, TO THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 24; THENCE SOUTH 00°04'25" EAST, ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 24, A DISTANCE OF 324.92 FEET; THENCE DEPARTING SAID EAST LINE, SOUTH 89°22'43" WEST, ALONG THE NORTH LINE OF LOT 2 OF THE WYCOFF MRD S-138-92, A DISTANCE OF 511.89 FEET, TO THE EAST LINE OF THAT CERTAIN PARCEL OF LAND AS DESCRIBED IN A QUIT CLAIM DEED RECORDED AS RECEPTION NUMBER 93067042 OF SAID LARIMER COUNTY RECORDS; THENCE NORTH 15°04'50" WEST, ALONG SAID EAST LINE OF RECEPTION NUMBER 93067042, A DISTANCE OF 67.28 FEET; THENCE CONTINUING ALONG SAID EAST LINE OF RECEPTION NUMBER 93067042, NORTH 02°00'29" WEST A DISTANCE OF 205.19 FEET, TO A POINT ON THE NORTH LINE OF LOT 3 OF SAID WYCOFF MRD S-138-92; THENCE SOUTH 89°59'43" WEST, ALONG THE NORTH LINE OF LOT 3 AND LOT 4 OF SAID WYCOFF MRD S-138-92, A DISTANCE OF 791.84 FEET; THENCE DEPARTING SAID NORTH LINE, NORTH 00°05'41" WEST, ALONG THE WEST LINE OF OUTLOT J OF THE FARMSTEAD SUBDIVISION, A DISTANCE OF 146.44 FEET, TO A POINT ON THE NORTH LINE OF SAID OUTLOT J; THENCE NORTH 46°03'50" WEST, ALONG SAID NORTH LINE, A DISTANCE OF 286.11 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF NEBRASKA AVENUE; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY THE FOLLOWING FIVE (5) COURSES AND DISTANCES:

1. NORTH 43°56'10" EAST A DISTANCE OF 95.00 FEET;
 2. ALONG A TANGENT, CURVE TURNING TO THE RIGHT AN ARC LENGTH OF 23.56 FEET, A HAVING A DELTA OF 90°00'00", AND RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 88°56'10" EAST, A DISTANCE OF 21.21 FEET;
 3. NORTH 43°56'10" EAST A DISTANCE OF 58.00 FEET;
 4. ALONG A NON-TANGENT, CURVE TURNING TO THE RIGHT, AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00" AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 01°03'50" WEST, A DISTANCE OF 21.21 FEET;
 5. NORTH 43°56'10" EAST A DISTANCE OF 112.96 FEET;
- THENCE DEPARTING SAID SOUTHERLY RIGHT-OF-WAY LINE, NORTH 00°05'41" WEST A DISTANCE OF 96.40 FEET, TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF NEBRASKA AVENUE; THENCE SOUTH 43°56'10" WEST, ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 182.27 FEET; THENCE CONTINUING ALONG SAID NORTHERLY RIGHT-OF-WAY, ALONG A CURVE TURNING TO THE RIGHT AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS SOUTH 88°56'10" WEST, A DISTANCE OF 21.21 FEET, TO A POINT ON THE BOUNDARY OF TRACT 3 OF THE

FARMSTEAD SUBDIVISION;

THENCE ALONG THE BOUNDARY OF SAID TRACT 3 THE FOLLOWING SIX (6) COURSES AND DISTANCES:

1. NORTH 43°56'10" EAST A DISTANCE OF 110.00 FEET;
2. NORTH 46°03'50" WEST A DISTANCE OF 594.90 FEET;
3. NORTH 54°40'01" WEST A DISTANCE OF 66.85 FEET;
4. NORTH 35°16'11" WEST A DISTANCE OF 53.39 FEET;
5. NORTH 00°10'08" EAST A DISTANCE OF 45.83 FEET;
6. NORTH 89°49'52" WEST A DISTANCE OF 123.20 FEET, TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF DOROTHY DRIVE;

THENCE ALONG THE EAST RIGHT-OF-WAY OF SAID DOROTHY DRIVE THE FOLLOWING SEVEN (7) COURSES AND DISTANCES;

