



REGULAR CITY COUNCIL MEETING AGENDA
Tuesday, June 7, 2022 6:00 PM
City Council Chambers, Elks Civic Building - 107 S. Cascade Ave.

The Montrose City Council is pleased to have residents of the community take time to attend City Council meetings. We encourage your attendance and participation. Individuals wishing to be heard during public hearing proceedings are encouraged to be prepared and will generally be limited to three minutes to allow everyone the opportunity to be heard. Additional written comments are welcome and will be received at any time. The 11:00 p.m. rule will be enforced in accordance with City of Montrose Regulations (Sec. 7-15-2).

Public participation for this meeting will be in person in the City Council Chambers, and the meeting can be viewed via livestream at <https://www.cityofmontrose.org/759/Live-Meetings-Viewer>.

Hearing assistance devices are available for public use. Please let us know if you need accommodation. The City also offers interpretation for Spanish speakers. In order to allow time to book this resource, please email planningmail@ci.montrose.co.us at least three days before the meeting.

- 1) City Council meeting called to order by Mayor Dave Frank
- 2) The Pledge of Allegiance
- 3) Roll call by the City Clerk
- 4) Changes to the agenda including additions and deletions
- 5) CALL FOR PUBLIC COMMENT FOR NON-AGENDA ITEMS

The “Call for Public Comment” agenda item is a time when concerned members of the community may publicly voice their concerns and discuss items of interest. Please note that no formal action will be taken on the matters raised during this time.

Comments made during this time should be addressed to the Council and pertain to matters of at least general importance to the City and its operations. Please be aware that neither City Council nor City staff are expected to respond or engage in discussion or debate.

Personal attacks and disagreements, personnel and employment matters, the use of profanity or ethnic, racial or gender-oriented slurs are prohibited, as is any “disorderly conduct” which violates state or local law and shall not be permitted.



6) APPROVAL OF MINUTES (5 minutes)

City Council consideration of the minutes of the May 17, 2022 regular City Council meeting and the minutes of the May 31, 2022 special City Council meeting. *Staff: City Clerk Lisa DelPiccolo* **5-10**

Action: Consider making a motion to approve the minutes of the May 17, 2022 regular City Council meeting and the May 31, 2022 special City Council meeting as presented.

7) HOTEL AND RESTAURANT LIQUOR LICENSE TRANSFER APPLICATION
(15 minutes)

City Council consideration of the transfer of the Hotel and Restaurant liquor license at 1032 6450 Road from Kinikin Processing LLC, doing business as Kinikin Processing LLC, to Kinikin Processing Company LLC, doing business as Kinikin Processing Company LLC, for consumption on the licensed premises. *Staff: Assistant City Attorney Chris Dowsey* **11-15**

Action: Accept public comment. Consider making a motion to approve the transfer of the Hotel and Restaurant liquor license at 1032 6450 Road from Kinikin Processing LLC, doing business as Kinikin Processing LLC, to Kinikin Processing Company, doing business as Kinikin Processing Company LLC.

8) ORDINANCE 2590 - SECOND READING (10 minutes)

City Council consideration of Ordinance 2590 on second reading, an Ordinance of the City of Montrose, Colorado, amending Title 5 Chapter 15 Sections 2 and 7, regarding a sales tax exemption for a fee the State of Colorado is imposing on carryout bags. *Staff: Assistant City Attorney Chris Dowsey* **16-49**

Action: Accept public comment. Consider making a motion to adopt Ordinance 2590 on second reading.

9) 6700 DEJULIO ADDITION ANNEXATION (15 minutes)

City Council will hold a hearing on the annexation of the 6700 DeJulio Addition. *Staff: Planner I William Reis* **50-79**

Resolution 2022-11: City Council consideration of Resolution 2022-11, Findings of Fact for the 6700 DeJulio Addition. **76-77**

Action: Accept public comment. Consider making a motion to adopt Resolution 2022-11 as presented.

Ordinance 2591 - First Reading: City Council consideration of Ordinance 2591 on first reading, an Ordinance of the City of Montrose, Colorado for the annexation of the 6700 DeJulio Addition. **78-79**

Action: Hold a hearing. Consider making a motion to pass Ordinance 2591 on first reading as presented.

10) ORDINANCE 2592 - FIRST READING (5 minutes)

City Council consideration of Ordinance 2592 on first reading, an Ordinance of the City of Montrose, Colorado, providing for the zoning of the 6700 DeJulio Addition as an "R-1A", Large Estate District. *Staff: Planner I William Reis* **80**

Action: Hold a hearing. Consider making a motion to pass Ordinance 2592 on first reading as presented.

11) BROWN RANCH SUBDIVISION AMENDMENT #4 PRELIMINARY PLAT (10 minutes)

City Council consideration of the Brown Ranch Subdivision Amendment #4 Preliminary Plat. *Staff: Planner I William Reis* **81-97**

Action: Accept public comment. Consider making a motion to approve the Brown Ranch Subdivision Amendment #4 Preliminary Plat expressly conditioned upon City staff ensuring that all policies, regulations, ordinance and Municipal Code provisions are met and that the Applicant adequately addresses all of staff's concerns prior to execution of the Final Plat. The City staff is not authorized by this approval to execute the Final Plat prior to all conditions being satisfied.

12) ORDINANCE 2588 - SECOND READING (10 minutes)

City Council consideration of Ordinance 2588 on second reading, an Ordinance of the City of Montrose, Colorado, granting and authorizing the conveyance of an interest in City-owned real estate pursuant to §1-9-2 of the Official Code of the City of Montrose. *Staff: City Engineer Scott Murphy* **98-100**

Action: Accept public comment. Consider making a motion to adopt Ordinance 2588 on second reading as presented.

13) 6700 ROAD EXTENSION DESIGN CONTRACT (10 minutes)

City Council consideration of a contract award to Del-Mont Consultants in the amount of \$97,200.00 for completion of design studies and civil design associated with the 6700 Road Extension Project. *Staff: City Engineer Scott Murphy* **101-104**

Action: Accept public comment. Consider making a motion to award a contract to Del-Mont Consultants in the amount of \$97,200.00 for completion of design studies and civil design associated with the 6700 Road Extension Project as presented.

14) MAIN STREET STREETSCAPING PROJECT AUTHORIZATION (10 minutes)

City Council consideration of the authorization of \$238,000.00 for improvements to the northeast corner of the intersection of Park Avenue and Main Street including a contract with Kuboske Construction, LLC in the amount of \$215,908.94. *Staff: Public Works Manager Jim Scheid* **105-107**



Action: Accept public comment. Consider making a motion to authorize \$238,000.00 for improvements to the northeast corner of the intersection of Park Avenue and Main Street, including a contract with Kuboske Construction, LLC in the amount of \$215,908.94.

15) ASBESTOS ABATEMENT CONTRACT AWARD (10 minutes)

City Council consideration of the authorization and award of funds in the amount of \$77,616.20 for asbestos abatement in the City facility at 400 E. Main Street (previously the Wells Fargo building), including the award of a contract with Asbestos Professionals LLC in the amount of \$67,492.35. *Staff: Public Works Manager Jim Scheid* **108**

Action: Consider making a motion to authorize and award funds in the amount of \$77,616.20 for asbestos abatement in the City facility at 400 E. Main Street, including the award of a contract with Asbestos Professionals LLC in the amount of \$67,492.35.

16) STAFF REPORTS

17) CITY COUNCIL COMMENTS

18) MOTION TO ADJOURN

A regular meeting of the Montrose City Council was held on Tuesday, May 17, 2022 at 6:00 p.m. in the City Council Chambers of the Elks Civic Building. Said meeting was posted in accordance with the Sunshine Law.

PRESENT: Doug Glaspell, Dave Frank, Barbara Bynum, J. David Reed, Ed Ulibarri, Bill Bell, Ann Morgenthauer, Chris Dowsey, Greg Story, Lisa DelPiccolo, Mikayla Unruh, Kailey Rhoten, Scott Murphy, Blaine Hall, Shani Wittenberg, Matt Magliaro

GUESTS: Amy Scriffiny, Gunnison Clamp, Harrison Hall, Grace Hotsenpiller, Indica Taylor, Jasmine Hemenway, Melissa Hall, Rick Fuller, Linda Fuller, Janet Eckerdt

CALL TO ORDER

Mayor Dave Frank called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

CHANGES TO THE AGENDA

No changes were made to the agenda.

MENTAL HEALTH MONTH PROCLAMATION

Mayor Dave Frank and the Montrose City Council proclaimed the month of May 2022 as Mental Health Month in the City of Montrose. The proclamation was presented to Laura Baker with the Tri-County Health Network.

MOTORCYCLE AWARENESS MONTH PROCLAMATION

Mayor Dave Frank and the Montrose City Council proclaimed the month of May 2022 as Motorcycle Awareness Month in the City of Montrose. The proclamation was presented to Rich and Linda Fuller with the Gold Wing Road Riders Association.

CALL FOR PUBLIC COMMENT

No comments were received.

APPROVAL OF MINUTES

City Council considered the minutes of the May 3, 2022 regular City Council meeting.

A motion was made by Barbara Bynum, seconded by Ed Ulibarri, to approve the minutes of the May 3, 2022 regular City Council meeting as presented. All voted yes. Motion passed.

YOUTH CITY COUNCIL REPORT TO CITY COUNCIL

The City of Montrose Youth City Council gave a regularly scheduled report to City Council.

Youth City Councilors Gunnison Clamp, Harrison Hall, Jasmine Hemenway, Grace Hotsenpiller, Amy Scriffiny, and Indica Taylor reviewed the Youth City Council vision, recruitment efforts for the upcoming year, and accomplishments for the 2021-2022 term.

Youth Council Coordinators Mikayla Unruh and Kailey Rhoten acknowledged graduating seniors Gunnison Clamp and Harrison Hall for their service on the Youth City Council.

HOTEL AND RESTAURANT LIQUOR LICENSE TRANSFER APPLICATION

City Council considered the transfer of the Hotel and Restaurant liquor license at 1032 6450 Road from Kinikin Processing LLC, doing business as Kinikin Processing LLC, to Kinikin Processing Company LLC, doing business as Kinikin Processing Company LLC, for consumption on the licensed premises.

Assistant City Attorney Chris Dowsey reported that application is for the transfer of an existing license. The file is in order, the fees have been paid, and staff review found no issues that would prevent the approval of the application.

Mr. Dowsey noted that the applicants were not present to answer questions and recommended continuing this agenda item to the next regular City Council meeting.

A motion was made by Barbara Bynum, seconded by Doug Glaspell, to continue this agenda item to the June 7, 2022 regular City Council meeting. All voted yes. Motion passed.

ORDINANCE 2590 - FIRST READNG

City Council considered Ordinance 2590 on first reading, an Ordinance of the City of Montrose, Colorado, amending Title 5 Chapter 15 Sections 2 and 7, regarding a sales tax exemption for a fee the State of Colorado is imposing on carryout bags. A hearing was held.

Assistant City Attorney Chris Dowsey reported that Ordinance 2590 would exempt carryout bag fees from City sales tax following implementation of HB21-1162. Mr. Dowsey stated that the legislation puts the onus on municipalities to implement, enforce, and administer the fees as of January 1, 2023. The minimum fee is .10 which may be increased by the municipality if desired. Mr. Dowsey stated that the business retains 40 percent of the fee to cover the cost of implementation and the City receives 60 percent for implementation and to fund recycling programs.

Mr. Dowsey stated that exempting the fee from sales tax will reduce the burden on citizens and the City.

Mayor Dave Frank opened the hearing.

Public comment was accepted. No comments were received.

Mayor Frank closed the hearing.

A motion was made by Doug Glaspell, seconded by Ed Ulibarri, to pass Ordinance 2590 on first reading as presented. All voted yes. Motion passed.

ORDINANCE 2589 - SECOND READING

City Council considered Ordinance 2589 on second reading, an Ordinance of the City of Montrose, Colorado, amending Title 4 Chapter 4 Section 24, regarding Planned Development (PD) regulations to clarify the process, consent, and public notice requirements for applications to amend an existing planned development plan. A hearing was held.

Deputy City Manager Ann Morgenthaler reported no changes since first reading. Ms. Morgenthaler stated that that Ordinance 2589 streamlines the process for Planned Development amendments to require consent only from property owners directly affected. The Ordinance also requires that all property owners within an existing Planned Development are notified of proposed amendments that go before the Planning Commission.

Mayor Dave Frank opened the hearing.

Public comment was accepted. No comments were received.

Mayor Frank closed the hearing.

A motion was made by Doug Glaspell, seconded by Barbara Bynum, to adopt Ordinance 2589 on second reading as presented. All voted yes. Motion passed.

ORDINANCE 2588 - FIRST READING

City Council considered Ordinance 2588 on first reading, an Ordinance of the City of Montrose, Colorado, granting and authorizing the conveyance of an interest in City-owned real estate pursuant to §1-9-2 of the Official Code of the City of Montrose. A hearing was held.

City Engineer Scott Murphy reviewed the location of the parcel immediately north of the Justice Center. Mr. Murphy said that a small remnant of property remains following a previous property transfer related to expansion of the Justice Center. Montrose County has requested clean-up of the remnant. If approved, the property will be conveyed to Montrose County by deed, and the City will reserve a sewer easement.

Mayor Dave Frank opened the hearing.

Public Comment was accepted. No comments were received.

Mayor Frank closed the hearing.

A motion was made by Doug Glaspell, seconded by Barbara Bynum, to pass Ordinance 2588 on first reading as presented. All voted yes. Motion passed.

MOVING MONTROSE FORWARD 2022 STREET MAINTENANCE CONTRACT AWARD

City Council considered the award of a construction contract to Mountain Valley Contracting in the amount of \$1,430,000.00 for completion of the Moving Montrose Forward 2022 Contracted Street Maintenance Project.

City Engineer Scott Murphy reported that this item is the last large street maintenance contract for 2022 and involves street rebuilds. Mr. Murphy reviewed street rebuild projects scheduled for completion in 2022.

Public Comment was accepted. No comments were received.

A motion was made by Barbara Bynum, seconded by Doug Glaspell, to approve the award of a construction contract to Mountain Valley Contracting in the amount of \$1,430,000.00 for completion of the Moving Montrose Forward 2022 Contract Street Maintenance Project as presented. All voted yes. Motion passed.

STAFF REPORTS

Sales, Use, and Excise Tax Report: Finance Director Shani Wittenberg gave a sales, use and excise tax report for the month of March 2022. Ms. Wittenberg reported that total sales and use tax collections were up 11.6 percent with a positive budget variance of 67.1 percent. Year-to-date collections were up 14.3 percent with a positive budget variance of 45.0 percent.

First Quarter Budget Review: Finance Director Shani Wittenberg indicated that a complete budget review is included in the meeting packet. Ms. Wittenberg reported no issues and stated that revenues and expenditures are proportional to the completion of the first quarter of the year.

Housing Development Announcement: Deputy City Manager Ann Morgenthaler announced that the Colorado Housing and Finance Authority (CHFA) awarded tax credits to a developer planning to construct housing next to the Community Recreation Center. Ms. Morgenthaler said that the units will be affordable, allocated based on income levels, and priced accordingly.

Project Updates: City Engineer Scott Murphy reported that the utility work on S. Townsend Avenue is complete. CDOT will now proceed with the overlay project and the work will be completed mainly at night. Mr. Murphy said that trail beneath the bridge on S. Townsend will be closed at 7 p.m. daily for safety reasons.

Mr. Murphy reported that the Woodgate Realignment Project has resumed and the first round of paving was completed today on the Hill Street Extension Project. The Southeast Transmission Line Project is temporarily halted, but that contractor is on track to complete the project in compliance with the contract.

YOUTH CITY COUNCIL COMMENTS

Youth City Council Representative Amy Scriffiny had no further report.

CITY COUNCIL COMMENTS

City Councilor Ed Ulibarri thanked staff and City Councilors for answering questions and providing information during a recent 2023 budget discussion.

City Manager Bill Bell discussed current staffing challenges and creative recruitment efforts.

City Council and staff wished Councilor Doug Glaspell a happy birthday.

Mayor Dave Frank invited the community to a City employee recruitment event on Saturday, May 21, at Montrose County Event Center.

MOTION TO ADJOURN

At 7:01 p.m., a motion was made by Barbara Bynum, seconded by Doug Glaspell, to adjourn the meeting with no further action taken.

ATTEST:

David Frank, Mayor

Lisa DelPiccolo, City Clerk

A special meeting of the Montrose City Council was held on Tuesday, May 31, 2022, at 2:00 p.m. in the Centennial Meeting Room located in the City Hall Annex at 433 S. First Street. Said meeting was posted in accordance with the Sunshine Law.

PRESENT: Dave Frank, Barbara Bynum, Doug Glaspell, J. David Reed, Ed Ulibarri, Ann Morgenthaler, Matthew Magliaro, Blaine Hall, Lisa DelPiccolo

CALL TO ORDER

Mayor Dave Frank called the special meeting to order at 2:03 p.m.

EXECUTIVE SESSION

At 2:03 p.m., a motion was made by Doug Glaspell, seconded by Barbara Bynum, to enter into an executive session for a conference with the Assistant City Attorney for the purpose of receiving legal advice pursuant to C.R.S. Section 24-6-402(4)(b); for the purpose of determining positions relative to matters that may be subject to negotiations, under C.R.S. Section 24-6-402(4)(e); and the following additional details are provided for identification purposes: discussion of ongoing litigation. All voted yes. Motion passed.

RECONVENEMENT AND ADJOURNMENT

The special meeting reconvened at 2:29 p.m.

At 2:29 p.m. a motion was made by Doug Glaspell, seconded by Barbara Bynum, to adjourn with no further action taken. All voted yes. Motion passed.

ATTEST:

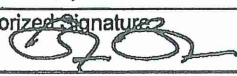
David Frank, Mayor

Lisa DelPiccolo, City Clerk

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Name Kinikin Processing Company, LLC	Type of License Hotel/Restaurant (city)	Account Number
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years? Yes ☐ No ☒		
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state): a. Been denied an alcohol beverage license? ☐ ☒ b. Had an alcohol beverage license suspended or revoked? ☐ ☒ c. Had interest in another entity that had an alcohol beverage license suspended or revoked? ☐ ☒		
If you answered yes to 8a, b or c, explain in detail on a separate sheet.		
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail. ☐ ☒		
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary? ☐ ☒ or Waiver by local ordinance? ☐ ☐ Other: _____		
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. ☐ ☐ N/A		
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. ☐ ☐ N/A		
13 a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016? N/A ☐ ☐		
13 b. Are you a Colorado resident? Kinikin Processing Company, LLC is a Colorado limited liability company ☒ ☐		
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any <u>current</u> financial interest in said business including any loans to or from a licensee. ☒ ☐ See attachment		
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement? ☒ ☐ ☐ Ownership ☒ Lease ☐ Other (Explain in Detail) _____ a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:		
Landlord Kinikin Real Estate, LLC	Tenant Kinikin Processing Company, LLC	Expires 1/31/2032
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16. ☐ ☒		
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".		
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary. See attachment		
Last Name	First Name	Date of Birth
FEIN or SSN	Interest/Percentage	
Last Name	First Name	Date of Birth
FEIN or SSN	Interest/Percentage	
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.		
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises: ☐ ☒ Has a local ordinance or resolution authorizing optional premises been adopted? ☐ ☒ Number of additional Optional Premise areas requested. (See license fee chart)		
18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.		
19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:		
a. Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? N/A ☐ ☐ If "yes" a copy of license must be attached.		

Name Kinikin Processing Company, LLC	Type of License Hotel/Restaurant (city)	Account Number		
20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation Yes No				
a. Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		☐ ☐		
b. Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		☐ ☐		
c. How long has the club been incorporated?		N/A		
d. Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		☐ ☐		
21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following: Yes No				
a. Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		N/A ☐ ☐		
22. Campus Liquor Complex applicants answer the following: Yes No				
a. Is the applicant an institution of higher education?		N/A ☐ ☐		
b. Is the applicant a person who contracts with the institution of higher education to provide food services?		☐ ☐		
If "yes" please provide a copy of the contract with the institution of higher education to provide food services.				
23. For all on-premises applicants. a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details. b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application - DR 8000 and fingerprints.				
Last Name of Manager Prock	First Name of Manager Jennifer			
24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number. Yes No				
		☐ ☒		
25. Related Facility - Campus Liquor Complex applicants answer the following: Yes No				
a. Is the related facility located within the boundaries of the Campus Liquor Complex?		☐ ☐		
If yes, please provide a map of the geographical location within the Campus Liquor Complex.		N/A		
If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex.				
b. Designated Manager for Related Facility- Campus Liquor Complex				
Last Name of Manager	First Name of Manager			
26. Tax Information. Yes No				
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?		☐ ☒		
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?		☐ ☒		
27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.				
Name	Home Address, City & State	DOB	Position	%Owned
See attachment				
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above. ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable) ** If total ownership percentage disclosed here does not total 100%, applicant must check this box: ☒ Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.				

Name Kinikin Processing Company, LLC		Type of License Hotel/Restaurant (city)		Account Number	
Oath Of Applicant					
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.					
Authorized Signature 		Printed Name and Title Bradley Berger, Manager		Date 2/10/22	
Report and Approval of Local Licensing Authority (City/County)					
Date application filed with local authority April 11, 2022		Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) May 17, 2022			
The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:					
☒ Fingerprinted ☒ Subject to background investigation, including NCIC/CCIC check for outstanding warrants					
That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license					
(Check One)					
☐ Date of inspection or anticipated date _____ ☒ Will conduct inspection upon approval of state licensing authority					
☐ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?					Yes No ☐ ☒
☐ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?					☐ ☒
NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.					
☐ Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?					☐ ☒
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. Therefore, this application is approved.					
Local Licensing Authority for			Telephone Number		☐ Town, City ☐ County
Signature	Print	Title		Date	
Signature	Print	Title		Date	

Kinikin Processing Company, LLC

Colorado Liquor Retail License Application (Form DR 8404)

Further response to the below numbered questions:

14. Has a liquor or beer license ever been issued to the applicant (including any of the members or manager if a Limited Liability Company)? **Yes**

If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee:

Next Gen Kulinary-Denver, LLC (dba Ya Ya's Euro Bistro) (no financial interest)

Next Gen BBQ-Denver, LLC (dba Burnt End BBQ) (no financial interest)

Elevated Q LLC (dba Elevated Q) (no financial interest)

Laws Chophouse LLC (dba Law's Chophouse) (no financial interest)

16. Who, besides the owners listed in this application will loan or give money, inventory, furniture, or equipment to or for use in this business; or who will receive money from this business:

No one other than the owners will loan or give money, inventory, furniture, or equipment to or for use in this business or will receive money from this business.

27. Members and Managers of Kinikin Processing Company, LLC:

Name	Home Address, City & State	DOB	Position	% Owned
Kompass Kapital Ventures, LLC	9800 Metcalf Ave, 5 th Floor, Overland Park, KS 66212	n/a	Member	70
Clubhouse Capital, LLC	15508 Oakmont Street, Overland Park, KS 66221	n/a	Member	10
Kinikin Processing, LLC (owned 50% by Zachary Prock and 50% by Jennifer Prock)	72015 Kinikin Rd, Montrose, CO 81401	n/a	Member	20
Jayson A. Kuti	16620 Eden Bridge, Belton, Missouri 64012		Manager	0
Bradley Berger	15508 Oakmont Street, Overland Park, KS 66221		Manager	0
Zachary Prock	72015 Kinikin Rd, Montrose, CO 81401		Manager	0



CITY OF MONTROSE

MEMO

TO: Honorable Mayor and Members of City Council
FROM: Chris Dowsey, Assistant City Attorney
DATE: 05/02/2022
RE: Sales Tax Exemption on Plastic Bag Fee

Action

Add the “carryout bag fee” that will be implemented by the State of Colorado through HB21-1162 to the list of sales tax exemptions.

Background

Generally, this is a ban on the use of plastic bags for certain stores, while placing a fee on single use, non-reusable bags from the stores affected by the Bill. This extends to one-time use paper and plastic bags. Additionally, polystyrene food containers will be banned as well, the fee will not be applicable to these containers. The onus is on the municipalities to implement, enforce, and administer these fees.

Beginning January 1, 2023, there will be a minimum of a ten cent fee (each municipality may raise the fee associated per bag with a minimum of ten cents) per single use bag given to a consumer at the affected stores. This includes plastic and recycled paper bags. The fee will be split between the business (40%) charging and collecting the fee and the municipality (60%).

Stores subject to this fee must provide on the customer’s receipt, the number of bags provided as part of the transaction. Stores must conspicuously display a sign alerting customers about the carryout bag fee. Stores may not refund any portion of money collected as part of the carryout bag fee collected from customers.

This affects any establishment at which carryout bags are traditionally provided to customers; inclusive of restaurants, groceries, dry cleaner, etc. There is a “small store”

exemption; a “small store” is defined as “a store that operates solely in Colorado, has three or fewer locations in the state, and is not part of a franchise, corporation, or partnership that has physical locations outside of Colorado.” Additionally, if the consumer is in Federal or State food assistance, they are not subject to the ten cent fee.

We are able to establish penalties

Important dates:

January 1, 2023: fee goes into effect.

January 1, 2024: retail stores will no longer be allowed to purchase new plastic bags and may only use what they have in inventory for the next six months; polystyrene food containers may no longer be purchased and businesses may only use what they have in inventory until depleted.

June 1, 2024: retail stores may no longer use plastic bags. Restaurants may continue using plastic bags after this date.

April 1, 2024: remittance begins, the remittance is due quarterly.

July 1, 2024: local governments may enact, implement, or enforce any ordinance, resolution, or rule provision that is as, or more, stringent than the State’s laws.

Sec. 5-15-2. Words and phrases defined.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Agricultural producer means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term "agricultural producer" includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft part means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

Aircraft simulator means a flight simulator training device (FSTD) as defined in Part I of title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.

Aircraft simulator part means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.

Airline company means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two or more points and publishes a flight schedule. Airline company shall not include operators whose aircraft are all certified for a gross takeoff weight of 12,500 pounds or less and who do not engage in scheduled service or mail carriage service.

Auction means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

Automotive vehicle means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. The term "automotive vehicle" includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

Business means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

Candy means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

Carrier access services means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

Carryout bag means a bag that is furnished to a customer at a store or retail food establishment at the point of sale for use by the customer to transport or carry purchased items. Carryout bag does not include:

- (1) A bag made of paper when the paper has a basis weight of thirty pounds or less;
- (2) A bag that a pharmacy provides a customer purchasing prescription medication;
- (3) A bag that a customer uses inside a store to:

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- a. Package loose or bulk items, such as fruits, vegetable, nuts, grains, candy, or greeting cards; nails, bolts, screws, or other small hardware items; live insects, fish, crustaceans, mollusks, or other small species; and bulk seed, bulk livestock feed, or bulk pet feed;
 - b. Contain or wrap frozen foods, meat, seafood, fish, flowers, potted plants, or other items that, if they were to come in contact with other items, could dampen or contaminate the other items;
or
 - c. Contain unwrapped prepared foods or bakery goods; or

(4) A laundry, dry cleaning, or garment bag.

Charitable organization means any entity which:

- (1) Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code; and
- (2) Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

City or town means the municipality of the City of Montrose.

Coin means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this state, the United States or any foreign nation.

Coin-operated device means any device operated by coins or currency or any substitute therefor.

Collection costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

Commercial packaging materials means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. The term "commercial packaging materials" does not include commercial shipping materials.

Commercial shipping materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. The term "commercial shipping materials" include but are not limited to, containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Community organization means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as:

- (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
- (3) Which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office.

Construction equipment means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including

public and private improvements. The term "construction materials" includes, but is not limited to, such things as, asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral and inseparable part of a completed structure or project, are not construction materials.

Consumer means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.

Contract auditor means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For the purposes of this definition, the term "contractor" also includes subcontractor.

Cover charge means a charge paid to a club or similar entertainment establishment which may or may not entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

Data processing equipment means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

Digital product means an electronic product, including, but not limited to, the following:

Digital audio works means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For the purposes of the definition of the term "digital audio works," the term "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

Digital audio-visual works means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Digital books means works that are generally recognized in the ordinary and usual sense as books.

Digital images means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as photographs, logos, cartoons, or drawings.

Distribution means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shopper's guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.

Dual residency means those situations, including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for the purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.

Dwelling unit means a building or any portion of a building designed for occupancy as complete, independent living quarters for one or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.

Economic nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and: (1) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or (2) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

Engaged in business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the City. Engaged in business in the City includes, but is not limited to, any one of the following activities by a person:

- (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
- (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;
- (5) Retailor or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a 12-month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in 5-15-2.

Factory built housing means a manufactured home or modular home.

Farm closeout sale means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

Farm equipment means any farm tractor, as defined in C.R.S. § 42-1-102(33), any implement of husbandry, as defined in C.R.S. § 42-1-102(44), and irrigation equipment having a per unit purchase price of at least \$1,000.00. The term "farm equipment" also includes, regardless of purchase price, attachments and baling wire, binders twine and surface wrap used primarily and directly in any farm operation. The term "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this definition, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, the term "farm equipment" does not include:

- (1) Vehicles subject to the registration requirements of C.R.S. § 42-3-103, regardless of the purpose for which such vehicles are used;
- (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;
- (3) Maintenance and janitorial equipment and supplies; and

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- (4) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

Farm operation means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

- (1) Agricultural, viticultural, fruit, and vegetable products;
- (2) Livestock;
- (3) Milk;
- (4) Honey; and
- (5) Poultry and eggs.

Finance Director means the Finance Director of the City or such other person designated by the municipality; including such person's designee.

Garage sale means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term "garage sale" includes, but is not limited to, yard sales, estate sales, and block sales.

Gross sales means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

Internet access services means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

Internet subscription service means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services, including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.

License means a City of Montrose sales and/or use tax license.

Linen services means services involving the provision and cleaning of linens, including, but not limited to, rags, uniforms, coveralls and diapers.

Lodging services means the furnishing of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration possesses or has the right to use or possess any room, including, but not limited to, a hotel, inn, bed and breakfast, apartment, lodginghouse, short-term rental, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, for a period of less than 30 days under any rental agreement, concession, permit, right of access, license to use, or other agreement.

Machinery means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term "machinery" includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

Manufactured home means any preconstructed building unit or combination of preconstructed building units, without motive power, where such units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

Manufacturing means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

Marketplace facilitator means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale of the marketplace seller's tangible personal property, products, or services through the person's marketplace;
- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

"Marketplace facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace seller means a person, regardless of whether or not the person is engaged in business in the City, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Medical marijuana means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition under Article XVIII, Section 14, of the State Constitution, and which person holds a valid registry identification card issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

Mobile machinery and self-propelled construction equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally-operated or moved over the public highways. The term "mobile machinery and self-propelled construction equipment" includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Modular home means any structure that consists of multiple Sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed according to the building codes adopted by the state division of housing, created in C.R.S. § 24-32-706, and is designed to be installed on a permanent foundation.

Motor fuel means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term "motor fuel" does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

Multichannel seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term "newspaper" does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Online garage sales means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

Parent means a parent of a student.

Person means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

Photovoltaic system means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

Precious metal bullion means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

Prepress preparation material means all materials used by those in the printing industry, including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and Veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

Preprinted newspaper supplements shall mean inserts, attachments or supplements circulated in newspapers that:

- (1) Are primarily devoted to advertising; and
- (2) The distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Prescription drugs for animals means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 USC 301 et seq., as amended, to state at a minimum the symbol "Rx Only," and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Prescription drugs for humans means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 USC 301 et seq., as amended, to state at a minimum the symbol "Rx Only," and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Price or purchase price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of

materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
- (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

The term "price" or "purchase price" includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser if not separately stated.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

The term "price" or "purchase price" shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to, exchanges in Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

Private communications services means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

Prosthetic devices for animals means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a

particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Prosthetic devices for humans means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Purchase or sale means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. The term "purchase" or "sale" include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms "purchase" and "sale" do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least 80 percent by the parent company to a parent company or to another subsidiary which is owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
- (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Article was paid by the transferor company at the time it acquired

such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company.

To such an extent, any transfer referred to in this Section shall constitute a sale. For the purposes of this Section, a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at 80 eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

Rail carrier means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.

Rail carrier part means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of a locomotive or rail car used by a rail carrier.

Recreation services means all services relating to athletic or entertainment participation events and/or activities, including, but not limited to, pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.

Recycled paper carryout bag means a carryout bag made from one hundred percent:

(1) Recycled material; or

(2) Other post-consumer content.

Renewable energy means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

Resident means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.

Retail sales means all sales except wholesale sales.

Retailer or vendor means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The term "retailer" shall include, but is not limited to, any:

- (1) Auctioneer;
- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

Retailer-contractor means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Return means any form prescribed by the City administration for computing and reporting a total tax liability.

Sale that benefits a Colorado school means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

Sales tax means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

School means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

Security system services means electronic alarm and/or monitoring services. The term "security system services" does not include non-electronic security services such as consulting or human or guard dog patrol services.

Single-use plastic carryout bag means a carryout bag that is a single-use plastic product made predominantly of plastic derived from natural gas, petroleum, or a biologically based source such as corn or other plant sources, and that is provided to a customer at the point of sale.

Soft drink means a nonalcoholic beverage that contains natural or artificial sweeteners. The term "soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume.

Software as a service means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including, but not limited to, applications, systems or programs.

Software license fee means a fee charged for the right to use, access, or maintain software programs.

Software maintenance agreement means an agreement, typically with a software provider, that may include

- (1) Provisions to maintain the right to use the software;
- (2) Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or
- (3) Technical support.

Software program means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g.; a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. The term "software program" includes:

- (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer;
- (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned off-the-shelf (COTS)," "mass produced" or "standardized";
- (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and
- (4) The generic terms "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

Solar thermal systems means a system whose primary purpose is to use energy from the sun to produce heat or cold for:

- (1) Heating or cooling a residential or commercial building;
- (2) Heating or cooling water; or
- (3) Any industrial, commercial, or manufacturing process.

Sound system service means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. The term "sound system service" does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

Special fuel means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term "special fuel" does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

Special sales event means any sales event which includes more than three vendors taking place at a single location for a limited period of time not to exceed seven consecutive days.

Storage means any keeping or retention of, or to exercise dominion or control over, or possession of, for any length of time, tangible personal property, not while in transit, but on a stand-still basis, for future use when leased, rented or purchased at retail from sources either within or without the City, from any person or vendor.

Student means any person enrolled in a school.

Tangible personal property means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged; or that is in any other manner perceptible to the senses.

Tax means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

Tax deficiency or deficiency means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

Taxable sales means gross sales less any exemptions and deductions specified in this Code.

Taxable services means services subject to tax pursuant to this Code.

Taxpayer means any person obligated to collect and/or pay tax under the terms of this Code.

Telecommunications service means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications, including, but not limited to, voice, image, data and any other information, by the use of any means but not limited to, wire, cable, fiber optic cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication. The term "telecommunications service" does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted to their exemption language.

Television and entertainment services means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.

Therapeutic device means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

Toll free telecommunications service means a telecommunications service that allows a caller to dial a number without incurring an additional charge for the call.

Total tax liability means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Transient/temporary sale means a sale by any person who engages in a temporary business of selling and delivering goods within the City for a period of no more than seven consecutive days.

Transient/temporary vendor means any person who engages in the business of transient/temporary sales.

Use means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. The term "use" also includes the withdrawal of items from inventory for consumption.

Use tax means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

Wholesale sales means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this Chapter.

Wholesaler means any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

(Code 2012, § 5-15-2; Ord. No. 2432 , § 5-15-2, 9-19-2017; Ord. No. 2473 , § 1(5-15-2), 5-7-2019; Ord. No. 2508 , §§ 1—3, 7-4-2020)

Sec. 5-15-7. Exemption from sales tax.

There shall be exempt from the sales tax under the provisions of this Chapter, the following:

- (A) All sales to the United States Government, its states, their departments and institutions, and the political subdivisions thereof (including the City) in their governmental capacities only.
- (B) All sales made to religious and charitable corporations for use in the conduct of their regular religious or charitable functions and activities.
- (C) All sales which the City is prohibited from taxing under the Constitutions or laws of the United States or the State of Colorado or the Charter or ordinances of the City.
- (D) All sales of cigarettes and tobacco products.
- (E) All sales and purchases of rooms or accommodations under the provisions of Section 5-15-4(A)6 to any occupant who is a permanent resident of an apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered into a written agreement for occupancy for a room or rooms or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year.
- (F) All sales of motor fuel upon which there has accrued or has been paid the motor fuel tax prescribed by the Colorado Motor Fuel Tax of 1933 and amendments thereto.
- (G) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any Article, substance, commodity, which tangible personal property enters into the processing of or become an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this Chapter.
- (H) Sales and purchases of electricity, coal, fuel oil, gas or coke for use in processing, manufacturing, mining, refining, irrigation, building construction, telecommunication services, street and railroad transportation services and all industrial uses, the newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Chapter.
- (I) All sales and purchases of the following for use on farms or ranches for farming or ranching operations qualified by the City's Standard Municipal Home Rule Affidavit of Exempt Sale form:
 - (1) Feed for livestock, fish or poultry.
 - (2) Salt, seed, plants, orchard trees.
 - (3) Fertilizer, insecticides, herbicides, and chemicals or compounds.
 - (4) Twine, bailing wire, bags, boxes, other containers.
 - (5) Barbed wire and other fencing materials and posts; irrigation pipe and fixtures; grain bins; stock watering, feeding and handling equipment.
 - (6) Livestock, and poultry.
- (J) All sales and purchases of farm equipment, and parts for farm equipment, as defined under this Chapter.
- (K) The entire purchase or sale price of motor vehicles bearing a Vehicle Identification Number (VIN) and which are required to be registered under the Colorado Motor Vehicle Laws, whether new or used

under the following conditions, with the exception of 50 percent the purchase or sales price of a manufactured home subject to a building permit fees collected under Subsection (N) of this Section.

- (1) The purchaser, if a natural person, is not a resident of the City; and
 - (2) The vehicles or manufactured home is to be registered under an address outside of the City and will be primarily housed, located or occupied at such address or other place outside the City.
- (L) Sales of tangible personal property shall be exempted from the operation of this Chapter if both the following conditions exist:
- (1) The sales are to those who are residents or doing business outside the City; and
 - (2) The articles purchased are to be delivered to the purchaser outside the City by common carrier or by the conveyance of the seller or by mail.
- (M) All sales and purchases of medical supplies. Drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes, and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses, or hearing aids.
- (N) Fifty percent of the initial purchase price of any buildings or structures.
- (O) The entire purchase price in any subsequent sale of any buildings or structures severed from real estate.
- (P) The sale of construction materials. If such materials are delivered to the worksite and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid.
- (Q) The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the percent set forth in Section 5-15-4(A) as the City's sales and use tax rate. A credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the City's sales tax rate.
- (R) All sales and purchases of newspapers, whether in print or digital form.
- (S) Recycled paper carryout bags or single-use plastic carryout bags subject to the ten cent Carryout Bag Fee imposed upon businesses by C.R.S. 25-17-505.

(Code 2012, § 5-15-7; Ord. No. 2432 , § 5-15-7, 9-19-2017; Ord. No. 2473 , § 1(5-15-7), 5-7-2019)

ORDINANCE NO. 2590

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, AMENDING TITLE 5 CHAPTER 15 SECTIONS 2 AND 7, REGARDING A SALES TAX EXEMPTION FOR A FEE THE STATE OF COLORADO IS IMPOSING ON CARRYOUT BAGS.

WHEREAS, the City's Municipal Code is updated from time to time; and

WHEREAS, the City must implement a "Carryout Bag Fee," as designated by the State of Colorado through HB21-1162.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO that:

The following Sections of Title 5 Chapter 15 of the Official Code of the City of Montrose, Colorado are hereby amended to read in full as follows:

Sec. 5-15-2. Words and phrases defined.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Agricultural producer means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term "agricultural producer" includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.

Aircraft means a device that is used or intended to be used for flight in the air.

Aircraft part means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.

Aircraft simulator means a flight simulator training device (FSTD) as defined in Part I of title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.

Aircraft simulator part means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.

Airline company means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two or more points and publishes a flight schedule. Airline company shall not include operators whose aircraft are all certified for a gross takeoff weight of 12,500 pounds or less and who do not engage in scheduled service or mail carriage service.

Auction means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.

Automotive vehicle means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. The term "automotive vehicle" includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

Business means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.

Candy means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.

Carrier access services means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.

Carryout bag means a bag that is furnished to a customer at a store or retail food establishment at the point of sale for use by the customer to transport or carry purchased items. Carryout bag does not include:

- (1) A bag made of paper when the paper has a basis weight of thirty pounds or less;
- (2) A bag that a pharmacy provides a customer purchasing prescription medication;
- (3) A bag that a customer uses inside a store to:
 - a. Package loose or bulk items, such as fruits, vegetable, nuts, grains, candy, or greeting cards; nails, bolts, screws, or other small hardware items; live insects, fish, crustaceans, mollusks, or other small species; and bulk seed, bulk livestock feed, or bulk pet feed;
 - b. Contain or wrap frozen foods, meat, seafood, fish, flowers, potted plants, or other items that, if they were to come in contact with other items, could dampen or contaminate the other items; or
 - c. Contain unwrapped prepared foods or bakery goods; or
- (4) A laundry, dry cleaning, or garment bag.

Charitable organization means any entity which:

- (1) Has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code; and
- (2) Is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.

City or town means the municipality of the City of Montrose.

Coin means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this state, the United States or any foreign nation.

Coin-operated device means any device operated by coins or currency or any substitute therefor.

Collection costs shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.

Commercial packaging materials means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. The term "commercial packaging materials" does not include commercial shipping materials.

Commercial shipping materials means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. The term "commercial shipping materials" include but are not limited to, containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.

Community organization means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and general welfare of the community, so long as:

- (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual;
- (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and
- (3) Which does not participate in, or intervene in, including the publishing or distributing of statements, any political campaign on behalf of any candidate for public office.

Construction equipment means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.

Construction materials means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. The term "construction materials" includes, but is not limited to, such things as, asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms or other items which do not remain as an integral and inseparable part of a completed structure or project, are not construction materials.

Consumer means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.

Contract auditor means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.

Contractor means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For the purposes of this definition, the term "contractor" also includes subcontractor.

Cover charge means a charge paid to a club or similar entertainment establishment which may or may not entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.

Data processing equipment means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

Digital product means an electronic product, including, but not limited to, the following:

Digital audio works means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For the purposes of the definition of the term "digital audio works," the term "ringtones" means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

Digital audio-visual works means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

Digital books means works that are generally recognized in the ordinary and usual sense as books.

Digital images means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as photographs, logos, cartoons, or drawings.

Distribution means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shopper's guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.

Dual residency means those situations, including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for the purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.

Dwelling unit means a building or any portion of a building designed for occupancy as complete, independent living quarters for one or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.

Economic nexus means the connection between the City and a person not having a physical nexus in the State of Colorado, which connection is established when the person or marketplace facilitator makes retail sales into the City, and: (1) In the previous calendar year, the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended; or (2) In the current calendar year, 90 days has passed following the month in which the person, which includes a marketplace facilitator, has made retail sales into the state exceeding the amount specified in C.R.S. § 39-26-102(3)(c), as amended.

This definition does not apply to any person who is doing business in this state but otherwise applies to any other person.

Engaged in business in the City means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property, products, or services for storage, use or consumption, within the City. Engaged in business in the City includes, but is not limited to, any one of the following activities by a person:

- (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction;
- (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons;
- (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction;
- (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction;
- (5) Retailer or vendor in the state of Colorado that makes more than one delivery into the taxing jurisdiction within a 12-month period; or
- (6) Makes retail sales sufficient to meet the definitional requirements of economic nexus as set forth in 5-15-2.

Factory built housing means a manufactured home or modular home.

Farm closeout sale means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.

Farm equipment means any farm tractor, as defined in C.R.S. § 42-1-102(33), any implement of husbandry, as defined in C.R.S. § 42-1-102(44), and irrigation equipment having a per unit purchase price of at least \$1,000.00. The term "farm equipment" also includes, regardless of purchase price, attachments and bailing wire, binders twine and surface wrap used primarily and directly in any farm operation. The term "farm equipment" also includes, regardless of purchase price, parts that are used in the repair or maintenance of the farm equipment described in this definition, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, the term "farm equipment" does not include:

- (1) Vehicles subject to the registration requirements of C.R.S. § 42-3-103, regardless of the purpose for which such vehicles are used;
- (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation;
- (3) Maintenance and janitorial equipment and supplies; and
- (4) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.

Farm operation means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products:

- (1) Agricultural, viticultural, fruit, and vegetable products;
- (2) Livestock;
- (3) Milk;
- (4) Honey; and
- (5) Poultry and eggs.

Finance Director means the Finance Director of the City or such other person designated by the municipality; including such person's designee.

Garage sale means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally purchased for use by members of the household where such sale is being conducted. The term "garage sale" includes, but is not limited to, yard sales, estate sales, and block sales.

Gross sales means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.

Internet access services means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of internet access services.

Internet subscription service means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services, including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.

License means a City of Montrose sales and/or use tax license.

Linen services means services involving the provision and cleaning of linens, including, but not limited to, rags, uniforms, coveralls and diapers.

Lodging services means the furnishing of any rooms or accommodations by any person, partnership, association, corporation, estate, representative capacity or any other combination of individuals by whatever name known to a person who, for consideration possesses or has the right to use or possess any room, including, but not limited to, a hotel, inn, bed and breakfast, apartment, lodginghouse, short-term rental, motor hotel, guesthouse, guest ranch, trailer coach, mobile home, auto camp, trailer court and park, any portion of a dwelling unit or other area which accommodates a guest, or similar establishment, for a period of less than 30 days under any rental agreement, concession, permit, right of access, license to use, or other agreement.

Machinery means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term "machinery" includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.

Manufactured home means any preconstructed building unit or combination of preconstructed building units, without motive power, where such units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.

Manufacturing means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.

Marketplace means a physical or electronic forum, including, but not limited to, a store, a booth, an internet website, a catalog, or a dedicated sales software application, where tangible personal property, taxable products, or taxable services are offered for sale.

Marketplace facilitator means a person who:

- (1) Contracts with a marketplace seller or multichannel seller to facilitate for consideration, regardless of whether or not the consideration is deducted as fees from the transaction, the sale

of the marketplace seller's tangible personal property, products, or services through the person's marketplace;

- (2) Engages directly or indirectly, through one or more affiliated persons, in transmitting or otherwise communicating the offer or acceptance between a purchaser and the marketplace seller or multichannel seller; and
- (3) Either directly or indirectly, through agreements or arrangements with third parties, collects payment from the purchaser on behalf of the seller.

"Marketplace facilitator" does not include a person that exclusively provides internet advertising services or lists products for sale, and that does not otherwise meet this definition.

Marketplace seller means a person, regardless of whether or not the person is engaged in business in the City, which has an agreement with a marketplace facilitator and offers for sale tangible personal property, products, or services through a marketplace owned, operated, or controlled by a marketplace facilitator.

Medical marijuana means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition under Article XVIII, Section 14, of the State Constitution, and which person holds a valid registry identification card issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

Mobile machinery and self-propelled construction equipment means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally-operated or moved over the public highways. The term "mobile machinery and self-propelled construction equipment" includes, but is not limited to, wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.

Modular home means any structure that consists of multiple Sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed according to the building codes adopted by the state division of housing, created in C.R.S. § 24-32-706, and is designed to be installed on a permanent foundation.

Motor fuel means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term "motor fuel" does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.

Multichannel seller means a retailer that offers for sale tangible personal property, commodities, or services through a marketplace owned, operated, or controlled by a marketplace facilitator, and through other means.

Newspaper means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term "newspaper" does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.

Online garage sales means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller's household.

Parent means a parent of a student.

Person means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.

Photovoltaic system means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

Precious metal bullion means any precious metal, including, but not limited to, gold, silver, platinum, and palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.

Prepress preparation material means all materials used by those in the printing industry, including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and Veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.

Preprinted newspaper supplements shall mean inserts, attachments or supplements circulated in newspapers that:

- (1) Are primarily devoted to advertising; and
- (2) The distribution, insertion, or attachment of which is commonly paid for by the advertiser.

Prescription drugs for animals means a drug which, prior to being dispensed or delivered, is required by the Federal Food, Drug, and Cosmetic Act, 21 USC 301 et seq., as amended, to state at a minimum the symbol "Rx Only," and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.

Prescription drugs for humans means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 USC 301 et seq., as amended, to state at a minimum the symbol "Rx Only," and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.

Price or purchase price means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this Article, and, in the case of all retail sales involving the exchange of

property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if:

- (1) Such exchanged property is to be sold thereafter in the usual course of the retailer's business; or
- (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft.

Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

The term "price" or "purchase price" includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser if not separately stated.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

The term "price" or "purchase price" shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to, exchanges in Colorado. Out-of-state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

Private communications services means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

Prosthetic devices for animals means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Prosthetic devices for humans means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.

Purchase or sale means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. The term "purchase" or "sale" include capital leases, installment and credit sales, and property and services acquired by:

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services. The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property;
- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms "purchase" and "sale" do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;
- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (4) A transfer of a partnership or limited liability company interest;
- (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration, including, but not limited to, the assumption of a liability, is paid for the transfer of assets;
- (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
- (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
- (8) The transfer of assets from a subsidiary company or companies which are owned at least 80 percent by the parent company to a parent company or to another subsidiary which is owned at least 80 percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;

- (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this Article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company.

To such an extent, any transfer referred to in this Section shall constitute a sale. For the purposes of this Section, a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at 80 eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least 80 percent of the total number of shares of all other classes of stock.

Rail carrier means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.

Rail carrier part means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of a locomotive or rail car used by a rail carrier.

Recreation services means all services relating to athletic or entertainment participation events and/or activities, including, but not limited to, pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.

Recycled paper carryout bag means a carryout bag made from one hundred percent:

- (1) Recycled material; or
- (2) Other post-consumer content.

Renewable energy means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.

Resident means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.

Retail sales means all sales except wholesale sales.

Retailer or *vendor* means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. The term "retailer" shall include, but is not limited to, any:

- (1) Auctioneer;
- (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer;
- (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes;
- (4) Retailer-contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property;
- (5) Marketplace facilitator, marketplace seller, or multichannel seller.

Retailer-contractor means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.

Return means any form prescribed by the City administration for computing and reporting a total tax liability.

Sale that benefits a Colorado school means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

Sales tax means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.

School means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.

Security system services means electronic alarm and/or monitoring services. The term "security system services" does not include non-electronic security services such as consulting or human or guard dog patrol services.

Single-use plastic carryout bag means a carryout bag that is a single-use plastic product made predominantly of plastic derived from natural gas, petroleum, or a biologically based source such as corn or other plant sources, and that is provided to a customer at the point of sale.

Soft drink means a nonalcoholic beverage that contains natural or artificial sweeteners. The term "soft drink" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume.

Software as a service means software that is rented, leased or subscribed to from a provider and used at the consumer's location, including, but not limited to, applications, systems or programs.

Software license fee means a fee charged for the right to use, access, or maintain software programs.

Software maintenance agreement means an agreement, typically with a software provider, that may include

- (1) Provisions to maintain the right to use the software;
- (2) Provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or
- (3) Technical support.