1. NORTH 00°03'40" WEST A DISTANCE OF 58.00 FEET;
2. ALONG A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 44°49'52" WEST, A DISTANCE OF 21.21 FEET;
3. NORTH 00°10'08" EAST A DISTANCE OF 229.98 FEET;
4. ALONG A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 45°10'08" EAST, A DISTANCE OF 21.21 FEET;
5. NORTH 00°10'08" EAST A DISTANCE OF 58.00 FEET;
6. ALONG A CURVE TURNING TO THE RIGHT HAVING AN ARC LENGTH OF 23.56 FEET, HAVING A DELTA OF 90°00'00", AND A RADIUS OF 15.00 FEET, THE CHORD OF WHICH BEARS NORTH 44°49'52" WEST, A DISTANCE OF 21.21 FEET;
7. NORTH 00°10'08" EAST A DISTANCE OF 95.00 FEET, TO A POINT ON THE NORTH BOUNDARY OF TRACT 2 OF THE FARMSTEAD SUBDIVISION;

THENCE SOUTH 89°49'52" EAST, ALONG THE NORTH BOUNDARY OF SAID TRACT 2, A DISTANCE OF 720.38 FEET TO THE EAST LINE OF THE BEBO MRD S-76-87;

THENCE NORTH 00°05'41" WEST, ALONG THE EAST LINE OF SAID BEBO MRD S-76-87 A DISTANCE OF 946.33 FEET, TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF COLORADO STATE HIGHWAY 56, AS DESCRIBED IN BOOK 1168 AT PAGE 559 OF LARIMER COUNTY RECORDS;

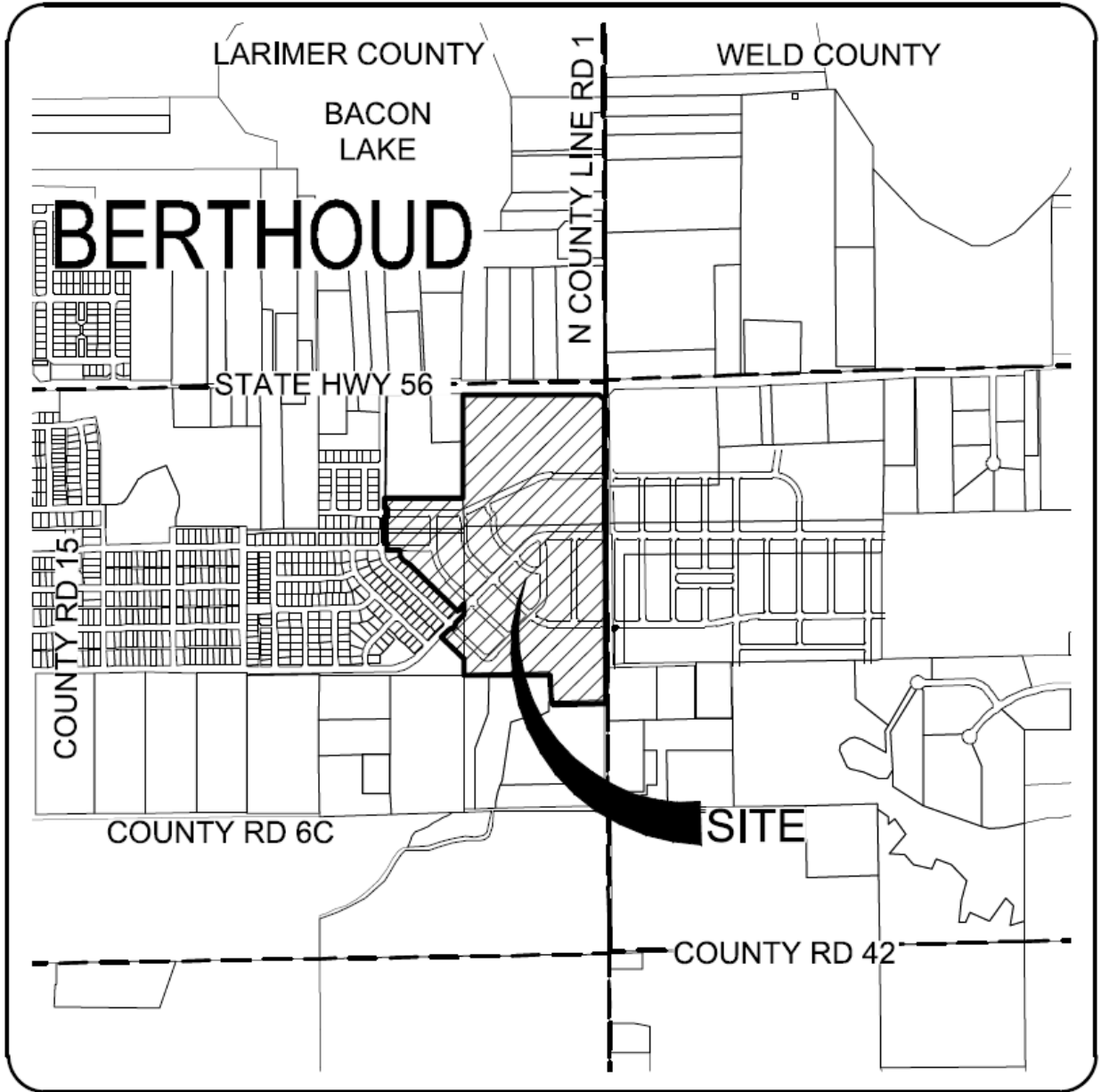
THENCE ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HIGHWAY 56, THE FOLLOWING THREE (3) COURSES AND DISTANCES:

1. NORTH 89°38'36" EAST A DISTANCE OF 1249.27 FEET;
2. SOUTH 44°27'54" EAST A DISTANCE OF 68.11 FEET;
3. SOUTH 89°37'24" EAST A DISTANCE OF 31.58 FEET, TO THE **POINT OF BEGINNING**;

The above-described parcel of land contains 4,142,434 square feet or 95.10 acres more or less (±), and may be subject to easements and rights-of-way now on record or existing.

EXHIBIT B

Vicinity Map



NORTH

VICINITY MAP

1" = 2000'

FINAL CONSTRUCTION PLANS

THE FARMSTEAD SECOND FILING

A TRACT OF LAND LOCATED IN SECTION 24, TOWNSHIP 4 NORTH,
RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF BERTHOOD, COUNTY OF LARIMER

MAY 2023

CONTACT INFORMATION

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PROJECT TEAM

CONTRACTOR

OWNER

DESIGNER

REVIEWER

DATE

SCALE

PROJECT LOCATION

PROJECT DESCRIPTION

PROJECT STATUS

PROJECT CONTACT

PROJECT ADDRESS

PROJECT PHONE

PROJECT FAX

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PROJECT PROPERTIES

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PROJECT TRAITS

PROJECT CHARACTERISTICS

PROJECT FEATURES

PROJECT ATTRIBUTES

PROJECT PROPERTIES

PROJECT QUALITIES

PROJECT TRAITS

PROJECT CHARACTERISTICS

PROJECT FEATURES

EXHIBIT D**Engineer's Estimated Costs for Sewer Line Improvements**

		ESTIMATED
TYPE OF IMPROVEMENT		CONSTRUCTION COST
SEWER MAIN 30" LINE		1,669,334.46
SEWER MAIN 30" BORE UNDER HWY. 56		721,241.12
	SUBTOTAL CONSTRUCTION COST	2,390,575.58
	SUBTOTAL	2,390,575.58
	PLUS FIFTEEN PERCENT (15%) CONTINGENCY	358,586.34
	TOTAL COST	2,749,161.92
	TOTAL COLLATERAL	2,749,161.92

EXHIBIT E
Estimated Eligible Costs

		ESTIMATED
TYPE OF IMPROVEMENT		CONSTRUCTION COST
SEWER MAIN 12" BASE PRICE		(812,297.14)
SEWER MAIN 30" OVERSIZING		1,669,334.46
SEWER MAIN 30" BORE UNDER HWY. 56		721,241.12
	TOTAL CONSTRUCTION REIMBURSEMENT	1,578,278.44
	SUBTOTAL	1,578,278.44
	PLUS FIFTEEN PERCENT (15%) CONTINGENCY	236,741.77
	TOTAL COST	1,815,020.21
	TOTAL COLLATERAL	1,815,020.21