Software program means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g.; a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. The term "software program" includes:

- (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer;
- (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as "canned off-the-shelf (COTS)," "mass produced" or "standardized";
- (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and

- (4) The generic terms "software," "software application," as well as "updates," "upgrades," "patches," "user exits," and any items which add or extend functionality to existing software programs.

Solar thermal systems means a system whose primary purpose is to use energy from the sun to produce heat or cold for:

- (1) Heating or cooling a residential or commercial building;
- (2) Heating or cooling water; or
- (3) Any industrial, commercial, or manufacturing process.

Sound system service means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. The term "sound system service" does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.

Special fuel means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term "special fuel" does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.

Special sales event means any sales event which includes more than three vendors taking place at a single location for a limited period of time not to exceed seven consecutive days.

Storage means any keeping or retention of, or to exercise dominion or control over, or possession of, for any length of time, tangible personal property, not while in transit, but on a stand-still basis, for future use when leased, rented or purchased at retail from sources either within or without the City, from any person or vendor.

Student means any person enrolled in a school.

Tangible personal property means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged; or that is in any other manner perceptible to the senses.

Tax means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.

Tax deficiency or *deficiency* means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.

Taxable sales means gross sales less any exemptions and deductions specified in this Code.

Taxable services means services subject to tax pursuant to this Code.

Taxpayer means any person obligated to collect and/or pay tax under the terms of this Code.

Telecommunications service means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications, including, but not limited to, voice, image, data and any other information, by the use of any means but not limited to, wire, cable, fiber optic cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-way communication. The term "telecommunications service" does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted to their exemption language.

Television and entertainment services means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.

Therapeutic device means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.

Toll free telecommunications service means a telecommunications service that allows a caller to dial a number without incurring an additional charge for the call.

Total tax liability means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.

Transient/temporary sale means a sale by any person who engages in a temporary business of selling and delivering goods within the City for a period of no more than seven consecutive days.

Transient/temporary vendor means any person who engages in the business of transient/temporary sales.

Use means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. The term "use" also includes the withdrawal of items from inventory for consumption.

Use tax means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.

Wholesale sales means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be retail sales and shall be subject to the provisions of this Chapter.

Wholesaler means any person doing an organized wholesale or jobbing business and selling to retailers, jobbers, dealers, or other wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.

Sec. 5-15-7. Exemption from sales tax.

There shall be exempt from the sales tax under the provisions of this Chapter, the following:

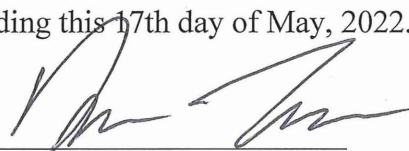
- (A) All sales to the United States Government, its states, their departments and institutions, and the political subdivisions thereof (including the City) in their governmental capacities only.
- (B) All sales made to religious and charitable corporations for use in the conduct of their regular religious or charitable functions and activities.
- (C) All sales which the City is prohibited from taxing under the Constitutions or laws of the United States or the State of Colorado or the Charter or ordinances of the City.
- (D) All sales of cigarettes and tobacco products.
- (E) All sales and purchases of rooms or accommodations under the provisions of Section 5-15-4(A)6 to any occupant who is a permanent resident of an apartment hotel, lodging house, motor hotel, guest house, guest ranch, mobile home, auto camp, trailer court or park, and who enters into or has entered into a written agreement for occupancy for a room or rooms or accommodations for a period of at least 30 consecutive days during the calendar year or preceding year.
- (F) All sales of motor fuel upon which there has accrued or has been paid the motor fuel tax prescribed by the Colorado Motor Fuel Tax of 1933 and amendments thereto.

- (G) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit or use, any Article, substance, commodity, which tangible personal property enters into the processing of or become an ingredient or component part of the product or service which is manufactured, compounded or furnished and the container, label or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this Chapter.
- (H) Sales and purchases of electricity, coal, fuel oil, gas or coke for use in processing, manufacturing, mining, refining, irrigation, building construction, telecommunication services, street and railroad transportation services and all industrial uses, the newsprint and printer's ink for use by publishers of newspapers and commercial printers shall be deemed to be wholesale sales and shall be exempt from taxation under this Chapter.
- (I) All sales and purchases of the following for use on farms or ranches for farming or ranching operations qualified by the City's Standard Municipal Home Rule Affidavit of Exempt Sale form:
 - (1) Feed for livestock, fish or poultry.
 - (2) Salt, seed, plants, orchard trees.
 - (3) Fertilizer, insecticides, herbicides, and chemicals or compounds.
 - (4) Twine, baling wire, bags, boxes, other containers.
 - (5) Barbed wire and other fencing materials and posts; irrigation pipe and fixtures; grain bins; stock watering, feeding and handling equipment.
 - (6) Livestock, and poultry.
- (J) All sales and purchases of farm equipment, and parts for farm equipment, as defined under this Chapter.
- (K) The entire purchase or sale price of motor vehicles bearing a Vehicle Identification Number (VIN) and which are required to be registered under the Colorado Motor Vehicle Laws, whether new or used under the following conditions, with the exception of 50 percent the purchase or sales price of a manufactured home subject to a building permit fees collected under Subsection (N) of this Section.
 - (1) The purchaser, if a natural person, is not a resident of the City; and
 - (2) The vehicles or manufactured home is to be registered under an address outside of the City and will be primarily housed, located or occupied at such address or other place outside the City.
- (L) Sales of tangible personal property shall be exempted from the operation of this Chapter if both the following conditions exist:
 - (1) The sales are to those who are residents or doing business outside the City; and
 - (2) The articles purchased are to be delivered to the purchaser outside the City by common carrier or by the conveyance of the seller or by mail.

- (M) All sales and purchases of medical supplies. Drugs dispensed in accordance with a prescription; insulin in all its forms dispensed pursuant to the direction of a licensed physician; glucose usable for treatment of insulin reactions; urine- and blood-testing kits and materials; insulin measuring and injecting devices, including hypodermic syringes, and needles; prosthetic devices; wheelchairs and hospital beds; drugs or materials when furnished by a doctor as part of professional services provided to a patient; and corrective eyeglasses, contact lenses, or hearing aids.
- (N) Fifty percent of the initial purchase price of any buildings or structures.
- (O) The entire purchase price in any subsequent sale of any buildings or structures severed from real estate.
- (P) The sale of construction materials. If such materials are delivered to the worksite and if the purchaser of such materials presents to the retailer a building permit or other documentation acceptable to the City evidencing that a local use tax has been paid.
- (Q) The sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed on the purchaser or user by another statutory or home rule municipality equal to or in excess of the percent set forth in Section 5-15-4(A) as the City's sales and use tax rate. A credit shall be granted against the City's sales tax with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed the City's sales tax rate.
- (R) All sales and purchases of newspapers, whether in print or digital form.
- (S) Recycled paper carryout bags or single-use plastic carryout bags subject to the ten cent Carryout Bag Fee imposed upon businesses by C.R.S. 25-17-505.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and the question of its passage on first reading on Tuesday, the 17th day of May, 2022, at the hour of 6:00 p.m. at the Elks' Civic Building in Montrose, Colorado.

INTRODUCED, READ and PASSED on first reading this 17th day of May, 2022.

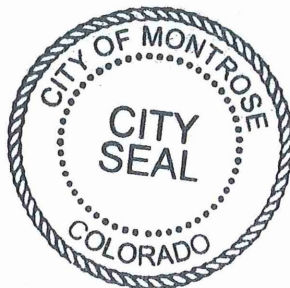


David Frank, Mayor

ATTEST:



Lisa DelPiccolo, City Clerk



INTRODUCED, READ and ADOPTED on second reading this 7th day of June, 2022.

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk



CITY OF MONTROSE
Planning Division and Office of the
City Manager

MEMO

TO: City Council
FROM: William Reis, Planner I
Ann Morgenthaler, Deputy City Manager
DATE: June 7, 2022
RE: 6700 Road DeJulio Addition
Exhibit A: Maps
Exhibit B: Approved Annexation Agreement
Exhibit C: Zoning Code Excerpt

City Council Consideration:

City Council is considering this annexation application and the associated initial zoning of the property, which is done by holding a hearing to consider a Resolution on the findings of fact regarding the annexation petition, consideration of the first reading of the annexation ordinance, and consideration of the first reading of the zoning ordinance.

Proposed schedule:

April 4, 2022:	Council Work Session Overview
April 19, 2022:	Council approval of annexation agreement
May 3, 2022:	Council Adoption of Resolution to set a hearing date
May 25, 2022:	Planning Commission initial zoning hearing
June 7, 2022:	City Council Annexation petition hearing, 1st reading of annexation ordinance, and 1st reading of zoning ordinance
June 20, 2022:	2nd reading of annexation and zoning ordinances and Council consideration of Official Act of the City plat

Application Background:

The 6700 Road DeJulio Addition is a proposed annexation approximately 9.54 acres in size. The property is comprised of one parcel located north of Sunnyside Road, south of Miami Road, west of 6720 road, and east of Laurel Lane and the Columbine East subdivision. It is within the City's Urban Growth Boundary, the City of Montrose Water Service Area, and the City of Montrose Sewer Service Area. Annexation of this property will allow for future residential development and the dedication of the 6700 Road Extension right-of-way. Details regarding the dedication of the right-of-way and future development rights are included in the Annexation

and Development Agreement, which was reviewed and approved by City Council at the April 19, 2022 City Council meeting.

Annexation Agreement Details:

The annexation agreement set the framework for the details of this proposed annexation and the dedication of the 6700 Road right-of-way, but did not approve the annexation application. The executed annexation agreement is included with this packet.

The annexation agreement includes, but is not limited to, the following main elements and commitments:

1. Grant of the following variations from the Land Use Code to facilitate compatible development of the remnant parcels:
 - Minimum lot depth of 90 feet (vs. 125 feet typical of the R-1A zoning district)
 - Minimum front setback of 20 feet (vs. 25 feet typical of the R-1A zoning district).
 - One shared driveway access to 6700 Road per two parcels with a turnaround to avoid backing onto the roadway.
2. City Purchase of the 6700 Extension rights of way and easements at a cost of \$291,300.00. This value was based on appraisals of the property and includes the existing single family residence on the property. The dedication will be performed through the creation of an “Official Act of the City” plat similar to recent dedications on other City roadway projects. The residence is required to be vacant before closing on the land.
3. City Design of the 6700 Road extension project in 2022. This design project was included in the approved 2022 capital budget.
4. City recommend construction of the 6700 Road extension in the 2023 budget. This project is expected to cost approximately \$3.5M to complete (2022 dollars). The proposed road template would be the same as the recently-completed South Hillcrest Extension and would include the extension of water and sewer mainlines within the roadway.
5. City prepare a preliminary plat for the landowners to develop approximately 12 half-acre lots on the remnant parcels each side of 6700 Road. The owners would remain responsible for installation of remaining infrastructure (power, comm, and natural gas) as well as final platting of these lots if they choose to move forward with development.
6. Following the City’s approval of the annexation, zoning, and Official Act of the City applications, City staff will schedule a closing date with the landowners to purchase the right-of-way and record all related documents. If the City does not approve the applications, the City and the landowners have the right to renegotiate the terms of the annexation and development agreement.

Proposed Zoning: R-1A, Large Estate District

Applicant: Paul and Ben DeJulio, Owners



Staff Analysis:

1. The City-County IGA gives the City the option to annex properties within the IGA. The area is urbanizing and more than 1/6 of the perimeter is contiguous to the city limits. These factors support annexation.
2. An annexation agreement is required as a condition of this annexation.
3. Zoning Regulations
 - a. Municipal Code, Section, 4-4-29(B), Zoning of Additions. "The Planning Commission shall recommend to the Council a zoning district designation for all property annexed to the City not previously subject to City zoning, and shall follow the review procedure set out in Section 4-4-31 in arriving at its recommendation. Proceedings concerning the zoning of property to be annexed may be commenced at any time prior to the effective date of the annexation ordinance or thereafter. *The zoning designation for newly annexed property shall not adversely affect the public health, safety and welfare* (emphasis added)."
 - b. Municipal Code, Section 4-4-5(A) Intent: The "R-1A" Large Estate District and "R-1B" Small Estate District are intended to provide an area of large single-family residential lots with a semi-rural environment.
 - c. The proposed zoning is compatible with existing zoning and general conditions in the area. The property is adjacent to properties that are zoned "R-1A" Large Estate District.
4. The Comprehensive Plan Future Land Use Map designates the area of the 6700 Road DeJulio Addition as Residential Mixed Density Low.
5. The property is located within Growth Area 1. According to the Comprehensive Plan, Growth Area 1 represents the most cost-efficient areas for the City to grow and comprises platted but unbuilt lots, annexed but unplatted land, and un-annexed small enclaves.
6. The proposed initial zoning of R1-A zoning district does not appear to be adverse to the public health, safety and welfare.

Future Actions:

The dedication of the 6700 Road Right of Way and creation of the two "remnant parcels" will occur via an Official Act of the City plat, which is scheduled to be considered by City Council on June 20, 2022, along with consideration of the second reading of the annexation ordinance and consideration of the second reading of the zoning ordinance.

Staff Recommendation:

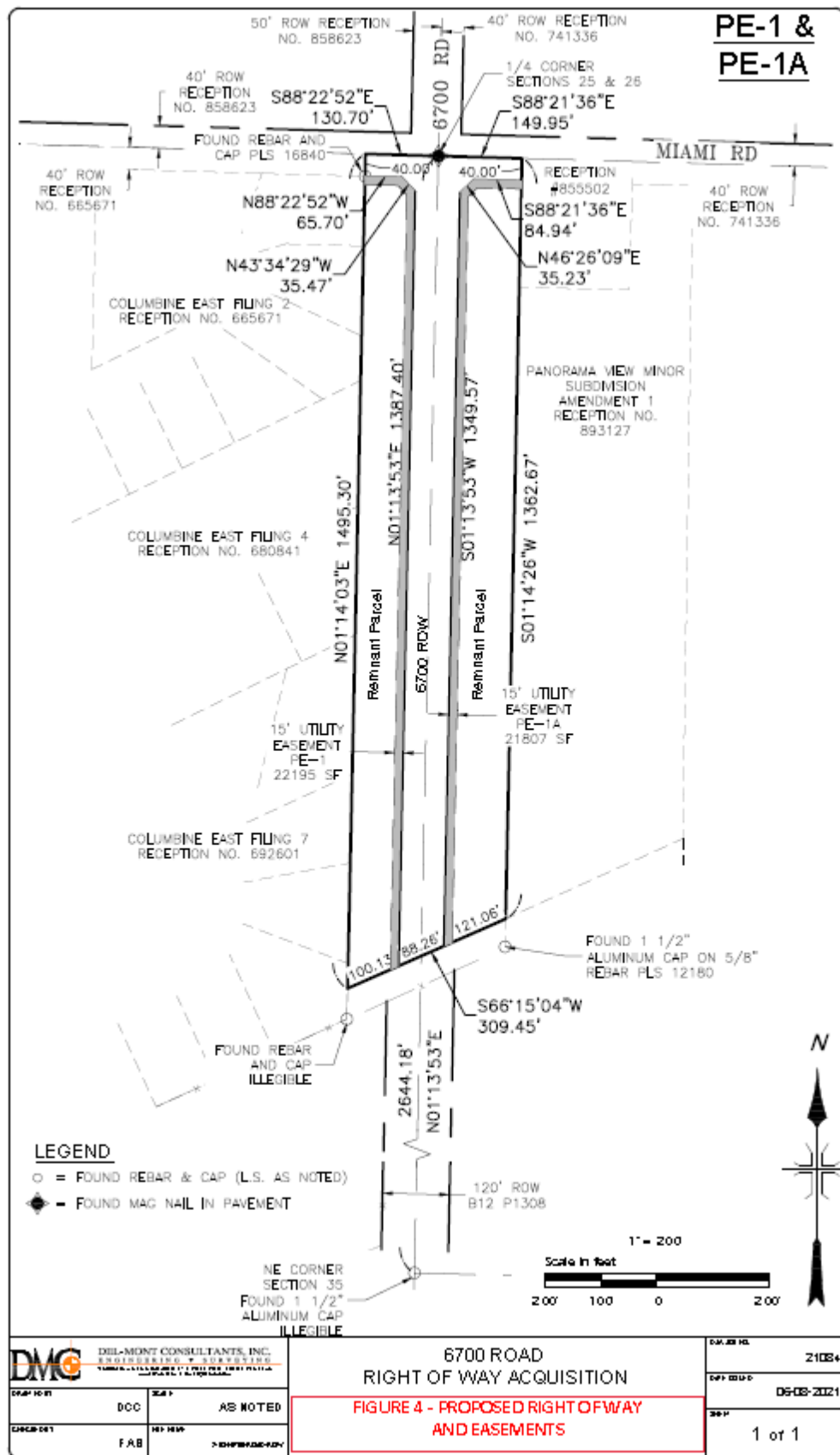
Staff recommends approval of the Resolution on the findings of fact regarding the annexation petition, approval of the first reading of the annexation ordinance, and approval of the first reading of the zoning ordinance.



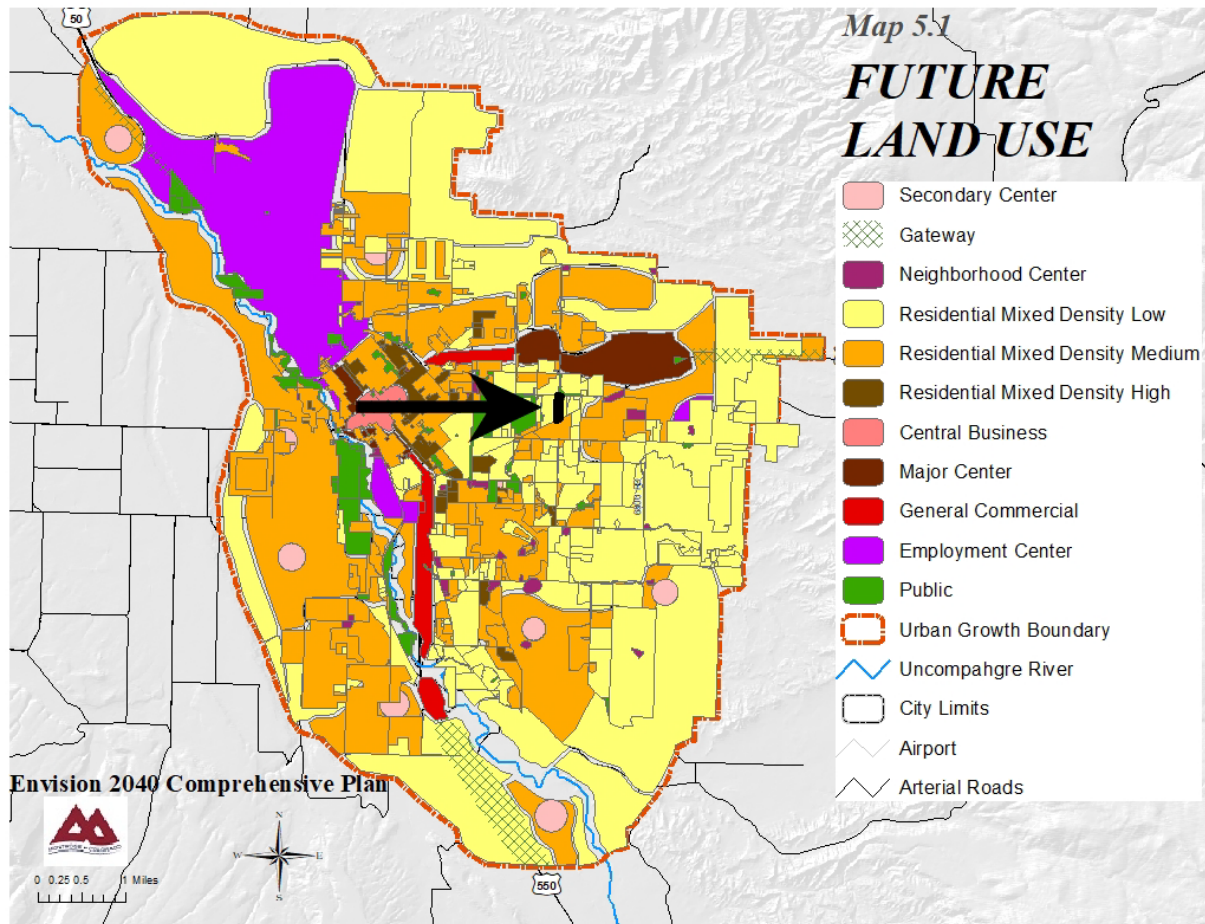
Exhibit A: Maps

Vicinity Map





Comprehensive Plan Future Land Use Map



Growth Areas Map

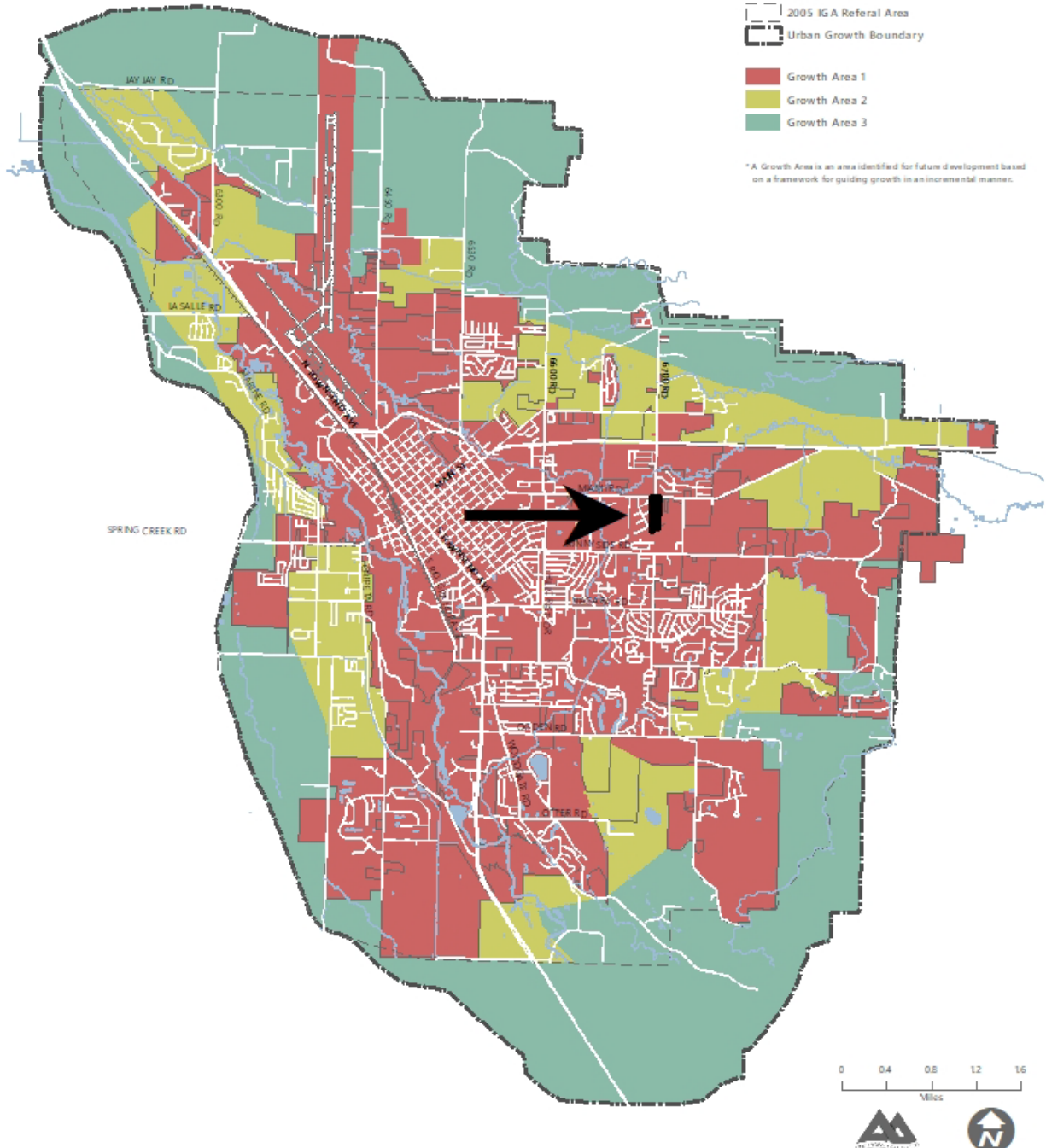
GROWTH AREAS*

MAP 5.2

LEGEND

-  City Limits
-  2005 IG A Referral Area
-  Urban Growth Boundary
-  Growth Area 1
-  Growth Area 2
-  Growth Area 3

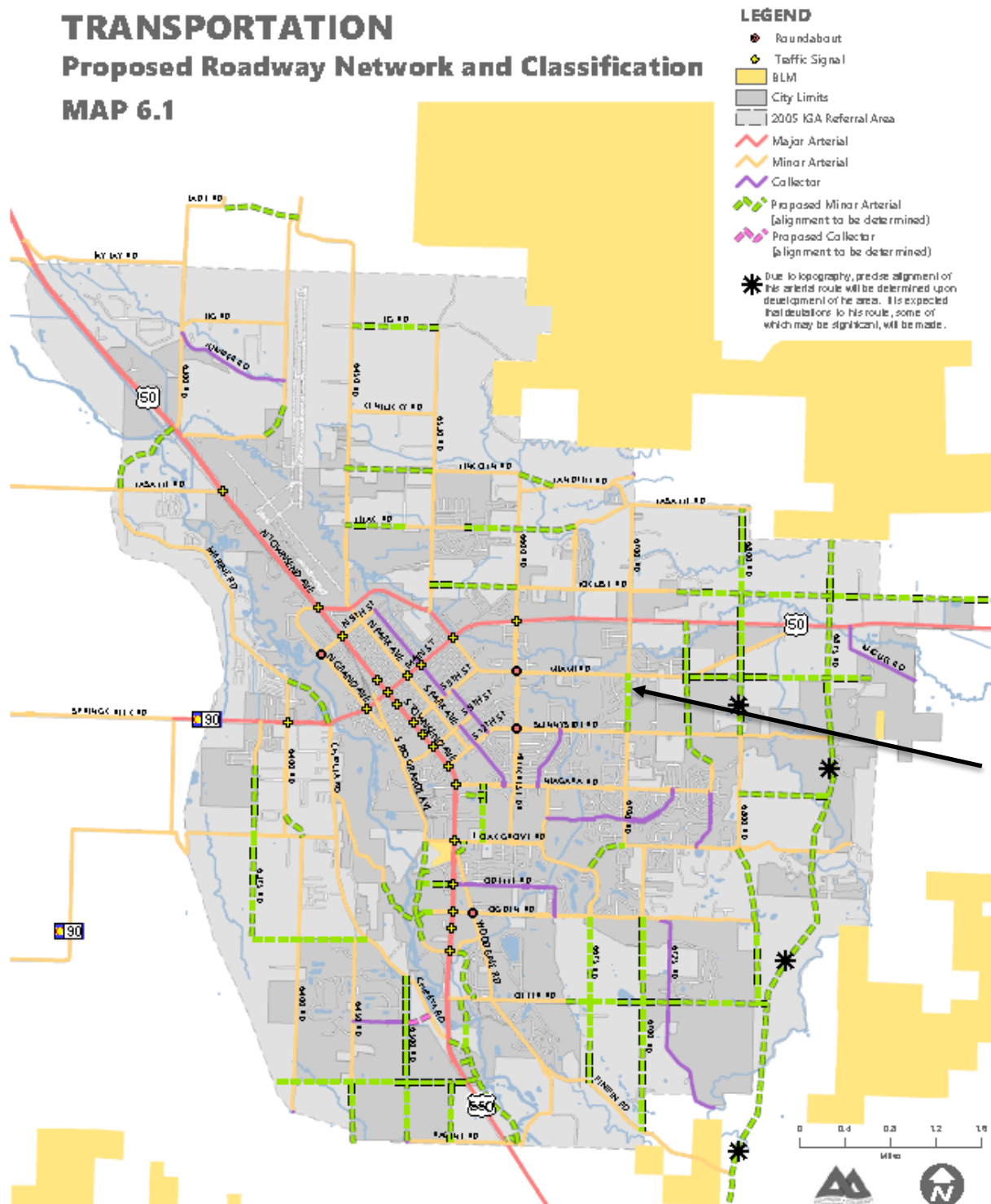
*A Growth Area is an area identified for future development based on a framework for guiding growth in an incremental manner.



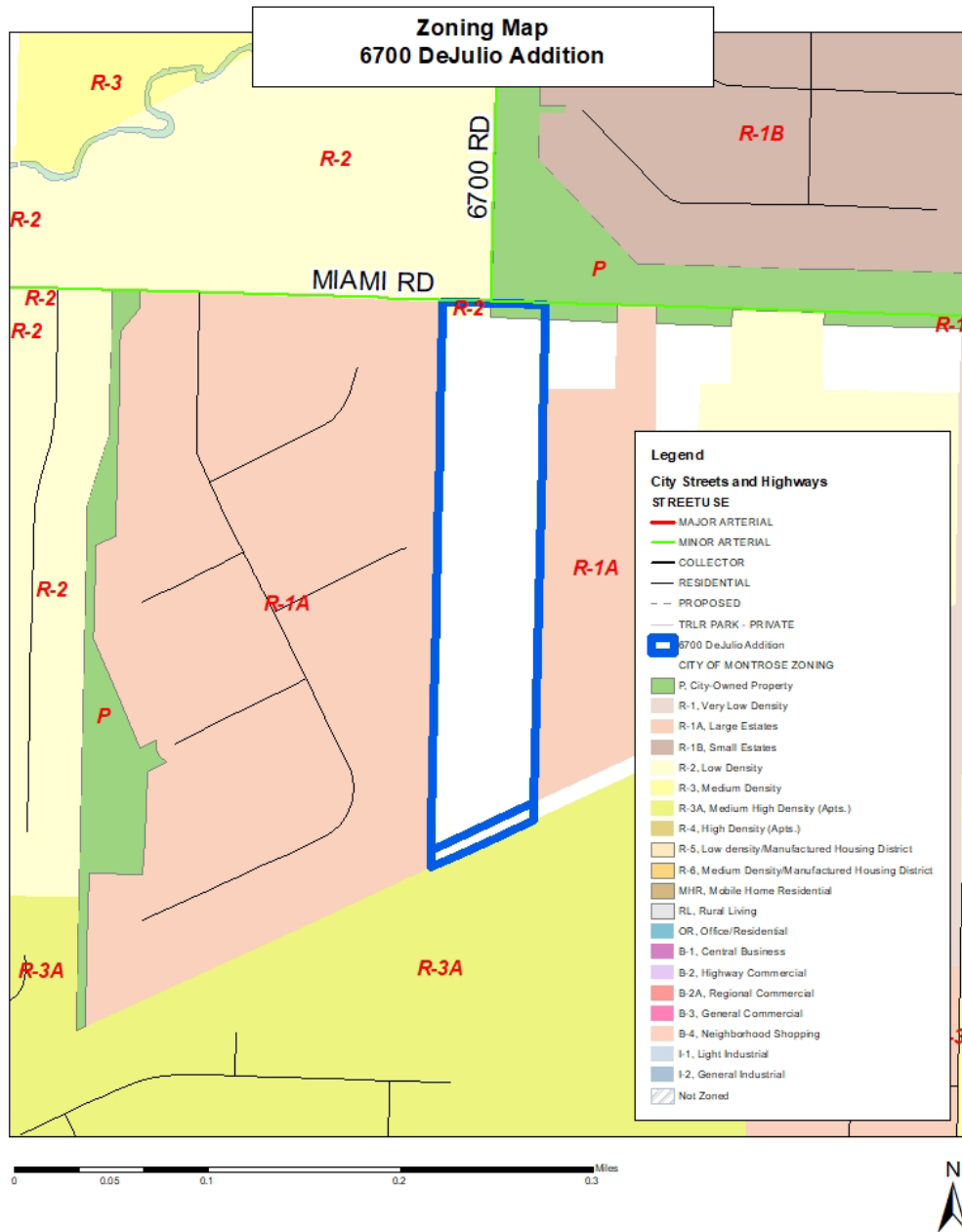
TRANSPORTATION

Proposed Roadway Network and Classification

MAP 6.1

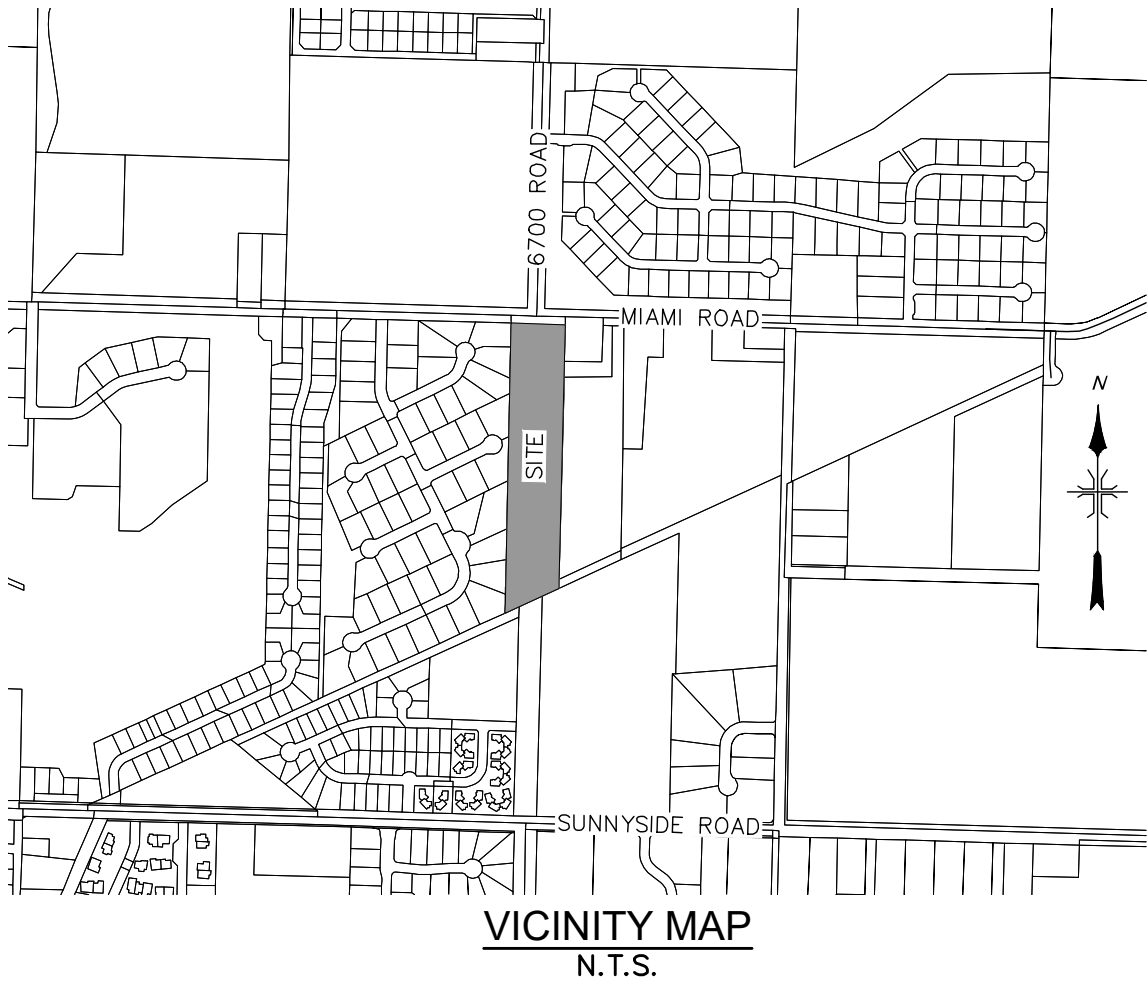


Zoning Map



6700 DEJULIO ADDITION

SITUATED IN SECTIONS 25 & 26, TOWNSHIP 49 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN
CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO



LEGEND

- //// CITY LIMITS
—— PROPERTY BOUNDARY / LIMITS OF ANNEXATION

CITY LIMITS

TOTAL PERIMETER = 3494.96'
PERIMETER CONTIGUOUS TO CITY LIMITS = 3244.23'

NOTES:

THIS PLAT DOES NOT CONSTITUTE A BOUNDARY SURVEY. IT IS A COMPILATION OF EXISTING RECORDS FOR THE PURPOSE OF ANNEXATION.

COVENANTS, CONDITIONS, AND AGREEMENTS PRESENTED IN THE 6700 DEJULIO ADDITION ANNEXATION AND DEVELOPMENT AGREEMENT RECORDED AS RECEPTION NO. WITH THE MONTROSE COUNTY CLERK AND RECORDER SHALL RUN WITH THE LAND BEING ANNEXED BY THIS PLAT.

PROPERTY DESCRIPTION

A parcel of land situated in Sections 25 & 26, Township 49 North, Range 9 West, New Mexico Principal Meridian, County of Montrose, State of Colorado, being better described as beginning at a point S01°13'53"W 30.00 feet from the 1/4 corner common to said Sections 25 & 26;
Thence S88°21'36"E 149.95 feet;
Thence S01°14'26"W 1381.85 feet;
Thence S85°15'25"W 312.01 feet;
Thence N01°14'03"E 1520.45 feet;
Thence S88°22'52"E 130.70 feet to the Point of Beginning.
Containing 9.35 Acres more or less as described.

SURVEYOR'S CERTIFICATE

I, Frederick A. Ballard, a Registered Land Surveyor in the State of Colorado, do hereby certify 6700 DEJULIO ADDITION Annexation Map was prepared under my direct supervision.

PRELIMINARY

Frederick A. Ballard, P.L.S.
Registration No. 37690

MAYOR'S CERTIFICATE

This is to certify that the City of Montrose, a municipal corporation in the County of Montrose, State of Colorado has by its Ordinance No. _____ adopted on the _____ day of _____, 20____, annexed the property hereon to the City of Montrose.

Mayor

Attest: _____
City Clerk

CLERK AND RECORDER'S CERTIFICATE

This map was filed for record in the office of the Clerk and Recorder of Montrose County, Colorado, at the time of _____ on the _____

day of _____, 20____ under Reception No. _____

Clerk and Recorder
Montrose County, Colorado

Deputy

TITLE: 6700 ROAD RIGHT OF WAY
AN OFFICIAL ACT OF THE CITY OF MONTROSE

CLIENT: CITY OF MONTROSE

ADDRESS & PHONE:



DEL-MONT CONSULTANTS, INC.
ENGINEERING & SURVEYING
125 Colorado Ave. • Montrose, CO 81401 • (970) 245-2251 • (970) 245-2242 FAX
www.del-mont.com • service@del-mont.com

FIELD BOOK:

DRAWN BY:

DATE:

DCC

2022-05-06

SHEET:

FILE:

JOB NO.:

TYPE:

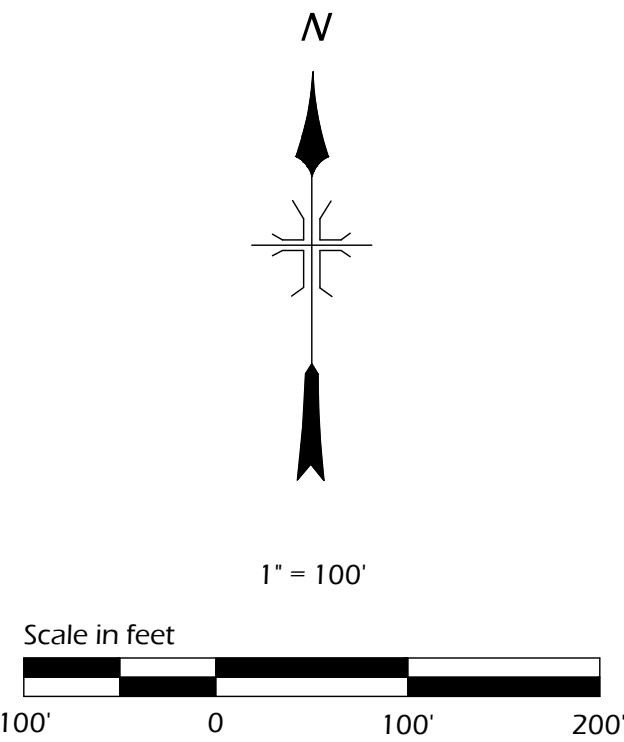
1 of 1

21084V_ANNEX

21084

PLAT

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.



FOUND REBAR
AND CAP
ILLEGIBLE

SUNNYSIDE DEVELOPMENT ADDITION
BOOK 12 PAGE 1261

FOUND 1 1/2" ALUMINUM CAP ON 5/8" REBAR PLS 12180

RAILROAD RIGHT OF WAY NOT
PREVIOUSLY ANNEXED

S85°15'25"W 312.01'

PANORAMA VIEW ADDITION
RECEPTION NO. 889501

9.35 ACRES

SECTION 26
SECTION 25

1/4 CORNER
SECTIONS 25 & 26

S01°13'53"W 30.00'

S88°22'52"E

S88°21'36"E

130.70'

149.95'

6700 RD

SUNRICH ADDITION NO. 2
RECEPTION NO. 642091

SUNRICH ADDITION NO. 1
BOOK 13 PAGE 259

SUNRICH ADDITION NO. 2
RECEPTION NO. 642091

**ANNEXATION AND DEVELOPMENT AGREEMENT
6700 DEJULIO ADDITION**

This Annexation and Development Agreement (the “**Agreement**”) is entered into and effective as of the 20th day of April, 2022 (the “**Effective Date**”) by and between the City of Montrose, Colorado (the “**City**”), and Ben and Paul DeJulio (the “**Developer**”) (each individually referenced herein as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, the Developer is the joint owners of the real property located in Montrose County, Colorado and described in **Exhibit A** (the “**Property**” or the “**6700 DeJulio Addition**”). Parcels described in **Exhibit A** are approximately 9.35 total acres, are currently within unincorporated Montrose County, and are planned to be annexed into the City as the “**6700 DeJulio Addition;**” and

WHEREAS, the Developer is requesting that the City annex and zone the 6700 DeJulio Addition to allow for the coordinated development of the Property to the benefit of both Parties; and

WHEREAS, the City of Montrose comprehensive plan calls for the eventual extension of 6700 Road (the “**6700 Road Extension**”) as a minor arterial roadway between Sunnyside and Miami Roads, passing through the 6700 DeJulio Addition. Within the 6700 DeJulio Addition, the 6700 Road Extension would generally occupy the rights of way and easements shown in **Exhibit B**; and

WHEREAS, continued regional traffic growth has made construction of the 6700 Road Extension a high-priority capital project for the City of Montrose. To that end, City Staff are currently planning to construct the 6700 Road Extension in 2023 subject to City Council budget appropriation. Construction of the roadway shall include water, sewer, and drainage infrastructure as well as curb, gutter, sidewalks, and paving; and

WHEREAS, with the 6700 Road Extension passing through the 6700 DeJulio Addition, two “**Remnant Parcels**” approximately 90 to 110 feet deep will be created on either side of the 6700 Road Extension within the 6700 DeJulio Addition, all as shown in **Exhibit B**.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants, conditions, and agreements of the Parties contained herein, the receipt and sufficiency of which are hereby acknowledged and accepted, the Parties hereby agree as follows:

AGREEMENT

- 1. CONSENT TO ANNEXATION.** The Developer hereby consents to the annexation of the 6700 DeJulio Addition subject to the terms of the Petition for Annexation and this Agreement. In the event the City enters into this Agreement prior to approval by the City Council of the annexation and zoning ordinances, the Parties agree that this Agreement shall not be binding upon the Parties unless and until the City Council approves said ordinances and the Official Act of the City Plat as described herein.

2. **ZONING.** The City agrees to consider zoning the 6700 DeJulio Addition to be within the R-1A Zoning District. This initial zoning shall be considered by the City Planning Commission, and subsequently by the City Council for approval by ordinance immediately after, and at the same public hearing, as its consideration of an ordinance annexing the Property.
3. **6700 ROAD EXTENSION DEDICATION.** The Developer agrees to dedicate right of way and utility easements to the City of Montrose as shown in **Exhibit B** for construction of the 6700 Road Extension. The manner of dedication shall be by express conveyance on the Official Act of the City Plat, as described in Section 4. Such property shall be solely titled in the Developer, vacant and free of any encumbrances, occupants or rental leases at the time of dedication. In exchange for this dedication, the City agrees to pay the Developer \$291,300.00 based on land appraisals and as outlined in **Exhibit C**.
4. **ANNEXATION, ZONING, PLATTING AND DEDICATION PROCESS.** City and Developer agree that the process for annexation, zoning, initial platting, and dedication will include the following key events and tasks in the general order presented:
 - a. Consideration and execution of this Agreement by Developer.
 - b. Consideration and execution of this Agreement by City Council.
 - c. City deposits purchase funds for 6700 Road Extension rights of way and easements into an escrow account with a mutually-agreed-upon title company pursuant to **Exhibit C**.
 - d. Submittal of annexation petition prepared by the City and executed by the Developer.
 - e. Submittal of zoning application prepared by the City and executed by the Developer. It is understood that Developer intends to request R-1A zoning (Large Estate District) for the 6700 DeJulio Addition.
 - f. Preparation of an Official Act of the City Plat by the City to serve as the means of dedication for the 6700 Road Extension rights of way and easements and to legally describe the two remaining remnant parcels each side of the 6700 Road Extension right of way.
 - g. Combined hearing on annexation and zoning set by City Council resolution.
 - h. Consideration of zoning application by City Planning Commission.
 - i. Combined hearing on annexation and zoning applications and consideration of the Official Act of the City right of way dedication plat by City Council.
 - j. Upon conclusion of the combined hearing, action by the City Council on the annexation ordinance, zoning ordinance, and Official Act of the City Plat as outlined in Section 5 of this Agreement.
5. **EFFECTIVENESS OF ACTIONS; RECORDING**
 - a. In the event the annexation and zoning ordinances and the Official Act of the City Plat are approved following the combined hearing, as soon thereafter as a mutually-agreed time can be set, the Parties shall hold a closing event with the title company, as described at subsection 5.b. In the event any one of the three (3) foregoing approvals are not granted, the Developer reserves the right to withdraw the annexation petition and zoning application, this Agreement shall be null, void and of no effect and both Parties shall be relieved from all obligations hereunder. Thereafter the Parties may choose to renegotiate the terms of their agreement, or not, in their sole and individual discretion. It is the express intent of the Parties that all of the foregoing actions must be approved by the

Parties, and that the failure to approve any one of the same shall render the approval of all of the remaining actions void.

- b. At the closing event with the title company, the following actions shall be taken in order: (i) execution by the City officials of the annexation and zoning ordinances and the Official Act of the City Plat, (ii) execution of the Official Act of the City Plat by the Developer; (iii) release of the purchase funds from escrow to the Developer, and (iv) any other necessary instruments executed by the Parties as required by the title company. Following the closing, the title company shall be instructed to record documents with the Montrose County Clerk and Recorder in the following order: (i) annexation ordinance and map pursuant to CRS 31-12-113; (ii) zoning ordinance; and (iii) Official Act of the City Plat.

6. INFRASTRUCTURE COMMITMENTS. Following recording of the documents as described in Section 5 of this Agreement, City shall perform detailed civil design and construction of the 6700 Road Extension to include water, sewer, and drainage infrastructure as well as curb, gutter, sidewalks, paving, and culvert or casing crossings as necessary to accommodate conveyance of irrigation water across the roadway to serve the remnant parcels. Curb and gutter installation shall include curb cuts at the anticipated driveway locations for future residential lots adjacent to 6700 Road within the 6700 DeJulio Addition. Project design is scheduled to be completed in 2022 and costs for design have been included in the City's 2022 capital budget. City staff shall recommend construction of the 6700 Road Extension in the City's 2023 capital budget. Final adoption of all budget items is subject to City Council approval. As part of the 6700 Road Extension construction, City shall install water and sewer mains which shall run the length of the 6700 Road Extension and include up to twelve (12) water and twelve (12) sewer service stubs to likely future lots within the Remnant Parcels.

7. FUTURE DEVELOPMENT; VESTED RIGHTS. The following considerations apply to any future development within the 6700 DeJulio Addition:

- a. With the exception of the following variations or exceptions and/or otherwise expressly approved by the City, all development shall be performed in accordance with applicable City standards and specifications, subdivision regulations, and any other applicable local, state, or federal regulations in place at the time of development. The following variations and exceptions to the Land Use Code are agreed upon:
 - i. A minimum lot depth of no less than 90 feet shall be allowed for lots within the 6700 DeJulio Addition due to physical space constraints. This minimum lot depth allowance shall be vested pursuant to Colorado Revised Statutes Title 24-68-103(1) in perpetuity as of the Effective Date of this Agreement and a note to the same effect shall be included on the Official Act of the City plat; and
 - ii. A minimum front setback of no less than 20 feet shall be allowed for lots within the 6700 DeJulio Addition. This minimum setback allowance shall be vested pursuant to Colorado Revised Statutes Title 24-68-103(1) in perpetuity as of the Effective Date of this Agreement and a note to the same effect shall be included on the Official Act of the City plat; and
 - iii. Any development of the Remnant Parcels shall only be allowed one driveway access to 6700 Road per each two platted lots. Driveways shall be configured with a turnaround area as to avoid the need for vehicles to back onto the 6700 Road Extension; and

- iv. Open space dedications shall not be required.
 - v. The Parties agree that the variations and exceptions to the Land Use Code described only in this Subsection 7.a constitute a development agreement for vested rights pursuant to CRS 24-68-104(2), and the City shall publish the required notice of the same pursuant to CRS 24-68-103(1)(c).
- b. Within one year of the recording of the Official Act of the City Plat, upon request by and consent of the Developer, City shall, at its cost, prepare for submission by the Developer, a subdivision sketch plan, infrastructure plans, and preliminary subdivision plat to subdivide the Remnant Parcels into six (6) approximately half (½)-acre lots located on each side of the 6700 Road Extension (for a total of 12 lots). Subdivision documents and infrastructure plans shall be prepared in cooperation with and subject to approval by the Developer prior to submission. The City shall waive the application and review fees for the sketch plan and preliminary plat. Infrastructure plans shall include power, communications, and natural gas (if desired). Water and sewer infrastructure plans will be included in the City's design of the 6700 Road Extension and, as a result, will not need to be included in the subdivision infrastructure plans. The location of private irrigation easements, if required, will be determined in coordination with the developer and included in platting documents at their direction. City Staff do not have the authority to approve subdivision plats of this anticipated scope; these applications will be reviewed by the City Planning Commission and City Council through public processes.
- c. If Developer choses to move forward with the development of Remnant Parcels into residential lots, Developer will be required to construct and/or install all remaining utilities required by the preliminary plat approval including but not limited to power/communication utilities and, if desired, natural gas, and then submit a final subdivision plat application to the City for consideration by City Council once remaining utility construction is complete.
- d. All building permits issued within the 6700 DeJulio Addition shall be subject to applicable taxes and fees in place at the time of building permit issuance. This includes, but is not limited to, applicable sales and use taxes, utility connection fees, parks-in-lieu fees, City Operations and Police Service (COPS) fees, and school-land dedication fees.