TOWN BOARD INFORMATION



ADMINISTRATION DEPARTMENT

Meeting Date:	January 23, 2024
Agenda Title/Subject:	Public Hearing to consider proposed amendments to Chapter 13 and Chapter 30 of the Berthoud Municipal Code.
Type of Item:	Public Hearing
Purpose:	Request for a recommendation to send to the Board of Trustees regarding the proposed amendments to the Land Development Code, Chapter 30 of the Berthoud Municipal Code
Presented by:	Christian Samora, Town Clerk

ATTACHMENTS:

- Ordinance 1333
- Exhibit A to Ordinance

BACKGROUND:

Amending the Berthoud Municipal Code is necessary to keep pace with State regulations, to clarify intent and processing standards, and to identify opportunities to strengthen the requirements for land use development proposals to ensure the resulting development will adhere to the Town's 2021 Comprehensive Plan update. The proposed changes are consistent with State regulations regarding marijuana businesses.

This item was introduced at the January 9, 2024 Board of Trustees Meeting.

UPDATE/NEXT STEPS:

If approved, no additional action will be needed.

FISCAL IMPACT AND FUND SOURCE:

There is no negative fiscal impact to the Town in consideration of this request.

COMMUNITY TOUCHSTONES:

Consideration of this request does support the Touchstones of Resilience, Sustainability and Community Identity. Keeping pace with State regulations regarding Marijuana regulations and term definitions by updating the Town's Municipal Code is resilient and provides a sustainable path forward by having current regulations.

RECOMMENDED ACTION(S):

A Board Member may move to approve Ordinance 1333, an ordinance of the Town of Berthoud amending Chapter 13 and Chapter 30 of the Berthoud Municipal Code. Followed by a second and a roll call vote.

**TOWN OF BERTHOUD ORDINANCE
NUMBER 1333
(SERIES 2024)**

**AN ORDINANCE OF THE TOWN OF BERTHOUD, COLORADO AMENDING CHAPTERS 13
AND 30 OF THE BERTHOUD MUNICIPAL CODE REGARDING MARIJUANA BUSINESSES**

WHEREAS, the Town of Berthoud is a municipal corporation possessing all powers granted to a statutory town by Title 31 of the Colorado Revised Statutes; and

WHEREAS, the Town wishes to amend sections of the Municipal Code to remain consistent with State regulations; and

WHEREAS, the Planning Commission, after proper notice, has held a public hearing on December 14, 2023 on this Ordinance providing for a recommendation of approval from the Town Board of Trustees; and

WHEREAS, the Municipal Code and amendments thereto have been submitted to the Board of Trustees in writing and the Board of Trustees has determined that such code and amendments thereto should be adopted as herein set forth;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN BOARD OF TRUSTEES OF THE TOWN OF BERTHOUD, COLORADO:

Section 1. Chapter 13, Sections 13.13-5(a), 13.13-6(b), 13.13-6(e), 13.13.8, 13.13-10, 13-13.11, and 13.16-5 regarding marijuana businesses is amended as set forth in Exhibit A.

Section 2. Chapter 30, Sections 30-1-116, 30-3-113, 30-3-112, 30-1-117, 30-3-104, Table 3.10 of Chapter 30 regarding land use application processing requirements as set forth in Exhibit A, attached is hereby adopted;

Section 3. If any section, paragraph, sentence, clause, or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance.

Section 4. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 5. The repeal or modification of any provision of the Municipal Code of the Town of Berthoud by this ordinance shall not release, extinguish, alter, modify, or change in whole or in part any penalty, forfeiture, or liability, either civil or criminal, which shall have been incurred under such provision, and each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all property actions, suits, proceedings, and prosecutions for the enforcement of the penalty, forfeiture, or liability, as well as for the purpose of sustaining any judgment, decree, or order which can or may be rendered, entered, or made in such actions, suits, proceedings, or prosecutions.

Section 5. The provisions of this ordinance shall take effect thirty days after publication as required by law and shall apply to all development and construction permitted after such date.

INTRODUCED, READ, ADOPTED, AND APPROVED on this 23rd day of January 2024.