8. GENERAL TERMS AND CONDITIONS

- a. **Counterparts; Electronic Execution.** This Agreement may be executed in two or more counterparts, all of which shall constitute a single instrument, and by one or more of the Parties by facsimile or e-mail transmitted signature and both Parties agree that the delivery of an executed counterpart hereby by facsimile or e-mail will have the same force and effect as the delivery of an original executed counterpart hereof.
- b. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the City, its officials, employees, contractors, or agents, or any other person acting on behalf of the City and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.
- c. **Signature Authority; Successors and Assigns.** Signators for each Party hereby confirm he or she is an authorized agent of the respective Party and has the full power and authority to execute and deliver this Agreement as a binding document of the Party. The promises made

in this Agreement by the Developer shall be deemed to have been made by any corporation or other business affiliated with Developer that acquires ownership or possession of all or any portion of the 6700 DeJulio Addition. This Agreement shall be binding upon the successors and assigns of the Parties.

- d. **Remedies.** The Parties waive entitlement to claim or receive any form of monetary damages, including but not limited to remedial, compensatory, punitive, liquidated or economic, including lost profits. The sole remedy available to the Parties shall be specific performance of this Agreement.
- e. **Effective Date.** This Agreement shall become effective on the date that it is executed and delivered and has been approved by the City Council. If the City Council considers but does not adopt an ordinance annexing the 6700 DeJulio Addition, this Agreement shall become null and void and of no force or effect whatsoever. If the City does not annex the 6700 DeJulio Addition, no party will be liable to any other for any costs that the other party has incurred in the negotiation of this Agreement or in any other matter related to the potential annexation.
- f. **Notices.** Whenever notice is required or permitted hereunder from one party to the other, the same shall be in writing and shall be given effect by hand delivery, or shall be effective three (3) days after being mailed by certified mail, return receipt requested, to the party for whom it is intended. Notices to any of the Parties shall be addressed as follows:

City of Montrose
Attn: City Manager
433 South First Street
Montrose, CO 81401

Developer
Paul and Ben DeJulio
305 Sortais Road
Durango, CO 81301

- g. **Waiver.** No waiver by the City or Developer of any term or condition of this Agreement shall be deemed to be construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.
- h. **Applicable Law/Severability.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. Jurisdiction and venue for any dispute concerning this Agreement shall be proper and exclusive in the district court for Montrose County, Colorado. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any application thereof to a particular situation shall be held invalid by a court of competent jurisdiction, such provision or application thereof shall be ineffective only to the extent of such invalidity without invalidating the remainder of such provision or any other provision of this Agreement.
- i. **No Waiver of Legislative Authority.** Nothing contained in this Agreement shall constitute or be interpreted as a repeal of the City's Charter, Code or ordinances or as a waiver of abnegation of the City's legislative, governmental, or police powers to promote and protect the health, safety, or general welfare of the municipality or its inhabitants; nor shall this Agreement prohibit the enactment by the City of any fee permitted under the law.
- j. **Term of Agreement.** This Agreement shall be perpetual in duration unless the City Council fails to adopt an ordinance annexing the Property on or before September 1, 2022 in which case the Agreement shall terminate on that date unless agreed upon to extend in writing by both Parties.

k. **Annexation or Zoning Challenged by Referendum or Judicially.** If the ordinance(s) annexing and/or zoning of the 6700 DeJulio Addition or any portion thereof be challenged by citizen initiative, referendum, or otherwise, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election or court proceeding. Should any such challenge result in the repeal (by the Council or at election) or invalidity of the annexation or zoning ordinance(s) upon entry of a final order of court which is unappealable or which the parties have elected not to appeal, then, similarly, the annexation of the Property shall be null, void and of no effect, and the annexation ordinance and map shall not be filed with the Montrose County Clerk & Recorder pursuant to C.R.S. § 31-12-113(2). If the referendum challenge fails, the Developer and the City shall continue to be bound by all the terms and provision of this Agreement. In the event the annexation of the 6700 DeJulio Addition or any portion thereof is voided by final action of any court (such action not being associated with a referendum of initiative action), the City and the Developer shall cooperate to cure the legal defect which resulted in disconnection of the Property, and upon such cure this Agreement shall be deemed to be an agreement to annex the 6700 DeJulio addition to the City pursuant to C.R.S. 31-12-121, as amended. The Developer shall reapply for annexation when the 6700 DeJulio Addition becomes eligible for annexation as determined and requested by the City.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the Effective Date.

CITY OF MONTROSE, COLORADO

By: [Signature]
Doug Gaspell, Mayor
David Frank

DEVELOPER

By: [Signature]
Paul DeJulio

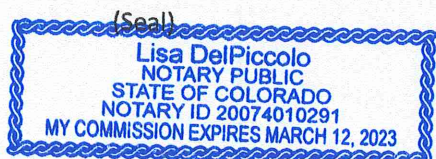
By: [Signature]
Ben DeJulio

State of Colorado)
) ss.
County of Montrose)

The foregoing instrument was acknowledged before me this 30th day of April, 2022, by Douglas Gaspell, Mayor of the City of Montrose, Colorado.
David Frank

Witness my hand and official seal.

My commission expires: 03/12/2023



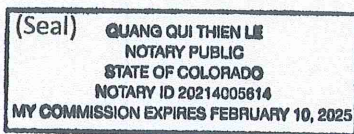
[Signature]

Notary

State of Colorado)
) ss.
County of Jefferson)

The foregoing instrument was acknowledged before me this 29th day of March, 2022, by Paul DeJulio.

Witness my hand and official seal.
My commission expires: 02/10/2025.



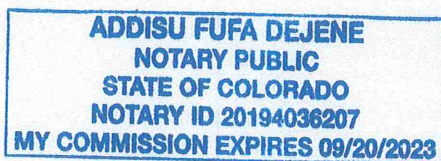
Quang Qui Thien Le
Notary

State of Colorado)
) ss.
County of Denver)

The foregoing instrument was acknowledged before me this 28th day of March, 2022, by Ben DeJulio.

Witness my hand and official seal.
My commission expires: 09/20/2023.

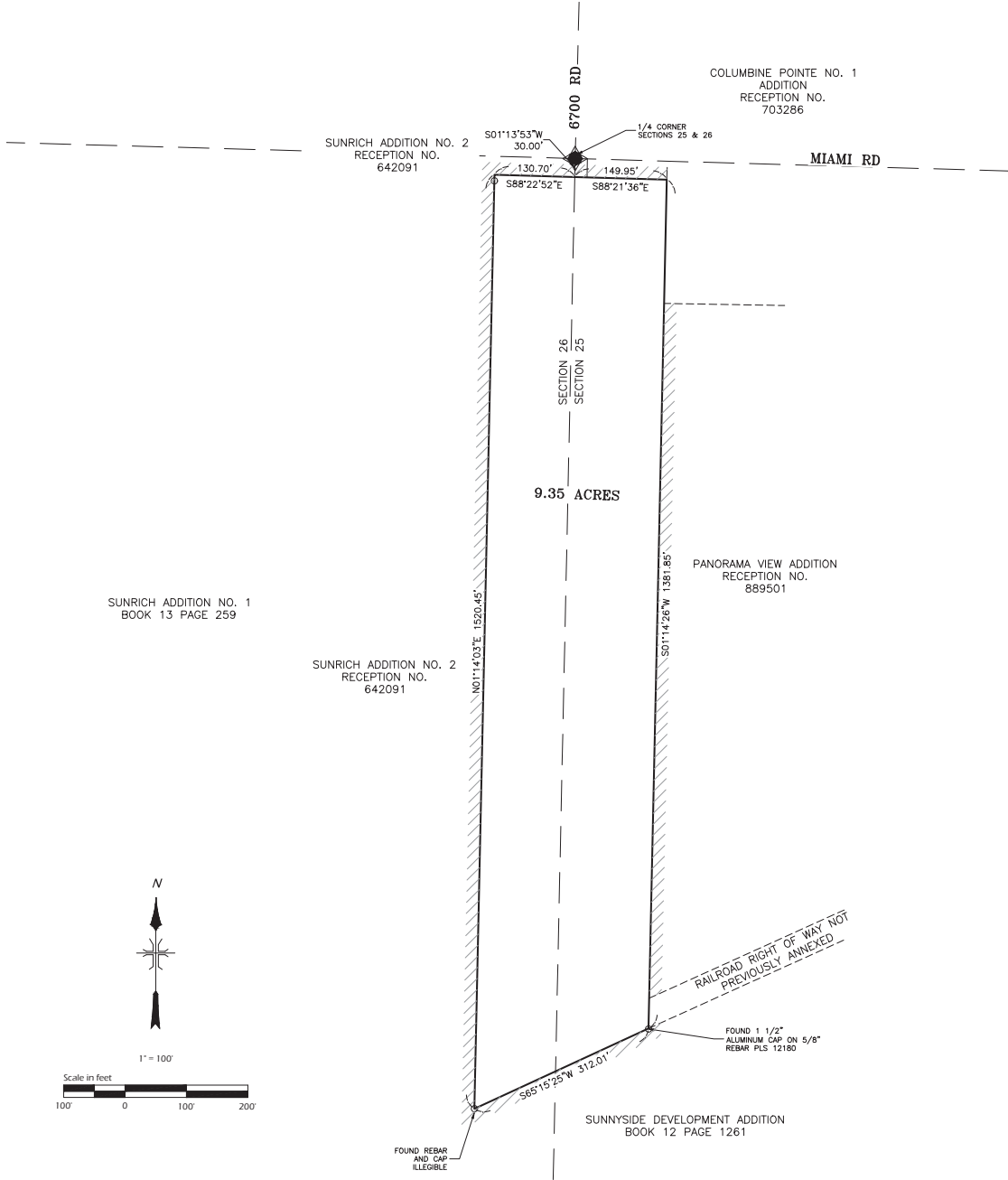
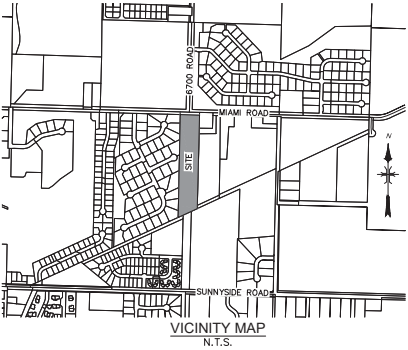
(Seal)



Addisu Fufa Dejene
Notary

6700 DEJULIO ADDITION

SITUATED IN SECTIONS 25 & 26, TOWNSHIP 49 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN
CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO



LEGEND

- //// CITY LIMITS
- PROPERTY BOUNDARY / LIMITS OF ANNEXATION

CITY LIMITS

TOTAL PERIMETER = 3494.96'
PERIMETER CONTIGUOUS TO CITY LIMITS = 3244.23'

NOTE:
THIS PLAT DOES NOT CONSTITUTE A BOUNDARY SURVEY. IT IS A COMPILATION OF EXISTING RECORDS FOR THE PURPOSE OF ANNEXATION.

PROPERTY DESCRIPTION
A parcel of land situated in Sections 25 & 26, Township 49 North, Range 9 West, New Mexico Principal Meridian, County of Montrose, State of Colorado, being better described as beginning at a point S01°13'53"W 30.00 feet from the 1/4 corner common to add Sections 25 & 26;
Thence S88°21'30"E 149.85 feet;
Thence S01°14'26"W 1381.85 feet;
Thence S65°15'25"W 312.01 feet;
Thence N01°14'03"E 1520.45 feet;
Thence S88°22'52"E 130.70 feet to the Point of Beginning.
Containing 9.35 Acres more or less as described.

SURVEYOR'S CERTIFICATE
I, Frederick A. Ballard, a Registered Land Surveyor in the State of Colorado, do hereby certify 6700 DEJULIO ADDITION Annexation Map was prepared under my direct supervision.

PRELIMINARY

Frederick A. Ballard, P.L.S.
Registration No. 37690

MAYOR'S CERTIFICATE
This is to certify that the City of Montrose, a municipal corporation in the County of Montrose, State of Colorado has by its Ordinance No. _____ adopted on the _____ day of _____, 20____, annexed the property hereon to the City of Montrose.

Mayor

Attest: _____
City Clerk

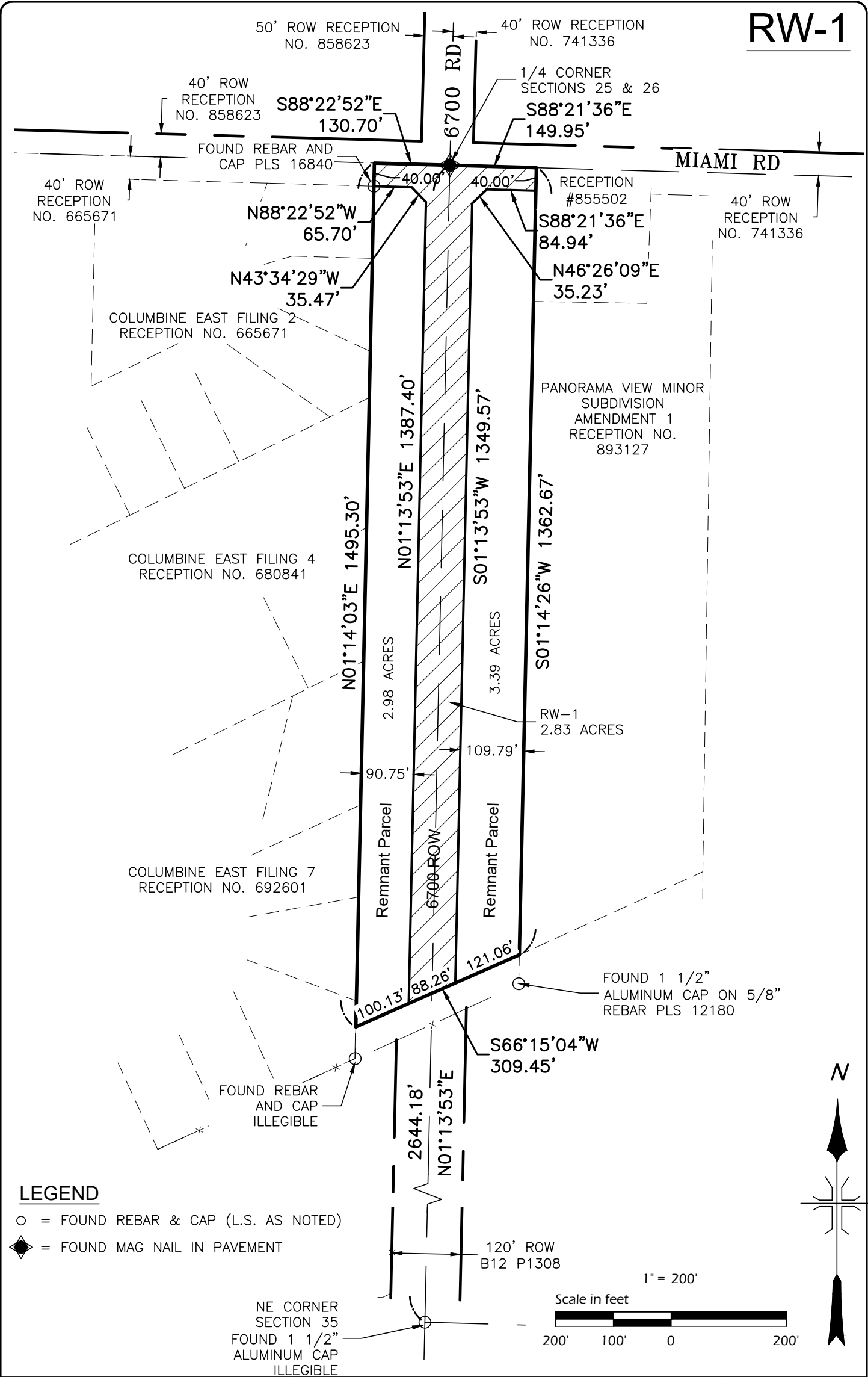
CLERK AND RECORDER'S CERTIFICATE
This map was filed for record in the office of the Clerk and Recorder of Montrose County, Colorado, at the time of _____ on the _____ day of _____, 20____ under Reception No. _____.

Clerk and Recorder
Montrose County, Colorado

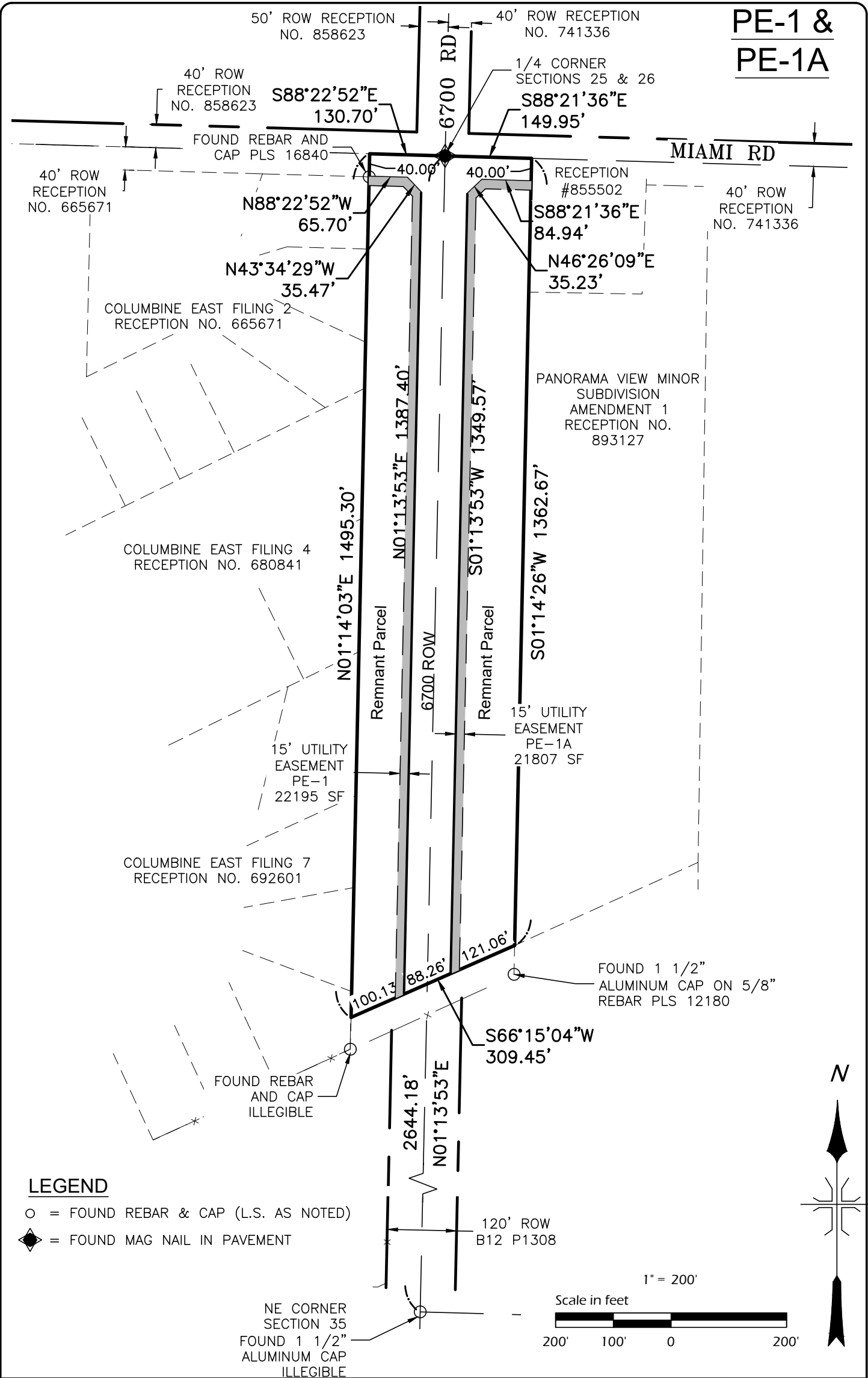
Deputy

FIELD BOOK:		DRAWN BY:	DATE:	TITLE:
1 of 1		DCC	2022-02-14	6700 DEJULIO ADDITION
SHEET:		FILE:	JOB NO.:	CLIENT:
21084V ANNEX		21084	21084	CITY OF MONTROSE
TYPE:		ADDRESS & PHONE:		
ADDITION				

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.



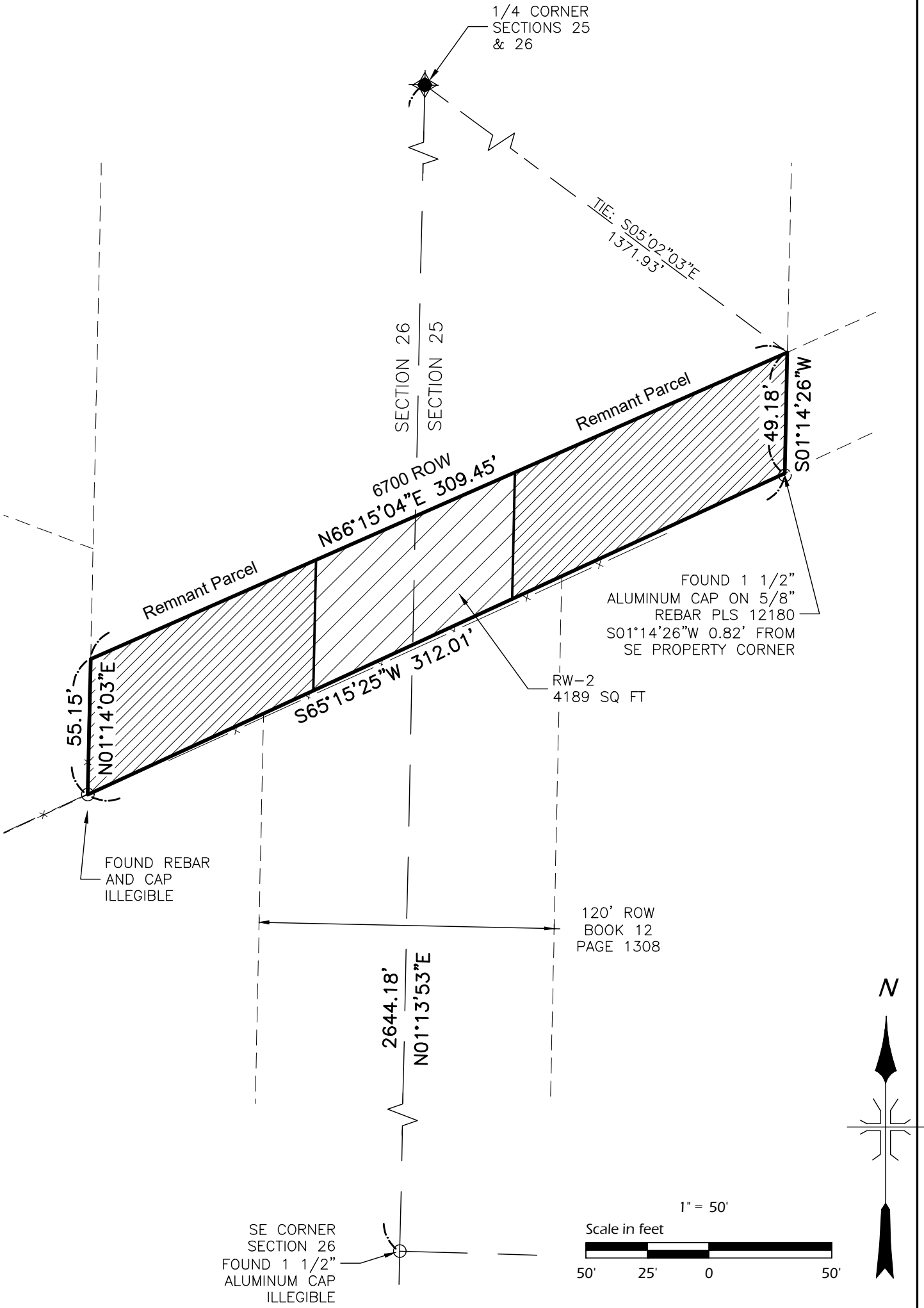
DMC DEL-MONT CONSULTANTS, INC. ENGINEERING & SURVEYING 125 Colorado Ave. Montrose, CO 81401 (970) 249-2281 (970) 249-2342 FAX www.del-mont.com service@del-mont.com		6700 ROAD RIGHT OF WAY ACQUISITION CITY OF MONTROSE		D.M. JOB NO: 21084
DRAFTED BY: DCC	SCALE: AS NOTED			DATE ISSUED: 06-08-2021
CHECKED BY: FAB	FILE NAME: 21084-6700-ROAD-ROW			SHEET: 1 of 1



DMC DEL-MONT CONSULTANTS, INC. ENGINEERING & SURVEYING 125 Colorado Ave. Montrose, CO 81401 (970) 249-2281 (970) 249-2342 FAX www.del-mont.com service@del-mont.com		6700 ROAD RIGHT OF WAY ACQUISITION CITY OF MONTROSE		D.M. JOB NO: 21084
DRAFTED BY: DCC	SCALE: AS NOTED			DATE ISSUED: 06-08-2021
CHECKED BY: FAB	FILE NAME: 21084-6700-ROAD-ROW			SHEET: 1 of 1

LEGEND

- = FOUND REBAR & CAP (L.S. AS NOTED)
- ◆ = FOUND MAG NAIL IN PAVEMENT



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ENGINEERING & SURVEYING
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www.del-mont.com service@del-mont.com

DRAFTED BY:	SCALE:
DCC	AS NOTED
CHECKED BY:	FILE NAME:
FAB	21084-6700-ROAD-ROW-RROAD

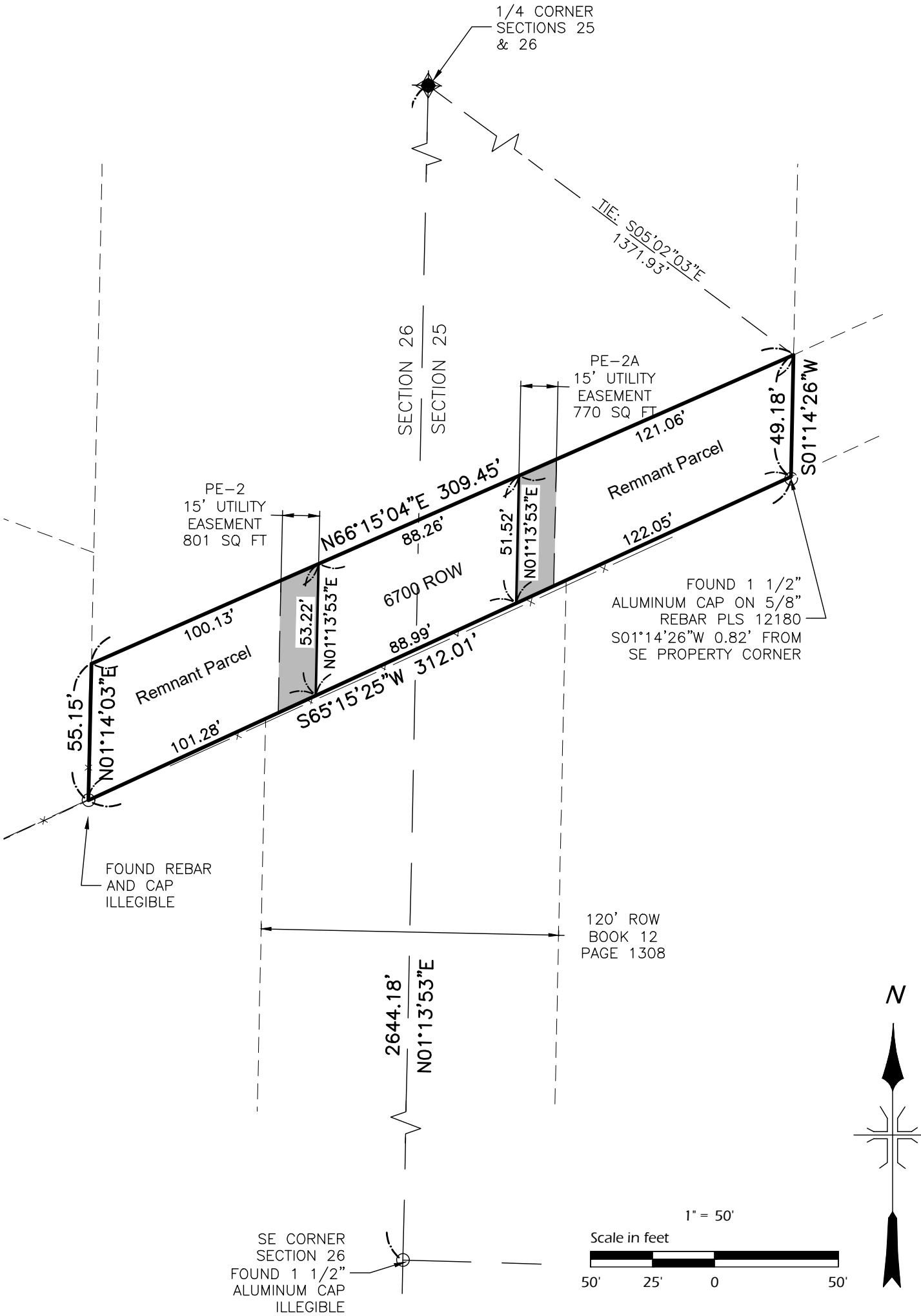
6700 ROAD
RIGHT OF WAY ACQUISITION
CITY OF MONTROSE

D.M. JOB NO.:	21084
DATE ISSUED:	02-14-2022
SHEET:	1 of 1

PE-2 &
PE-2A

LEGEND

- = FOUND REBAR & CAP (L.S. AS NOTED)
- ◆ = FOUND MAG NAIL IN PAVEMENT



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125 Colorado Ave. Montrose, CO 81401 (870) 249-2251 (870) 348-2342 FAX
www.del-mont.com service@del-mont.com

DRAFTED BY:	SCALE:
DCC	AS NOTED
CHECKED BY:	FILE NAME:
FAB	21084-6700-ROAD-ROW-RROAD

6700 ROAD
RIGHT OF WAY ACQUISITION
CITY OF MONTROSE

D.M. JOB NO.:	21084
DATE ISSUED:	02-14-2022
SHEET:	1 of 1

EXHIBIT C

SUMMARY STATEMENT OF COMPENSATION AND RELATED CONDITIONS

Project: 6700 Road Extension
Location: 67008 Miami Road
Parcel APN: 3767-253-00-008 and
Vacated Denver and Rio-Grande Railroad Right of Way
Parcels: RW-1, RW-2, PE-1, PE-1A, PE-2, PE-2A
Grantor: Paul DeJulio and Ben DeJulio
Grantee: City of Montrose, a Colorado Home Rule Municipality

This statement is intended to furnish a written summary of compensation and related conditions for the dedication of rights of way and easements to the City of Montrose, Colorado (the “Grantee”) for the 6700 Road Extension Project (the “Project”). The City shall compensate for the granting of two parcels and four permanent easements to construct and maintain a roadway and associated public improvements summarized as follows. Compensation is based on an appraisal performed by Roberts Appraisals of the property and dated August 4, 2021, adjusted for the addition of RW-2, PE2, PE2A. The compensation listed below is full consideration for the land, easements, improvements, and damages of any kind.

Fee Simple (Parcel RW-1):

2.83 acres x \$25,000/acre = \$70,750.00

Fee Simple (Parcel RW-2):

0.096 acres x \$25,000/acre = \$ 2,404.00

Permanent Easement (Parcel PE-1):

0.51 acres x \$25,000/acre x 20% = \$ 2,550.00

Permanent Easement (Parcel PE-1A):

0.50 acres x \$25,000/acre x 20% = \$ 2,500.00

Permanent Easement (Parcel PE-2):

0.018 acres x \$25,000/acre x 20% = \$ 92.00

Permanent Easement (Parcel PE-2A):

0.0177 acres x \$25,000/acre x 20% = \$ 89.00

Improvements:

Site improvements \$212,904.00

TOTAL OFFER OF JUST COMPENSATION: (rounded) \$291,300.00

Related Conditions:

1. Grantor will, at the closing, pay all taxes (including prorated taxes for the current year) and special assessments for the current year.
2. Grantor shall be responsible for securing releases from all liens, judgments and encumbrances to deliver clear, unencumbered title to Grantee for property being purchased. Any encumbrance required to be paid by Grantor shall be paid at or before closing from the proceeds of the transaction hereby contemplated or from any other source.
3. An Official Act of the City Plat shall be prepared by the City for City Council consideration to serve as the instrument for dedication of the rights of way and easements.
4. Grantee will make payment after receiving acceptable conveyance instruments from the Grantor.

Exhibit C: Zoning Code Excerpts

Sec. 4-4-5. "R-1A" Large Estate District And "R-1B" Small Estate District.

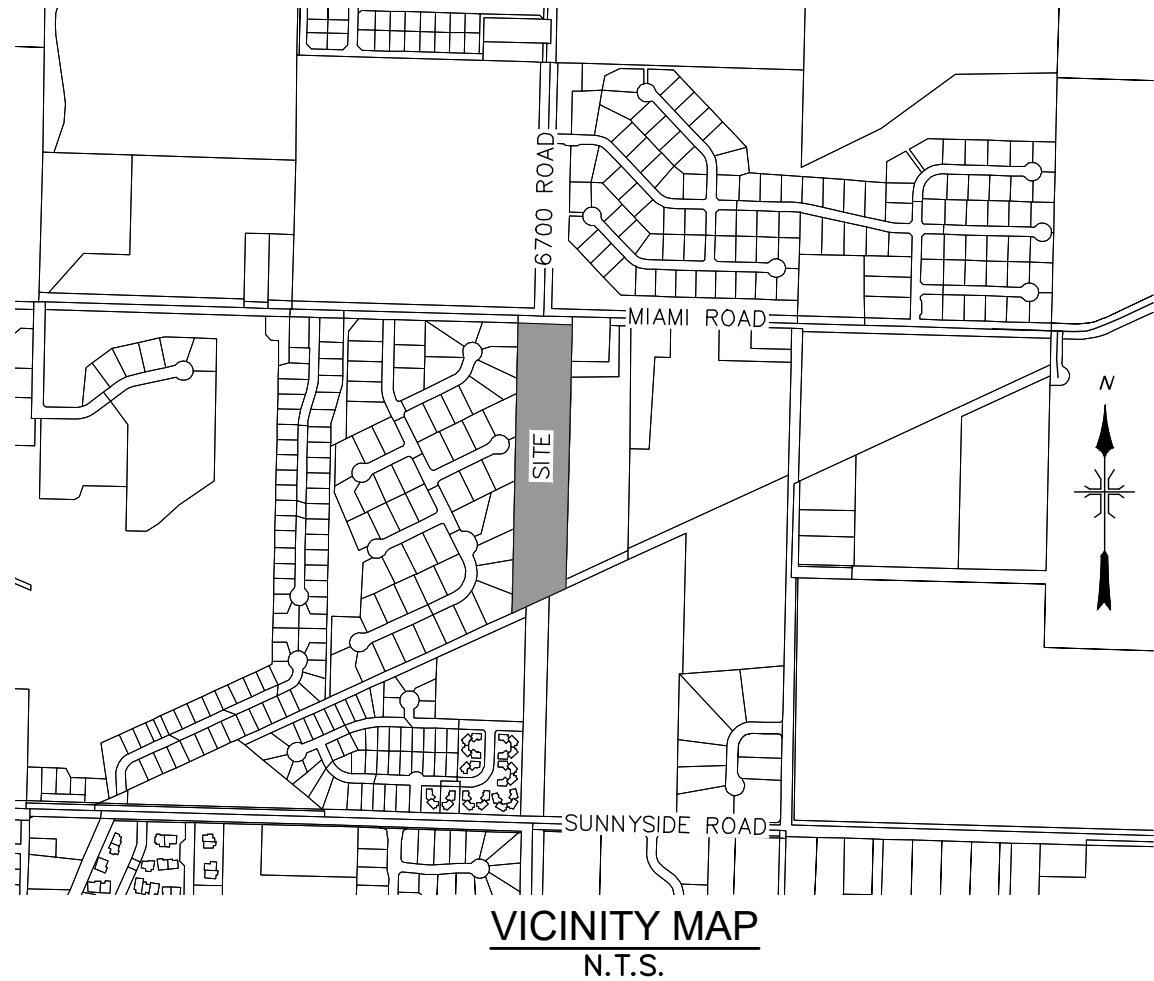
- (A) *Intent.* The "R-1A" Large Estate District and "R-1B" Small Estate District are intended to provide an area of large single-family residential lots with a semi-rural environment.
- (B) *Uses by Right.*
- (1) Single-family homes.
 - (2) Public utility service facilities.
 - (3) Government buildings and facilities.
 - (4) Parks and recreation facilities owned or operated by a homeowner association.
 - (5) Accessory uses.
 - (6) Short-term rentals.
 - (7) Family child care home.
- (C) *Conditional Uses.*
- (1) Places of worship.
 - (2) Schools.
 - (3) Childcare facilities.

(Ord. No. 2472 , § 4-4-5, 5-7-2019; Ord. No. 2561 , 10-1-2021)



6700 DEJULIO ADDITION

SITUATED IN SECTIONS 25 & 26, TOWNSHIP 49 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN
CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO



LEGEND

- //// CITY LIMITS
— PROPERTY BOUNDARY / LIMITS OF ANNEXATION

CITY LIMITS

TOTAL PERIMETER = 3494.96'
PERIMETER CONTIGUOUS TO CITY LIMITS = 3244.23'

NOTES:

THIS PLAT DOES NOT CONSTITUTE A BOUNDARY SURVEY. IT IS A COMPILATION OF EXISTING RECORDS FOR THE PURPOSE OF ANNEXATION.

COVENANTS, CONDITIONS, AND AGREEMENTS PRESENTED IN THE 6700 DEJULIO ADDITION ANNEXATION AND DEVELOPMENT AGREEMENT RECORDED AS RECEPTION NO. WITH THE MONTROSE COUNTY CLERK AND RECORDER SHALL RUN WITH THE LAND BEING ANNEXED BY THIS PLAT.

PROPERTY DESCRIPTION

A parcel of land situated in Sections 25 & 26, Township 49 North, Range 9 West, New Mexico Principal Meridian, County of Montrose, State of Colorado, being better described as beginning at a point S01°13'53"W 30.00 feet from the 1/4 corner common to said Sections 25 & 26;
Thence S88°21'36"E 149.95 feet;
Thence S01°14'26"W 1381.85 feet;
Thence S85°15'25"W 312.01 feet;
Thence N01°14'03"E 1520.45 feet;
Thence S88°22'52"E 130.70 feet to the Point of Beginning.
Containing 9.35 Acres more or less as described.

SURVEYOR'S CERTIFICATE

I, Frederick A. Ballard, a Registered Land Surveyor in the State of Colorado, do hereby certify 6700 DEJULIO ADDITION Annexation Map was prepared under my direct supervision.

PRELIMINARY

Frederick A. Ballard, P.L.S.
Registration No. 37690

MAYOR'S CERTIFICATE

This is to certify that the City of Montrose, a municipal corporation in the County of Montrose, State of Colorado has by its Ordinance No. _____ adopted on the _____ day of _____, 20____, annexed the property hereon to the City of Montrose.

Mayor

Attest: _____
City Clerk

CLERK AND RECORDER'S CERTIFICATE

This map was filed for record in the office of the Clerk and Recorder of Montrose County, Colorado, at the time of _____ on the _____

day of _____, 20____ under Reception No. _____

Clerk and Recorder
Montrose County, Colorado

Deputy

TITLE: 6700 ROAD RIGHT OF WAY
AN OFFICIAL ACT OF THE CITY OF MONTROSE

CLIENT: CITY OF MONTROSE

ADDRESS & PHONE:



DEL-MONT CONSULTANTS, INC.
ENGINEERING & SURVEYING
125 Colorado Ave. • Montrose, CO 81401 • (970) 245-2251 • (970) 245-2342 FAX
www.del-mont.com • service@del-mont.com

FIELD BOOK:

DRAWN BY:

DATE:

DCC

2022-05-06

SHEET:

FILE:

JOB NO.:

TYPE:

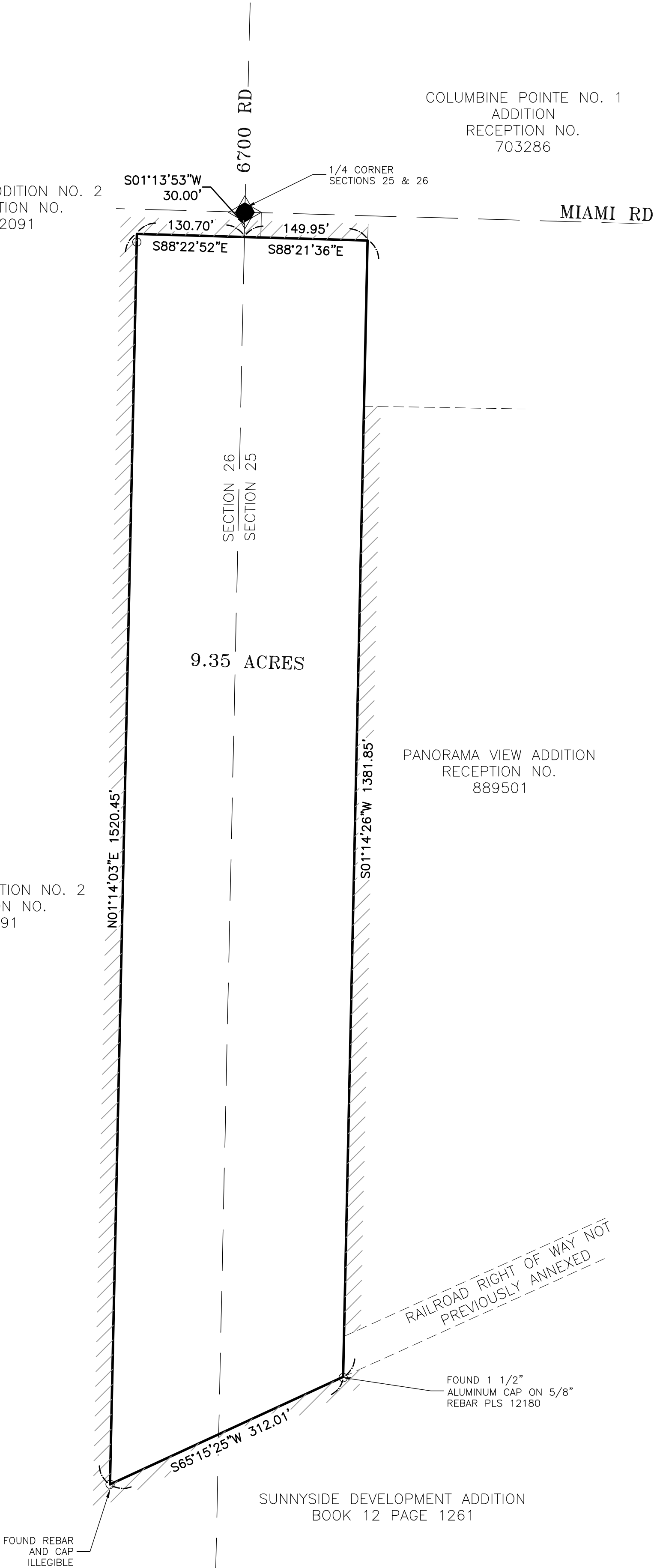
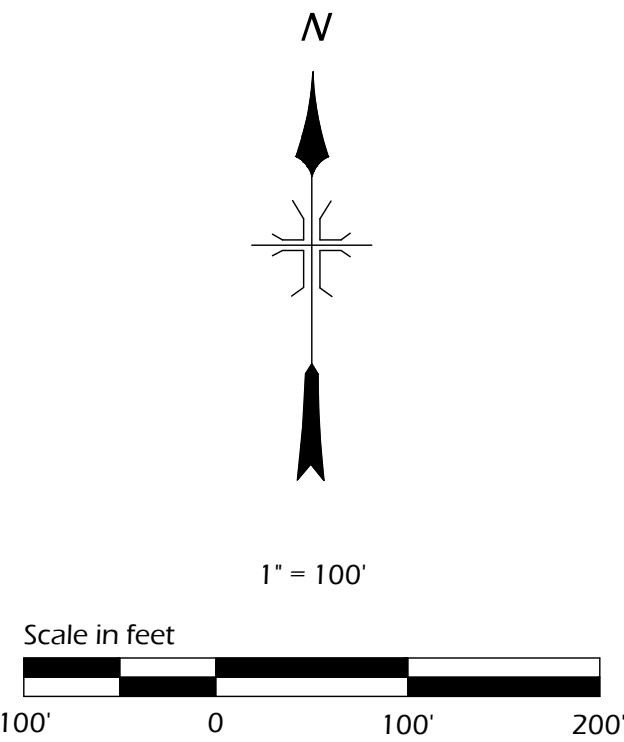
1 of 1

21084V_ANNEX

21084

PLAT

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.



SUNRICH ADDITION NO. 1
BOOK 13 PAGE 259

SUNRICH ADDITION NO. 2
RECEPTION NO.
642091

PANORAMA VIEW ADDITION
RECEPTION NO.
889501

SUNNYSIDE DEVELOPMENT ADDITION
BOOK 12 PAGE 1261

FOUND REBAR
AND CAP
ILLEGIBLE

FOUND 1 1/2" ALUMINUM CAP ON 5/8" REBAR PLS 12180

RAILROAD RIGHT OF WAY NOT PREVIOUSLY ANNEXED

RESOLUTION NO. 2022-11

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, as follows:

The City Council hereby set forth its findings of fact and conclusions based thereon with respect to the annexation of the **6700 DeJulio Addition** based on the evidence contained in the official file, the official records of the City of Montrose, Colorado and the evidence produced at the Hearing held on June 7, 2022.

FINDINGS OF FACT

1. The requirements of the applicable parts of C.R.S. §§ 31-12-104 and 105, have been met including the following:

A. Not less than one-sixth of the perimeter of the area proposed to be annexed is contiguous with the City as can be seen from the annexation map.

B. A community of interest exists between the area proposed to be annexed and the City, due to the proximity of the area to the City, the desire the owners to annex and existing City services in the area.

C. The area is urban or will be urbanized in the near future and the area is already substantially integrated with, and is capable of being fully integrated with the City.

D. It is practical to extend City services to the area on the same terms and conditions on which services are available to City citizens generally.

E. No land held in identical ownership has been divided into separate parts. No tract over 20 acres with a valuation of over \$200,000 has been included without written consent. No annexation proceedings concerning this area have been commenced by any other municipality.

F. This annexation will not result in any detachment of area from the Montrose School District No. RE-1J. No part of the area to be annexed extends any more than three miles from the existing City boundaries. The City has in place a plan for that area as required by C.R.S. § 31-12-105.

G. The entire width of any streets to be annexed are included within the annexation.

H. Access shall be allowed to annexed portions of the street to the owners of unincorporated property adjoining annexed streets on a reasonable basis.

2. No petition for annexation election has been submitted and an election is not required pursuant to C.R.S. § 31-12-107(2).
3. The City Council has determined that additional terms and conditions will not be imposed.
4. The Petition was signed by the owners of 100% of the property to be annexed exclusive of streets and alleys.
5. Proper notice of this hearing was published and mailed as required by C.R.S. § 31-12-108.
6. An Annexation Impact Report is not required.

CONCLUSIONS

1. The area proposed for annexation as the **6700 DeJulio Addition** is eligible for annexation pursuant to applicable parts of C.R.S. § 31-12-104.
2. None of the limitations of C.R.S. § 31-12-105 apply to restrict annexation.
3. Said Addition may be annexed by Ordinance pursuant to C.R.S. § 31-12-111, without election.

ADOPTED this 7th day of June, 2022, by the Montrose City Council.

CITY OF MONTROSE, COLORADO

By _____
David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

ORDINANCE NO. 2591

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, FOR THE ANNEXATION OF THE **6700 DEJULIO ADDITION**.

WHEREAS, a petition for the annexation of a tract of land known as the **6700 DeJulio Addition** has been submitted to the City of Montrose and has been found by the City Council to be in substantial compliance with C.R.S. § 31-12-107(1); and

WHEREAS, said petition has been signed by the owners of 100% of the area proposed to be annexed exclusive of streets and alleys; and

WHEREAS, the property is eligible for annexation in accordance with the Municipal Annexation Act of 1965, as amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, as follows:

SECTION 1:

The property described in **Exhibit A**, known as the **6700 DEJULIO ADDITION**, is hereby annexed to the City of Montrose, Colorado.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its passage on first reading on Tuesday, the 7th day of June, 2022, at the hour of 6:00 p.m. at Montrose City Council Chambers, Elks Building, Montrose, Colorado.

INTRODUCED, READ and PASSED on first reading this 7th day of June, 2022.

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

INTRODUCED, READ and ADOPTED on second reading this 20th day of June, 2022.

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

EXHIBIT A

Legal Description

A parcel of land situated in Sections 25 & 26, Township 49 North, Range 9 West, New Mexico Principal Meridian, County of Montrose, State of Colorado, being better described as beginning at a point S01°13'53"W 30.00 feet from the ¼ corner common to said Sections 25 & 26;

Thence S88°21'36" E 149.95 feet;

Thence S01°14'26"W 1381.85 feet;

Thence S65°15'25"W 312.01 feet;

Thence N01°14'03"E 1520.45 feet;

Thence S88°22'52"E 130.70 feet to the Point of Beginning.

Containing 9.35 Acres more or less as described.

ORDINANCE NO. 2592

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, PROVIDING FOR THE ZONING OF THE **6700 DEJULIO ADDITION** AS AN "R-1A", LARGE ESTATE DISTRICT.

WHEREAS, the **6700 DeJulio Addition** has been recently annexed to the City of Montrose, Colorado; and

WHEREAS, the owners of such property have requested zoning which the Planning Commission has reviewed and recommended in accordance with the requirements of the City Code; and

WHEREAS, the proposed recommendation is substantially in accord with the City's Master Plan, is compatible with existing zoning in nearby or adjoining properties, and is in the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, that

The Official Zoning Map is hereby amended to designate the **6700 DeJulio Addition**, according to the Official Annexation Map thereof, as an "R-1A", Large Estate District.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and on the question of its passage on first reading on Tuesday, the 7th day of June, 2022, at the hour of 6:00 p.m. at Montrose City Council Chambers, Elks' Civic Building in Montrose, Colorado.

INTRODUCED, READ and PASSED on first reading this 7th day of June, 2022.

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk

INTRODUCED, READ and ADOPTED on second reading this 20th day of June, 2022.

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk



CITY OF MONTROSE
Planning Services

MEMO

TO: City Council
FROM: William Reis, Planner I
DATE: June 7, 2022
RE: Brown Ranch Subdivision Amendment #4 Preliminary Plat
ATTACHMENTS

- Exhibit A: Maps
- Exhibit B: Excerpt from City of Montrose Municipal Code

Public notice requirements have been fulfilled in accordance with Section 4-4-31(D) of the City of Montrose Municipal Code. A sign was posted on the property, letters sent to property owners within 100 feet, and an ad appeared in the Montrose Daily Press.

Planning Commission Consideration:

City Council is considering approval of the Brown Ranch Subdivision Amendment #4 Preliminary Plat. City Council will consider all of the information in this memo in making a decision.

Application Background:

The Brown Ranch Subdivision Amendment #4 Preliminary Plat is a proposed single-family residential development in the southeastern portion of the city. The property is approximately 17.233 acres in size and is partially located north of Donnegan Dr (zoned “R-1” Very Low Density District), and south of Chestnut Dr (zoned “R-2” Low Density District). The proposed subdivision will include 17 single-family residential lots off of Donnegan Dr, and 24 lots off of a southern extension of Chestnut Dr.