TOWN OF BERTHOUD

By _____
William Karspeck, Mayor

ATTEST:

By: _____
Christian Samora, Town Clerk

EXHIBIT A: Ordinance (2024)

13.13-5 General Provisions

A.

General Licensing Provisions. The general procedures and requirements for municipal ~~sales tax~~business licenses, as more fully set forth in the Berthoud Municipal Code Chapter ~~23-14.10~~ shall apply to medical marijuana business licenses. To the extent there is any conflict between the provisions of this Section and Chapter 14.10 the provisions of this Section shall control for medical marijuana sales tax licenses.

13.13-6 Application

b.

Denied an application for a liquor license pursuant to Title ~~12-44~~ C.R.S., or any similar state or local licensing law, or had such a license suspended or revoked.

e.

Investigation. For purposes of section ~~12-43.3-303(2)~~44-10-304, C.R.S., the investigation of the application by the Town is not complete until the Town Licensing Authority has (i) determined the application is complete, (ii) determined the medical marijuana business is prepared and able to operate in compliance with all applicable laws, (iii) conducted an inspection of the business, (iv) obtained all other information the Town Licensing Authority determines necessary to make a decision whether to approve or deny the license application, or approve it with conditions, and (v) the Town Licensing Authority has voted to approve the license application.

13.13-8 Locations of Medical Marijuana Businesses

Location — Permitted Use in Zoning District. A medical marijuana business license may be issued only in the zones and pursuant to the restrictions set forth in Section 5, of Chapter 30 of the Berthoud Municipal code, ~~as amended by Ordinance 1132 on June 2, 2011.~~

A.

13.13-10 Stores and Cultivation Facilities Only.

Medical marijuana businesses operating within the Town of Berthoud shall be limited to licensed medical marijuana cultivation facilities and licensed medical marijuana stores. Further, it shall be unlawful to operate a medical marijuana cultivation facility that is not immediately adjacent to and under the same ownership as a retail marijuana store or a medical marijuana store. Medical marijuana store, medical marijuana cultivation facility and

retail marijuana store shall have the same definition as those terms are defined in C.R.S. Section 44-10-103, as amended.

13.13-11 Cultivation Facilities Sales and Distribution

A medical marijuana cultivation facility may sell and distribute its products to only licensed medical marijuana stores, medical marijuana products manufacturers, or other medical marijuana cultivation facilities.

13.16-5 Licensing Authorized-Stores and Cultivation Facilities Only-Cultivation Facilities Sales

A. Retail marijuana businesses operating within the Town of Berthoud shall be limited to licensed retail marijuana cultivation facilities and licensed retail marijuana stores. Further, it shall be unlawful to operate a retail marijuana cultivation facility that is not immediately adjacent to and under the same ownership as a retail marijuana store or a medical marijuana store. Retail marijuana store, retail marijuana cultivation facility and medical marijuana store shall have the same definition as those terms are defined in C.R.S. Section 44-10-103, as amended.

B. A retail marijuana cultivation facility may sell and distribute its products to only licensed retail marijuana stores, retail marijuana products manufacturers, retail marijuana hospitality and sales business, or other retail marijuana cultivation facilities.

Note for the reader/Municode: Section explanations are not to be codified. These introductory explanations are intended to memorialize the reason why a code change is proposed.

Section 1: Clarification on the allowance for business operations involving Medical and Retail Marijuana and growing operations to be consistent with Colorado Revised Statute.

30-1-116 – Definitions

258. *Marijuana store, medical* means a person licensed pursuant to C.R.S. Title 44, Article 10, to operate a business as described in C.R.S. [Section 44-10-501](#) that sells marijuana to registered patients or primary caregivers defined in section 14 of article XVIII of the state constitution.

258.1 *Marijuana store, retail* has the same meaning as defined in Section 16(2)(n) article XVIII of the state constitution.

259. *Marijuana products manufacturer, medical* means a person licensed pursuant to C.R.S. Title 44, Article 10 to operate a business as described in C.R.S. [Section 44-10-503](#).

259.1 *Marijuana products manufacturer, retail* has same meaning as defined in section 16(2)(i) article XVIII of the state constitution.