Applicant: John Moir, Sunshine of Montrose, LLC

Staff Analysis:

1. Subdivision Application Details & Review Standards:

The City of Montrose Municipal Code outlines the process and standards for Subdivision applications. The preliminary plat and proposed improvements shall comply with all



requirements of the subdivision regulations and other applicable City design and construction specifications and standards. The Planning Commission should consider whether the project meets the standards outlined within Section 4-7-5 (A)(2) and summarized below: (See Exhibit B)

- The proposal shall be consistent with the Master Plan, City subdivision and zoning regulations, standards and other applicable ordinances and regulations and will be reviewed considering the following at a minimum:
 - a. Conformance with the master plan and zoning regulations;
 - b. Relationship of development to topography, soils, drainage, flooding, potential hazard areas and other physical characteristics;
 - c. Availability of water, means of sewage collection and treatment, storm water drainage, access and other utilities and services;
 - d. Compatibility with the natural environment, wildlife, vegetation and unique natural features;
 - e. Adjacent streets and traffic flow, including pedestrian access;
 - f. Availability of fire, police and other emergency services protection;
 - g. Impacts on area schools.
- 2. The Comprehensive Plan Future Land Use Map designates the area as Residential Mixed Density Low.
 - *Residential Mixed Density Low. This district provides primarily for single-family homes, as well as small amounts of attached residential dwelling units (such as duplexes and even small groups of townhomes). This low-density residential land use is intended to preserve the traditional building pattern of the existing residential development in Montrose. It will continue to be the predominant density in the City.*
- 3. Zoning Regulations:
 - Municipal Code, Section 4-4-4.2 (A) Intent: The “R-1” Very Low Density District provides for overall very low density residential development.
 - Municipal Code, Section 4-4-6 (A) Intent: The “R-2” Low Density District is intended to provide a quiet, low density development for single-family residences. Environmental protection is provided by allowing only single-family residences along with certain other compatible land uses.
 - The proposed use is a use-by-right in these zoning districts. The current zoning is compatible with general conditions in the area. The property is adjacent to properties that are also zoned “R-1” Very Low Density District and “R-2” Low Density District.
 - The minimum lot size requirement in the “R-2” zoning district is 7,500 SF. All lots on this preliminary plat within this zoning district meet the minimum lot size requirement.
 - The minimum lot size requirement in the “R-1” zoning district is 1 acre.



However, the Brown Ranch Planned Development #2 was approved by the Planning Commission and City Council in 2003, allowing smaller lot sizes. All lots on this preliminary plat in the “R-1” zoning district adhere to the planned development.

4. The Brown Ranch Subdivision Amendment #4 Preliminary Plat does not appear to be adverse to the public health, safety and welfare and is in compliance with the City’s Subdivision Regulations.

Planning Commission Action:

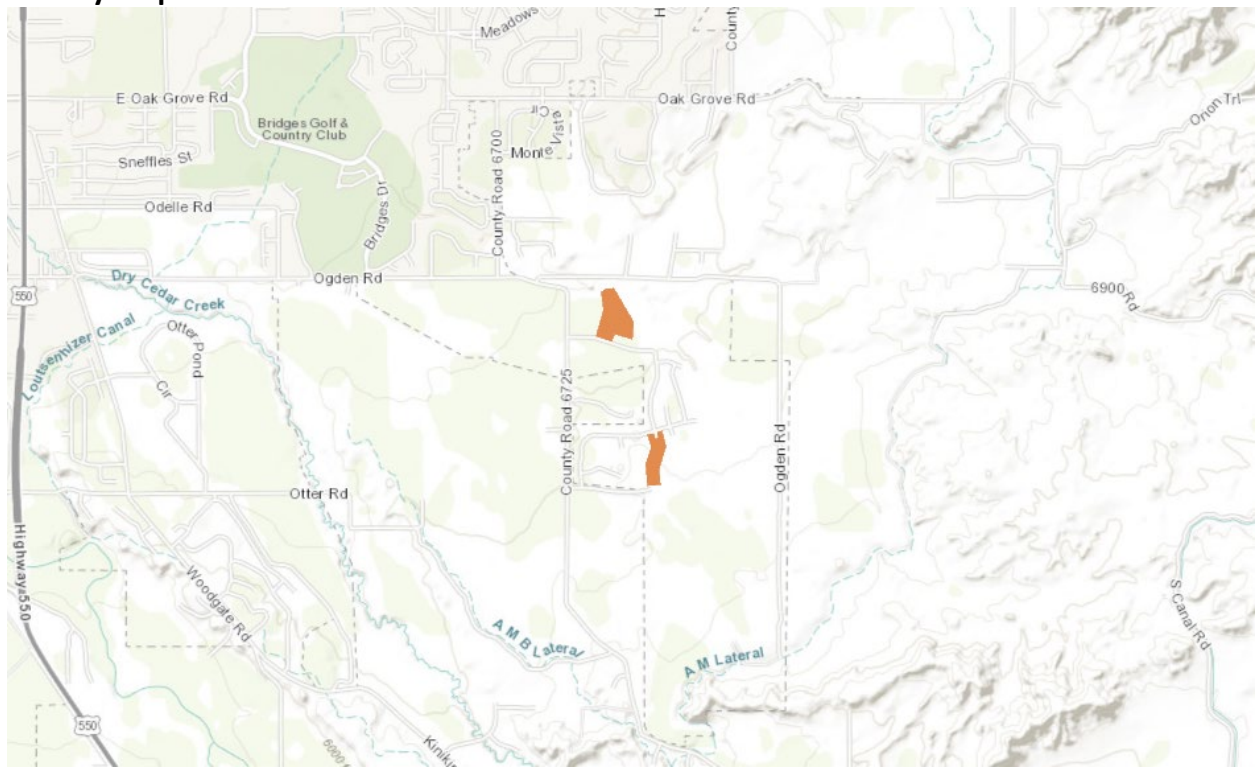
The Planning Commission shall recommended approval of the Brown Ranch Subdivision Amendment #4 Preliminary Plat at the May 25, 2022 meeting with the following standard condition: “The approval of this Preliminary Plat is expressly conditioned upon City staff ensuring that all policies, regulations, ordinances and municipal code provisions are met and that the Applicant adequately addresses all of staff’s concerns prior to the execution of the Final Plat. The City staff is not authorized by this approval to execute the Final Plat prior to all conditions being satisfied.” The vote was unanimous.

City Council Options for Preliminary Plat:

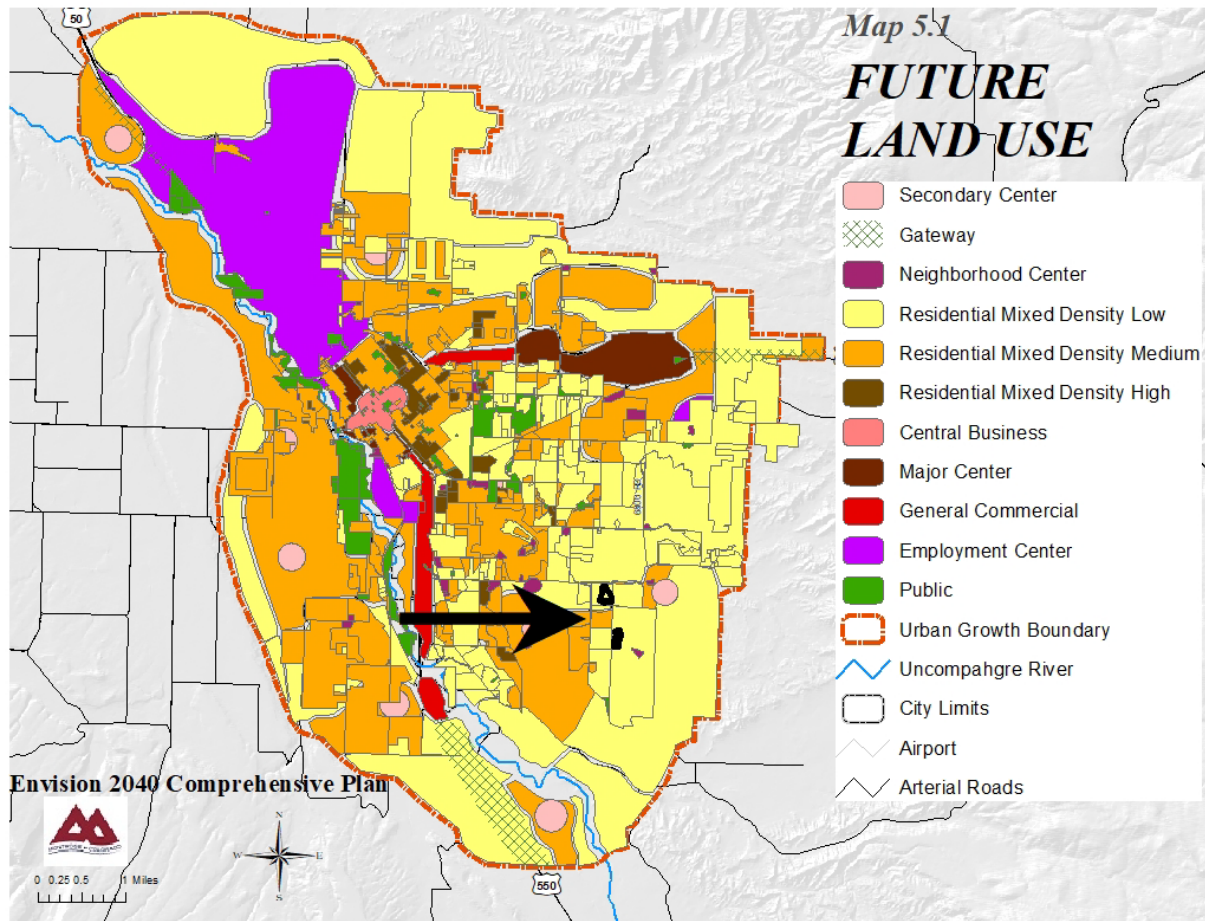
1. Accept the Planning Commission recommendation and approve the Brown Ranch Subdivision Amendment #4 Preliminary Plat with the following standard condition:
 - “The approval of this Preliminary Plat is expressly conditioned upon City staff ensuring that all policies, regulations, ordinances and municipal code provisions are met and that the Applicant adequately addresses all of staff’s concerns prior to the execution of the Final Plat. The City staff is not authorized by this approval to execute the Final Plat prior to all conditions being satisfied.”
2. Disapprove the preliminary plat if Council finds the requirements of the subdivision regulations have not been met.

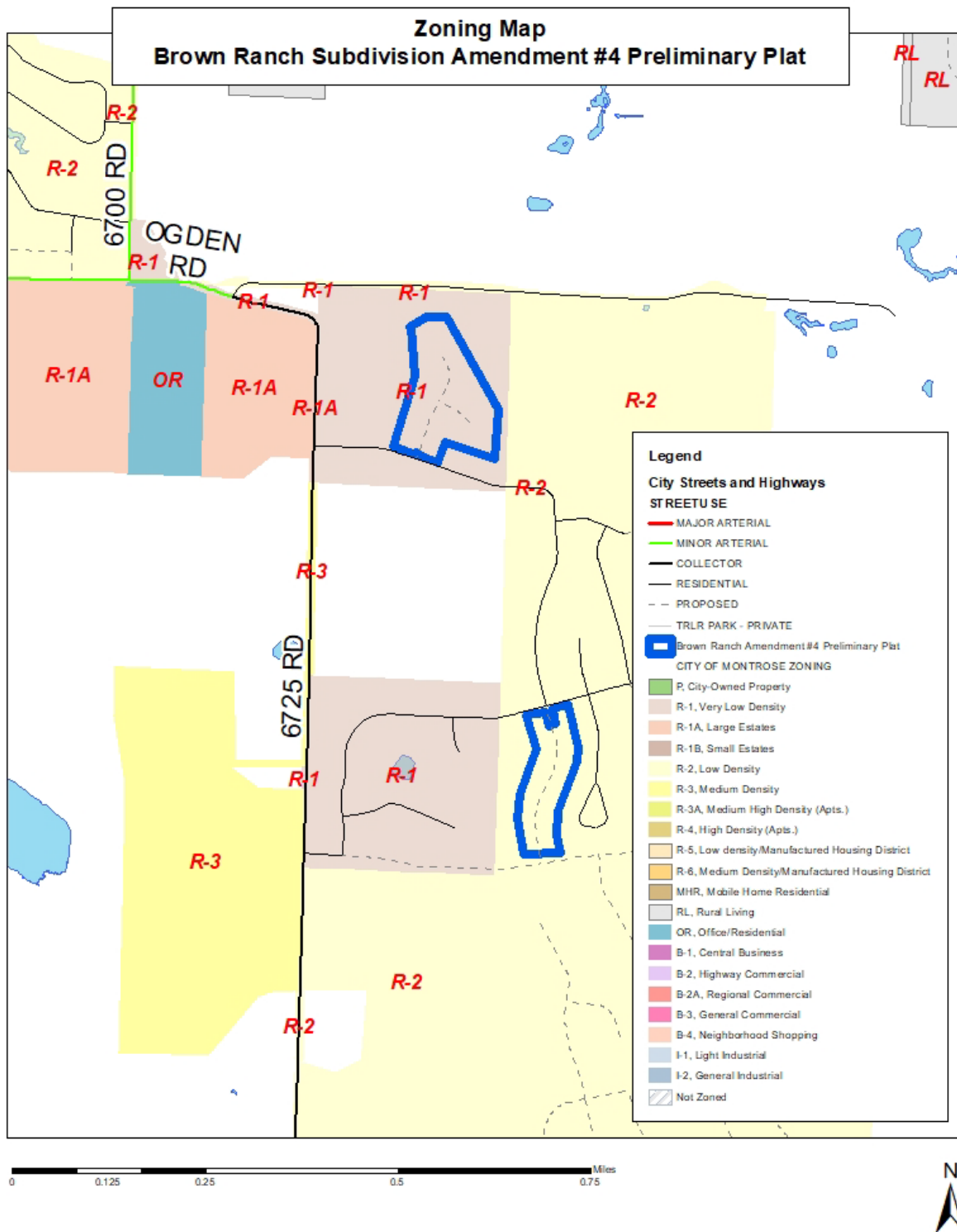


EXHIBIT A: Area Maps
Vicinity Map



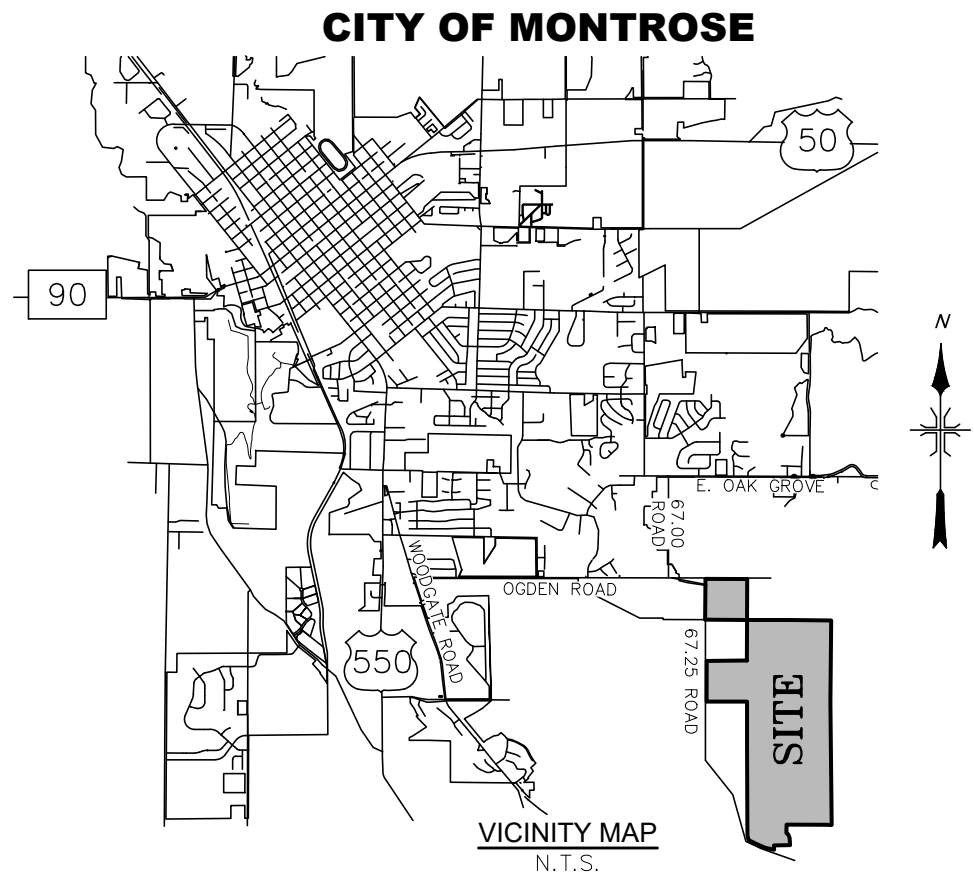
Comprehensive Plan Future Land Use Map





BROWN RANCH SUBDIVISION AMENDMENT 4 PRELIMINARY PLAT

SITUATED IN GOVERNMENT LOT 14, AND THE NW ¼SE ¼ OF SECTION 2,
TOWNSHIP 48 NORTH, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN,
CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO



AREA SUMMARY

LOTS L4–L20 = 9.190 ac.

LOTS C1–C24 = 5.597 ac.

RIGHT-OF WAY = 2.446 ac.

BROWN RANCH SUBDIVISION
AMENDMENT NO. 4 TOTAL AREA = 17.233 ac.

CERTIFICATE OF DEDICATION AND OWNERSHIP

KNOW ALL MEN BY THESE PRESENTS that the undersigned being the owners of certain lands in the City of Montrose, County of Montrose and State of Colorado to wit:

A tract of land situated in Government Lot 14 and the NW¼SE¼, of Section 2, Township 48 North, Range 9 West, New Mexico Principal Meridian, City of Montrose, Colorado, more particularly described as follows:

Outlot 2a of Brown Ranch Filing No. 4 and Outlot A102 of Brown Ranch Filing No. 6

Have by these presents laid out, platted and subdivided the same into lots, as shown on this plat, under the name and style of Brown Ranch Subdivision Amendment 4 Preliminary Plat, and do hereby dedicate, grant and convey to the City of Montrose, Colorado, for the use of the public, Galway Lane, Kilarnay Court, Chestnut Drive, as hereon shown.

The utility easements shown on this plat are dedicated, granted and conveyed to the City of Montrose, Colorado for public utility purposes, including but not limited to water, sewer, electrical, telephone, gas, communications, fiber optic, and CATV lines, and drainage easements specifically labeled for dedication, together with perpetual right of ingress and egress for installation, maintenance and replacement of such facilities. The dedication of easements as herein provided shall not include those easements exclusively utilized for irrigation improvements, or otherwise subject to a previously recorded conveyance.

Executed this _____ day of _____, 20____

Sunshine of Montrose, Inc.

John T. Moir / Vice President

STATE OF COLORADO)
) ss.
COUNTY OF MONTROSE)

The above Certificate of Dedication was acknowledged before me on this

_____ day of _____, 20____, by _____

Witness my hand and official seal.
My commission expires

Notary (SEAL)

SCHOOL LAND DEDICATION

Outlot #1, Brown Ranch Filing #1, recorded 5 December, 2003 under Reception No. 713206, and amended by Brown Ranch Filing #1 Amended Plat of Outlot 1, recorded on 9 July, 2007 under Reception No. 776816, is dedicated and conveyed to Montrose County School District RE–1J by warranty deed recorded on 7/9/2007, under Reception No. 776817, in the records of the Montrose County Recorder, for use as a site for an elementary school. The Owner, Sunshine of Montrose, Inc., and its successors in interest, retains first right of refusal to repurchase the site from School District RE–1J in the event the District should decide not to construct a school on the site, and offers the site for sale. Dedication of this site satisfies the requirement by the City of Montrose for school land dedication or payment of fees in lieu thereof for the first 835 lots or residential units to be platted in this project. Additional payment to the City may be required beginning with lot #836, unless lots or individual residential units are, or previously have been, exempted under terms of City Code.

FIRE DISTRICT LAND DEDICATION

Outlot 3A, Brown Ranch Filing #1, recorded 5 December, 2003 under Reception No. 713206, and amended by Brown Ranch Filing #1 Amended Plat of Outlot #1 and Outlot #3A, recorded on 9 July, 2007 under Reception No. 776816, is reserved for dedication to the Montrose Fire District as specified in the terms and conditions in the dedication language on said Amended Plat.

OFFSITE IMPROVEMENT AGREEMENT

All residential units constructed hereon shall be subject to an assessment of Two Thousand One Hundred Thirty One dollars and two cents (\$2,131.02) per unit to be paid at the time of building permit issuance, which assessment shall represent the unit's total cost assessment to construct offsite road infrastructure improvements in accordance with City specifications as follows: Approximately 9,200 linear feet of Ogden Road located between 67.25 Road and Woodgate Road to be constructed as a minor arterial street; approximately 3300 linear feet of 67.10 Road located between Ogden Road and East Oak Grove Road to be constructed as a minor arterial street; and approximately 3,800 linear feet of 67.25 Road located between Ogden Road and Otter Road to be constructed as a collector street. Such offsite improvements shall include curb, gutter, sidewalk, base, pavement, and related improvements. The assessment as provided herein shall be subject to an annual adjustment for inflation, to be applied on or after January 1st of each calendar year commencing in the year 2017, said adjustment being equal to the percentage increase in the Denver / Boulder Consumer Price Index for the previous year.

All lots or units that have made payments of such assessments shall be exempt from participation in local improvement districts with respect to those specific improvements described above. Assessments collected in accordance with this requirement shall be placed in an interest bearing account designated by the City of Montrose and reserved for such improvements. It is anticipated that such improvements will be constructed incrementally as sufficient funds are collected.

ZONING

The zoning of this property is R2 for lots C1–C24, and R1 for lots L4–L20 as shown on the City's Official Zoning Map, and defined and described by the City of Montrose Municipal Code at the time of approval and recordation of this plat, and is subject to change.

BASIS OF BEARINGS

The bearing along the North line of Government Lot 14, Section 2, Township 48 North, Range 9 West, New Mexico Principal Meridian between the found rebar and survey cap LS 12062 at the Northwest Corner of said Government Lot 14 and the found rebar and survey cap LS 12062 at the Northeast corner of said Government Lot 14 bears S81°23'20"E (ASSUMED)

LINEAL UNITS STATEMENT

The Lineal Unit used on this plat is U.S. Survey Feet

SURVEYOR'S CERTIFICATE

I, Nicholas Barrett, a Registered Land Surveyor in the State of Colorado, do hereby certify that there are no roads, pipelines, irrigation ditches or other easements or rights-of-way in evidence or known to me to exist on or across said property except as shown on this plat. I certify that I have made the survey represented by this plat and that this plat accurately represents said survey, and conforms to all applicable requirements of the City Subdivision Regulations and applicable law. I further certify that all monuments shown hereon actually exist and their positions are as shown.

C.R.S. Section 38–51–106 Statement: this plat does not represent a title search by the Surveyor, nor by any professional corporation or business entity with which said Surveyor may be associated. Information regarding the title work performed for and used in producing this plat may be found in the title report issued by _____, dated _____, bearing policy number _____.

Colorado Registered Land Surveyor

Registration No. 38037

Date: _____

Bearing Policy No: _____

ATTORNEY'S CERTIFICATE

I, _____, an attorney at Law, duly licensed to practice in Colorado, do hereby certify that I have examined the title of all land herein platted and described in the above Certificate of Ownership, and that title to such land is in the owners; and that the title to all dedicated property therein described, is free and clear of all liens and encumbrances, except:

Attorney
Registration No. _____

Date: _____

ENGINEER'S CERTIFICATE

I, _____, a Registered Engineer in the State of Colorado, do hereby certify that the sanitary sewer system, water distribution system and the storm drainage system shown on the accompanying plans of this Subdivision are properly designed, meet City of Montrose specifications, and are adequate to properly serve the Subdivision shown hereon. I further certify that the sanitary sewer system, water distribution system, storm drainage system, streets, parks, and other improvements are designed and constructed in accordance with applicable City specifications and regulations.

Engineer
Registration No. _____

Date: _____

CERTIFICATE OF COMPLETED IMPROVEMENTS

I, _____, City Engineer, certify that all improvements and utilities required by the current Subdivision Regulations of the City of Montrose, have been constructed, inspected and approved in this Subdivision in accordance with applicable City ordinances, regulations and specifications, and a Letter of Substantial Completion or a Preliminary Letter of Infrastructure Completion has been issued, as required by the City's Municipal Code.

City Engineer
Registration No. _____

Date: _____

APPROVAL OF CITY MANAGER

Approved this _____ day of _____, 20____, by _____, City Manager of the City of Montrose.

City Manager

APPROVAL OF CITY COUNCIL

Approved this _____ day of _____, 20____, by _____, Mayor of the City of Montrose; all conveyances of interests in real property made on this plat are hereby accepted by the City.

Mayor

APPROVAL OF CITY ATTORNEY

Approved for recording this _____ day of _____, 20____, by _____, City Attorney of the City of Montrose.