260. ~~M~~*marijuana cultivation facility, medical*~~ar~~*ijuana* means a person licensed pursuant to C.R.S. Title 12, Article 10 to operate a business as described in C.R.S. [Section 44-10-502](#).

260.1 *Marijuana cultivation facility, retail* has the same meaning as defined in section 16(2)(h) article XVIII of the state constitution.

[260.2 Marijuana business, medical](#) has the same meaning as defined in C.R.S. [Section 44-10-103\(35\)](#).

[260.32 Marijuana business, retail](#) has the same meaning as defined in C.R.S. [Section 44-10-103\(58\)](#).

[260.42 Allowed marijuana business](#) as used in this Chapter 30 shall mean collectively and exclusively [medical marijuana stores, retail marijuana stores, medical marijuana products manufacturers, retail marijuana manufacturers, medical marijuana cultivation facilities and retail marijuana cultivation facilities and excludes all other medical marijuana businesses and retail marijuana businesses.](#)

30-3-113 ~~30-3-113~~ – Retail Marijuana Businesses

- A. [Allowed/Disallowed.](#) It shall be unlawful to operate a marijuana business in the Town of Berthoud unless it is an allowed marijuana business as defined in Section 30-1-116. Unless the context requires otherwise, the term “marijuana business” as used in Section 30-3-113 means an allowed marijuana business. It shall be unlawful to operate a retail marijuana cultivation facility or a retail marijuana products manufacturing business that is not co-located on the same parcel of land as a retail marijuana store. It shall be unlawful to operate a medical marijuana cultivation facility or a medical marijuana products manufacturing business that is not co-located on the same parcel of land as a medical marijuana store.
- B. [Compliance with State laws](#)~~Defined.~~ This section applies to ~~retail~~ [allowed](#) marijuana businesses ~~that are allowed within the Town of Berthoud~~ and [terms not defined herein shall have the meaning incorporates the definitions](#) set forth in Section 44-10-103 C.R.S., as amended. [All marijuana businesses shall be comply with all applicable state statutes, as the](#)

same may be amended, and ~~Those~~ regulations which are and will be adopted by the Colorado Department of Health and Environment and Colorado Department of Revenue ~~are incorporated herein by this reference.~~

- C. *Review process.* Applications for a Use by Special Review permit for any allowed marijuana business ~~facility, operation or premises for the cultivation, manufacture, processing, distribution and/or sale of marijuana, marijuana products or related activities~~ must be submitted in conformance with the Use by Special Review Permit application process and provisions of this Code including the procedures found in Table 3.10.
- D. ~~This includes applications for~~ allowed marijuana ~~businesses~~ ~~stores, retail cultivation facilities, marijuana products manufacturing~~ whether co-located or not; ~~and marijuana growing operations as long as the growing operation is located on the same parcel of land where retail sales occur.~~
1. Notice shall be given in accordance with the public hearing and general notice provisions found in this Chapter.
 2. Unless otherwise provided in the resolution approving it, as stated in the Resolution, the ~~the~~ allowed marijuana business ~~Special Use Permit~~ shall be commenced within six months of the ~~date of such approval~~ time such Special Use Permit is granted; otherwise the allowed marijuana business ~~Special Use Permit~~ shall be null and void.
- E. *Permitted zoning districts.* Applications for all uses identified above shall only be accepted for properties located in the M1: Limited Industrial and M2: Industrial zone districts as designated north of Mountain Avenue, south of Bunyan Avenue, east of the rail line, and west of 1st Street. Allowed mMarijuana ~~businesses~~ establishments shall not be permitted on properties located on Mountain Avenue.
- F. *Use by Special Review permit criteria.* In their review of applications for any premises or facility, the Planning Commission and Board of Trustees shall consider, at a minimum, the following factors:
- a. The number, type, and availability of ~~retail~~ allowed marijuana businesses located in or near the location under consideration;
 - b. That the location must be over 1,000 feet away from established schools, rehabilitation facilities, licensed daycare centers and non-profit centers for the care of minors with such distance measured in a linear (straight line) manner from edge of property to edge of property;
 - c. That any ~~retail~~ allowed marijuana business may be no closer than 1,000 feet from any other marijuana business with such distance to be measured in a linear (straight line) manner from edge of property to edge of property;
 - d. The size of the building housing the marijuana business;
 - e. The proposed security plans;
 - f. The character, experience and criminal history of all persons involved as management, employees and owners;
 - g. Sanitary issues, health safety issues, fire safety issues, building code issues and waste water effluent issues;
 - h. The needs and desires of the community with respect to the requested Use by Special Review permit and specifically, why those needs are not and cannot be met by the existing facility(ies) in the Town of Berthoud at that time. It shall be incumbent upon all applicants

to document how the needs of the Berthoud community are not being met by existing premises and/or facilities and to provide data to adequately address this issue.

30-3-112 Home occupations

- A. Purpose: The purpose of ~~this section 30-3-112e Home Occupation Section~~ is to regulate the conduct of operating ~~provide parameters to guide residents who wish to conduct an occupation or business activity in the residenceea residence or other in an approved structure on the same property as attheir residence.~~
- B. Home occupations must meet the following standards:
7. The following uses because of their tendency to go beyond the limits permitted for home occupations and thereby impair the use and value of the residential area shall not be permitted as home occupations:
 - a. Marijuana businesses including allowed marijuana business as defined in Section 30-1-116
Medical marijuana businesses
 - b. Retail marijuana businesses
 - ~~e.~~
 - c. Auto repair or motorized implement repair
 - d. Dance, music or other types of instruction (if more than four students being instructed at one time)
 - e. The painting of vehicles, trailers or boats
 - f. Private schools with organized classes
 - g. Welding shops
 - h. Nursing facility(ies)
 - i. Any retail or wholesale sales to consumers upon the premises not incidental to the home occupation (e.g. hair care products at a hair stylist are incidental sales).
 10. A Home Occupation must maintain a Town of Berthoud Business License.

30-1-117 - Public hearing and general notice provisions

A portion of this table is being revised to reflect the correct terminology for Marijuana businesses. The remainder of the table shall remain the same.

Table 1.1 Hearing and notification requirements

	Hearing	Publication	Mailed notice	Post sign
Use by Special Review: <u>Allowed Marijuana Business</u> /Oil and Gas	Before Town Board as a hearing	No less than 15 days prior to hearing	Yes, to property owners within 500 feet, and referral agencies no less than 15 days prior to Board meeting	Yes, no less than 15 days prior to Town Board meeting

30-3-104 - Principal and conditional uses permitted by zoning district

Amend Table 3.3: Principal and conditional uses by zone district to reflect the following changes only. No other changes to these tables are being requested at this time. The location of an an allowed marijuana businessfacility can occur in the area of Town specified in Section 30-2-113.C and only in the Industrial M-1 and M2- Districts.

☒ Principal Use By Right
☐ Use by Special Review
<i>Commercial, retail or service land uses</i>
Allowed Marijuana businessstore
Marijuana product manufacturing
Marijuana cultivation facility

Amend Table 3.7 Suburban Use Table to remove Marijuana establishments from this Zone District. It was not the intent to allow this land use in the Suburban Zone District as the location of a marijuana facility can occur in the area of Town specified in Section 30-2-113.C and only in the Industrial M-1 and M2- Districts as reflected in Table 3.3.

☒ Principal Use By Right
☐ Use by Special Review
<i>Commercial, retail or service land uses</i>
Medical Marijuana center
Medical marijuana infused product manufacturing
Medical marijuana optional premises cultivation operation

A portion of Table 3.10 is being revised to reflect the correct terminology for Marijuana businesses. The remainder of the table shall remain the same.

Table 3.10

Application Process	Required pre-application meeting	Application Submittal	Certification of Completeness	Notice to Surrounding Property Owners; Hearing Date publication; Sign Posting requirements	Mineral Notice	Referral Period	Administrative Option	Planning Commission	Town Board of Trustees	Criteria for Approval	Ordinance/Resolution	Conditions of Approval Addressed including Development Agreement	Record documents
Application Type													
Use by Special Review for Allowed Marijuana Business	Yes	Yes	Yes	Refer to the Hearing and Notification requirements Section of this Chapter of the Municipal Code	Yes	Yes	No	Yes	Yes	Yes	Resolution	Yes	Yes