City Attorney

RECORDER'S CERTIFICATE

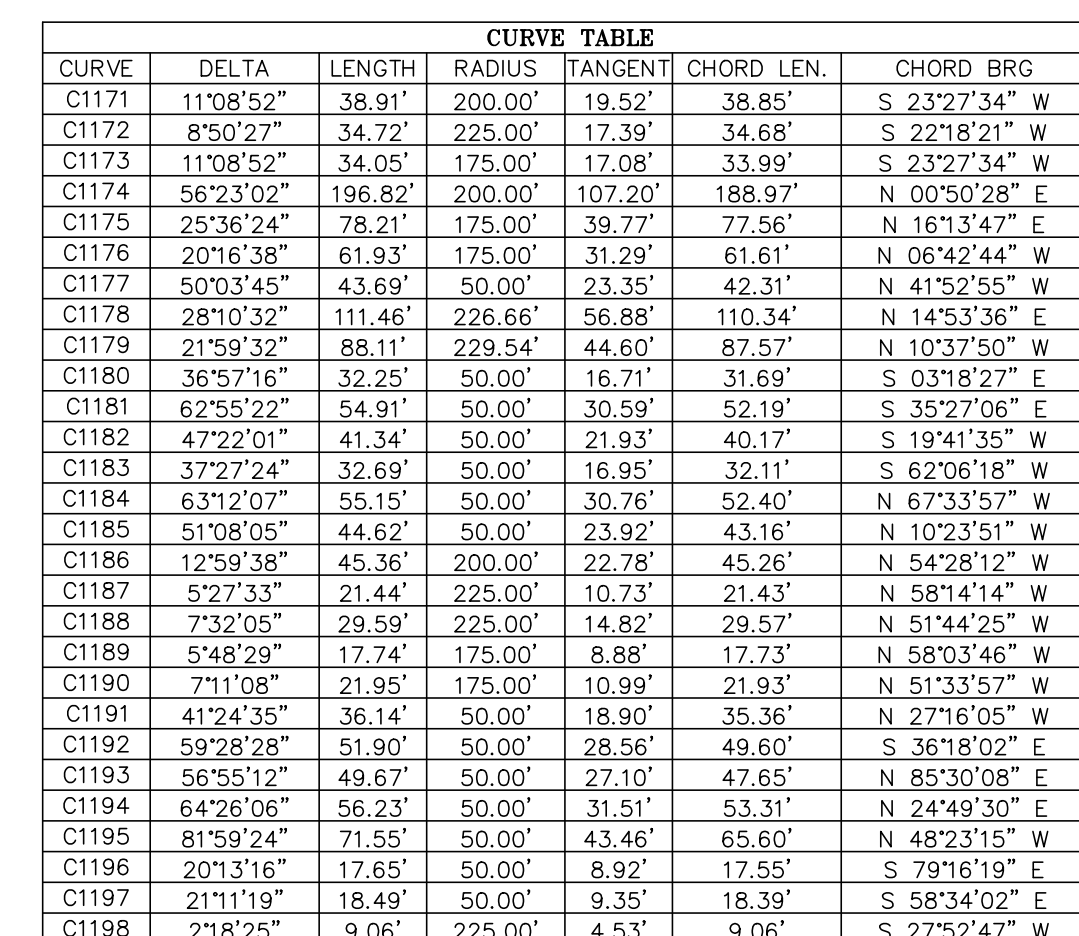
This plat was filed for record in the office of the Clerk and Recorder of Montrose County, Colorado, at the time of _____, on the _____ day of _____, under Reception No. _____.

Clerk and Recorder
Montrose County, Colorado

NOTICE: According to Colorado Law (13–80–105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

DMC		DEL-MONT CONSULTANTS, INC. ENGINEERING SURVEYING 125 Colorado Ave. • Montrose, CO 81401 • (970) 249-2251 • (970) 249-2342 FAX www.delmont.com • service@delmont.com	
FIELD BOOK:	DRAWN BY: NF	DATE: 2022-04-12	TITLE: BROWN RANCH SUBDIVISION AMENDMENT 4 PRELIMINARY PLAT
SHEET: 1 of 3	FILE: 22002V_PLAT-PRELIM-A4	JOB NO.: 22002	CLIENT: SUNSHINE OF MONTROSE INC.
TYPE: PLAT			ADDRESS & PHONE:

SITUATED IN GOVERNMENT LOT 14 AND THE NW1/4SE1/4 OF SECTION 2, TOWNSHIP 48, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN
CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO



LINE TABLE		
LINE	BEARING	LENGTH
L83	N 19'02"54" E	32.74'
L84	S 17'53"08" W	10.00'
L85	S 62'53"08" W	14.14'
L86	N 70'37"23" W	25.01'
L87	N 70'37"23" W	25.01'
L88	N 17'53"08" E	10.00'
L89	N 27'06"52" W	14.14'
L90	N 74'02"00" E	20.38'
L91	N 15'58"00" W	20.38'
L92	N 26'31"59" W	14.60'
L93	S 63'28"01" W	14.70'

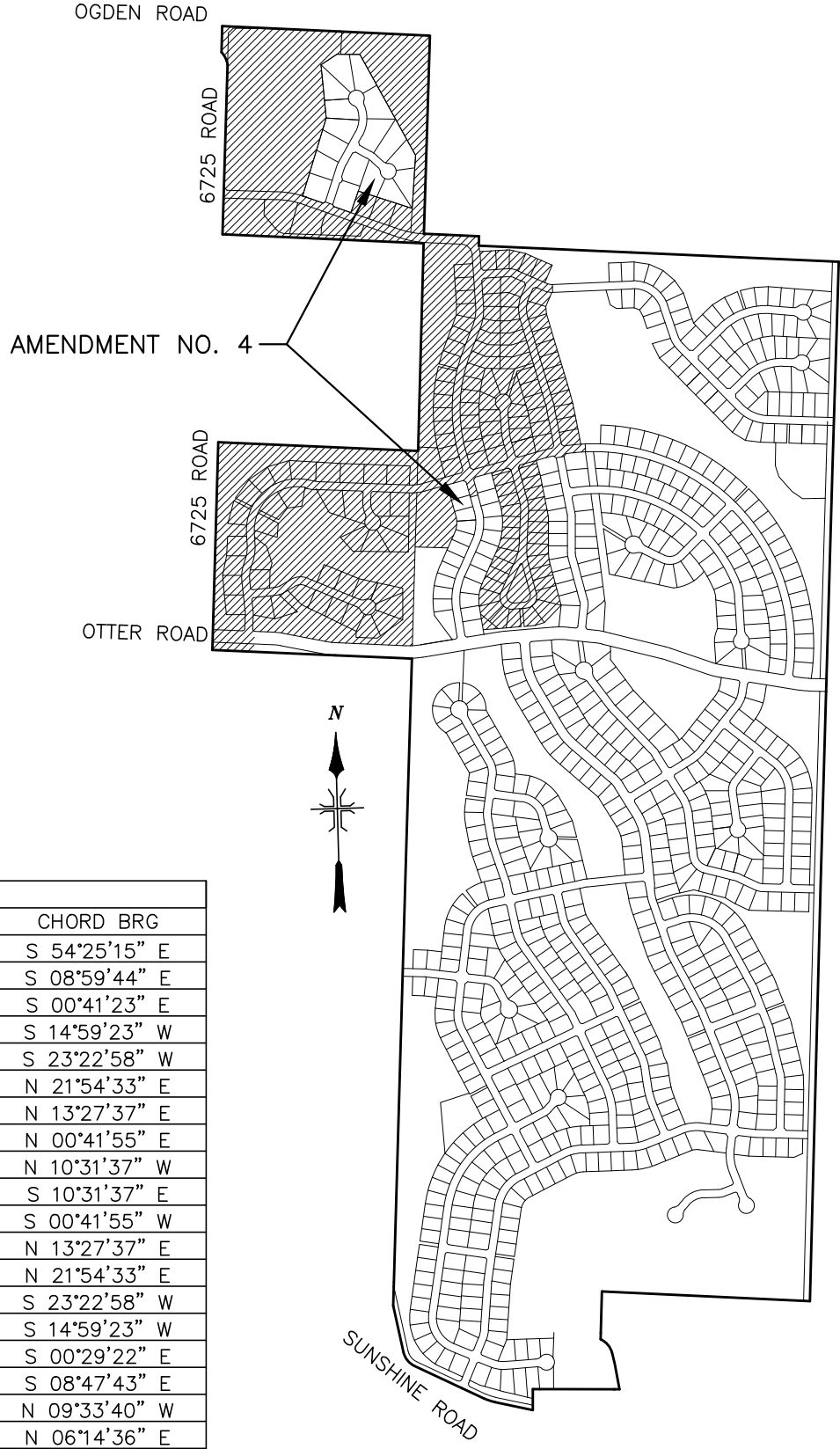
○ = FD. REBAR & CAP (L.S. 20698)
 △ = FD. REBAR & CAP (L.S. 16840)
 ⊕ = CITY MONUMENT
 ● = SET REBAR & CAP (L.S. 38037)
 40' = SIGHT TRIANGLE PER CITY OF
 MONTROSE SUBDIVISION REGULATIONS

NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown herein.

	DEL-MONT CONSULTANTS, INC. E N G I N E E R I N G S U R V E Y I N G 135 Colorado Ave. • Westmont, CO 81091 • (970) 248-5251 • (970) 248-3452 FAX www.del-mont.com • service@del-mont.com		CLIENT: SUNSHINE OF MONTROSE INC.
			ADDRESS & PHONE:
FIELD BOOK:	DRAWN BY: NF	DATE: 2022-04-12	
SHEET: 2 of 3	FILE: 22002V PLAT-PRELIM-A4	JOB NO.: 22002	TYPE: PLAT

BROWN RANCH SUBDIVISION AMENDMENT 4 PRELIMINARY PLAT

SITUATED IN GOVERNMENT LOT 14 AND THE NW1/4SE1/4 OF SECTION 2, TOWNSHIP 48, RANGE 9 WEST, NEW MEXICO PRINCIPAL MERIDIAN
CITY OF MONTROSE, COUNTY OF MONTROSE, STATE OF COLORADO



VICINITY MAP
N.T.S.

CURVE TABLE					
CURVE	DELTA	LENGTH	RADIUS	TANGENT	CHORD LEN.
C292	90°00'00"	21.99'	14.00'	14.00'	19.80'
C293	0°51'02"	5.57'	375.00'	2.78'	5.57'
C294	15°45'40"	103.16'	375.00'	51.91'	102.83'
C295	15°35'52"	102.09'	375.00'	51.36'	101.77'
C296	11°11'18"	7.78'	375.00'	3.89'	7.78'
C297	4°08'09"	23.46'	325.00'	11.73'	23.45'
C298	12°45'42"	72.39'	325.00'	36.34'	72.24'
C299	12°45'42"	72.39'	325.00'	36.34'	72.24'
C300	9°41'23"	54.96'	325.00'	27.55'	54.90'
C303	9°41'23"	75.26'	445.00'	37.72'	75.17'
C305	12°45'42"	99.12'	445.00'	49.76'	98.91'
C306	12°45'42"	99.12'	445.00'	49.76'	98.91'
C307	4°08'09"	32.12'	445.00'	16.07'	32.11'
C308	11°11'18"	9.29'	255.00'	2.64'	9.29'
C309	15°35'52"	69.42'	255.00'	34.93'	69.20'
C310	15°21'39"	68.36'	255.00'	34.39'	68.16'
C311	11°15'04"	5.57'	255.00'	2.78'	5.57'
C313	11°37'19"	55.78'	275.00'	27.99'	55.69'
C314	19°59'13"	95.93'	275.00'	48.46'	95.44'
C315	7°44'25"	37.15'	275.00'	18.60'	37.12'
C316	5°40'25"	42.08'	425.00'	21.06'	42.07'
C317	8°51'37"	65.72'	425.00'	32.93'	65.66'
C318	8°51'37"	65.72'	425.00'	32.93'	65.66'
C319	8°51'37"	65.72'	425.00'	32.93'	65.66'
C320	1°08'38"	8.48'	425.00'	4.24'	8.48'
C321	90°00'00"	21.99'	14.00'	14.00'	19.80'
C1199	11°37'19"	31.44'	155.00'	15.77'	31.39'
C1200	19°59'13"	54.07'	155.00'	27.31'	53.80'
C1201	7°44'25"	20.94'	155.00'	10.49'	20.92'

LINE TABLE		
LINE	BEARING	LENGTH
L44	S 60°22'19" E	20.38'
L45	N 29°37'41" E	20.38'
L77	N 09°31'03" W	23.60'
L78	N 74°37'41" E	25.00'
L79	N 74°37'41" E	25.00'

LEGEND

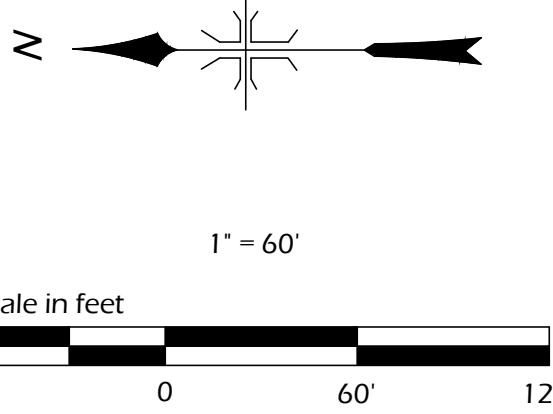
○ = FD. REBAR & CAP (L.S. 20698)

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⊙ = CITY MONUMENT

● = SET REBAR & CAP (L.S. 38037)

40' = SIGHT TRIANGLE PER CITY OF MONTROSE SUBDIVISION REGULATIONS



NOTICE: According to Colorado Law (13-80-105, CRS) you must commence any legal action based upon any defect in this survey within three (3) years after you first discover such defect. In no event may any action based upon any defect in this survey be commenced more than ten (10) years from the date of the certification shown hereon.

TITLE BROWN RANCH SUBDIVISION AMENDMENT 4 PRELIMINARY PLAT		CLIENT SUNSHINE OF MONTROSE INC.
FIELD BOOK: 3 of 3		DATE: 2022-04-12
DRAWN BY: NF		JOB NO.: 22002V_PLAT-PRELIM-A4
SHEET: 3 of 3		TYPE: AMD 4 PRELIMINARY PLAT

EXHIBIT B: Code Excerpts for Subdivisions

Sec. 4-7-5. Subdivision procedure.

- (A) The subdivision of land shall be accomplished in accordance with the procedures provided in this Section, except for those instances where different governing procedures are set forth pursuant to Sections 4-7-9 through 4-7-11, Informal Review and Sketch Plan. The City Council shall set all application fees related to land use action per resolution.
- (1) Prior to submittal of the subdivision application, the subdivider shall make a reasonable effort to consult informally with property owners of record adjoining or within 100 feet of the proposed subdivision, and the City. No fee shall be required for such review or discussions of any plans or data concerning the proposed subdivision, prior to sketch plan review. The City shall not be bound by virtue of any discussions during the informal review stage.
 - (2) The proposal shall be consistent with the Master Plan, City subdivision and Zoning Regulations, standards and other applicable ordinances and regulations and will be reviewed, considering the following at a minimum.
 - (a) Conformance with the Master Plan and Zoning Regulations;
 - (b) Relationship of development to topography, soils, drainage, flooding, potential natural hazard areas and other physical characteristics;
 - (c) Availability of water, means of sewage collection and treatment, stormwater drainage, access and other utilities and services;
 - (d) Compatibility with the natural environment, wildlife, vegetation and unique natural features;
 - (e) Adjacent streets and traffic flow, including pedestrian access;
 - (f) Availability of fire, police and other emergency services protection;
 - (g) Impacts on area schools.
 - (3) A subdivider who intends to immediately develop only a portion of a full tract shall nevertheless submit an informal sketch plan for the entire tract showing his present plans for its eventual development.
 - (4) Following informal review when applicable, and in all cases except when not required by other provisions of this Chapter, the applicant shall file copies of the sketch plan application and sketch map, along with all required supporting plans, with the City. The submittal of such application, map and supporting plans shall comply with City's application and fee requirements.

Filing of a sketch plan shall not be required in cases where a subdivision, which does not qualify as a minor or amended subdivision, primarily due to a lack of installed on or off-site public improvements. In no case shall the sketch plan requirement be waived under this provision for subdivision proposals containing more than three divisions of real property, or where any part of the subdivision has been subdivided without a sketch plan under any part of this Official Code of the City of Montrose, Colorado, within the three years prior to the date of submission.
 - (5) The sketch plan review shall commence only upon submittal of a completed sketch map, a completed sketch plan application form, which form shall be provided by the City, and all required supplemental information as set forth below, as well as any additional materials determined by City staff to be necessary for processing of the application.
- (a) Sketch Map. The sketch map shall include the following:
- (i) A location map, of approximately four inches by four inches, showing the project location in relation to the City of Montrose, with appropriate reference to major and minor arterial and



- collector roads or highways.
- (ii) A detailed map showing property boundaries of the subdivision, north arrow and date. The scale of the map shall not be less than one inch equals 200 feet. The map shall include the name of the subdivision, name of the county, township, range, Section and quarter Section. The map shall further indicate zoning and land use of all lands within 300 feet of any property boundary owned by or under option to the subdivider. A title box shall be located in the lower right corner of the map. In the case of large subdivisions requiring more than one sheet at such a scale, an index map showing the total area on a single sheet shall also be submitted.
 - (iii) A conceptual drawing of the lot and street layout indicating the approximate area and number of individual lots and access to the property.
 - (iv) Significant natural and manmade features on the site, such as streams, lakes, natural drainage ways and wetlands; vegetation types including locations of wood areas; wildlife habitats; scenic corridors; visual impacts; solar access; existing buildings; utility lines and easements; irrigation ditches; bridges and similar physical features; existing development on adjacent property; and footprints of existing buildings.
 - (v) Total acreage of the tract.
 - (vi) Existing and proposed zoning district boundary lines. General land use divisions, including residential types, commercial, industrial, parks, open space and community facilities, including the proposal's relevance to underlying zoning.
 - (vii) Type and layout of all proposed infrastructure, including streets, utilities, water and sewer systems, and impact on existing systems.
 - (viii) Public use areas proposed to be dedicated to the public, the purpose of the dedication, and their relationship to existing public use areas.
 - (ix) Existing and proposed land use patterns, including street system, of both the tract proposed for development and immediately adjacent land.
 - (x) Existing site problems or peculiarities, such as areas of poor drainage, existing floodplain, geological hazards and seepage water.
 - (xi) Existing and proposed stormwater discharge facilities pertaining to the property.
- (b) Sketch Plan Application. The sketch plan application shall include, but not be limited to, the following information pertaining to the proposed subdivision (this information may be provided in a narrative format):
- (i) Estimated total number of gallons per day of water system requirements, source of water to supply subdivision requirements, and proposed dedication of water rights in accordance with existing City ordinances.
 - (ii) Estimated total number of gallons per day of sewage to be treated and means for sewage disposal.
 - (iii) Availability of electrical power, natural gas, CATV, telephone and other utilities necessary or proposed to serve the subdivision.
 - (iv) Access to the property, off-street parking, school bus stop area, and mail box location.
 - (v) Total number of proposed dwelling units.
 - (vi) Demonstrated compatibility with natural features.
 - (vii) Identification of all activities of the subdivision which shall require approval by permitting agencies at the local, state and federal level, and a description of the approval so required.
 - (viii) Names and addresses of all property owners of record adjoining or within 100 feet of the proposed subdivision.
 - (ix) Summary of issues or concerns resulting from informal review with neighboring property owners, if applicable.
- (c) Sketch Plan Supplemental Documents. The sketch plan application shall also include the following



supplemental documentation:

Disclosure of ownership, with supporting documentation from a title insurance company or, if acceptable to the City, an attorney licensed in the State of Colorado, which shall set forth a legal description of the property and title ownership of the property.

- (6) Upon complete submittal of all required information, City staff shall provide initial review of the sketch plan within 45 days. Upon completion of initial review of the plan and submission by the applicant of any supplemental materials or necessary revisions as requested by City staff, the sketch plan application shall be placed on an upcoming Planning Commission agenda for which space is available and for which all notice requirements can be met.
- (7) Advance notice of the sketch plan review by the City Planning Commission shall be provided by publication, with a location map of the property to be subdivided. Fifteen-day advance written notice shall also be provided, by hand delivery or deposit into the U.S. mail, to all property owners of record adjoining or within 100 feet of the proposed subdivision. The City shall provide such notice. The review and discussion of the Sketch Plan by the Planning Commission shall be informal and non-binding in nature, and shall serve as a means to provide guidance to the subdivider.

(B) Preliminary Plat.

- (1) An application for preliminary plat shall be submitted to the City and shall comply with applicable City submittal requirements.
- (2) The City may distribute copies of the preliminary plat and supporting plans or data as appropriate to the County Land Use Department, the school district, the natural gas, CATV, electrical power and telephone companies, the Fire Protection District, the Colorado Department of Transportation, the Federal Aviation Administration, the Uncompahgre Valley Water User's Association, applicable City departments and employees, and other entities as appropriate.
- (3) The preliminary plat and proposed improvements shall comply with all requirements of these subdivision regulations and other applicable City design and construction specifications and standards. The plat shall be drawn to a scale of not less than one inch equals 100 feet. (See Chapter 4-4 of these Zoning Regulations.)
- (4) The preliminary plat shall contain, at a minimum, the following:
 - (a) The name of the subdivision and the name, address and phone number of the subdivider, and his representatives, if applicable. Such information shall be contained in a title box located on the lower right corner of the plat.
 - (b) A certificate by the engineer or surveyor preparing the plat attesting to the accuracy of the plat. Such information shall be contained in a title box located on the lower right corner of the plat and shall be signed and stamped by the licensed professional engineer or registered surveyor, and shall indicate the scale used and direction of true north.
 - (c) A certificate by a licensed professional engineer that the water, stormwater, sewer systems, and all other improvements are properly engineered and designed in compliance with applicable requirements of the City and state.
 - (d) A certificate of ownership of the subject property.
 - (e) A location map, of approximately four inches by four inches, showing the project location in relation to the City of Montrose, with appropriate reference to significant roads or highways. The location map shall be provided both on the preliminary plat and separately on letter size paper.
 - (f) Certification on forms approved by the City to document approval of the plat; and the form of the certificates proposed to be used to comply with the requirements imposed for the final plat as found



- in Subsection (C) of this Section.
- (g) Two-foot elevation contours and the boundaries of the base flood (100-year flood) and floodway and base flood elevation data, as defined and specified in the City's floodplain management regulations.
 - (h) The then-current zoning designations of the subdivision and of adjacent properties.
 - (i) The names of the owners of record of adjacent properties, and the property lines of adjacent properties as space will allow.
 - (j) The location and ownership interest of existing and proposed watercourses including lakes, swamps, ditches and floodprone areas (the inclusion of such watercourses within the jurisdictional authority of local, state or federal regulatory agencies shall also be noted); the location of existing and proposed streets, easements, utility lines, poles and towers, sewer lines, water lines, drains, culverts and other underground utilities and stormwater drainage facilities both on the proposed subdivision and adjacent properties as practical.
 - (k) The layout of all lots showing the building lines, dimensions and lot areas and footprints of existing buildings, if any. The plat shall include at least two references to City GPS coordinates.
 - (l) The layout and location of all parks and open space.
 - (m) The location of all land to be reserved or dedicated for public use.
- (5) The following shall be submitted accompanying the preliminary plat together with plans and specifications prepared by a licensed professional engineer consistent with City standards and specifications, for all required or proposed improvements. All plans and specifications shall be signed and stamped by a licensed professional engineer.
- (a) Plans for the proposed sanitary sewer system showing location, grade, pipe sizes and invert elevations, and the connection points to the existing system.
 - (b) Plans for the water system and fire protection system showing locations, pipe size, valves, fire hydrants and connection points to the existing system.
 - (c) Plans for the storm drainage system showing location, pipe sizes, grades and discharge points, including off-site improvements. Such plans shall comply with any applicable City stormwater drainage requirements.
 - (d) Plans for any improvements specifically affecting watercourses within the jurisdictional authority of local, state or federal regulatory agencies, noting the required permits therefor.
 - (e) Plans for proposed streets, sidewalks, recreation paths, showing grade and cross Section, trails and walkways and streetlight and street names.
 - (f) A soil or geological report prepared and certified by a professional geologist or soil scientist.
 - (g) Plans for piping ditches, or improvements to waterways.
 - (h) Plans for parks and recreation facilities.
 - (i) A traffic impact study for all developments when estimated vehicle trips per day will exceed 250 and plans for recommended traffic mitigation measures. The study shall provide, but not be limited to, traffic capacity for existing road infrastructure, proper analyses of transportation linkages in conformance with transportation plan, cumulative traffic impact of development at build-out, and proposed infrastructure design to account for such considerations. The scope of the impact study may be broadened to include other nearby subdivisions and developments, allowing for cooperative participation and cost sharing.
- (6) If the applicant intends to develop the project in phases, a phasing plan will be required to be submitted to and approved by the City. The phasing plan must include the numbers of lots in each phase, the infrastructure planned for completion with each phase that is necessary to allow the phase to be properly integrated into City services as determined by the City Engineer, the amenities to be constructed with each phase, and all other information pertinent to the completion of the development.



- (7) Upon submittal of all required information, the City staff shall provide initial review of the preliminary plat within 45 days. Upon completion of initial review of the preliminary plat and submission by the applicant of any supplemental materials and revisions necessary to comply with City regulations, the Preliminary Plat Application shall be placed on an upcoming Planning Commission agenda for which space is available and for which all notice requirements can be met. City staff shall make a recommendation to the City Planning Commission to approve the preliminary plat, provided that all supporting documentation has been properly submitted and the plat meets all requirements, disapprove the plat if it does not appear to comply with the provisions of this Chapter, or approve the plat with conditions or modifications.
- (8) Advance notice of the preliminary plat review by the City Planning Commission shall be provided by publication, with location map of the property to be subdivided. The City shall provide such notice at least 15 days in advance of the scheduled meeting.
- (9) Following receipt of a completed Preliminary Plat Application, the applicant shall be required to diligently pursue the application by providing revised plans, plat maps, and other necessary information in a timely fashion. Where the applicant fails to meet this requirement, the City shall, in writing, request the applicant to withdraw the application. If the applicant fails to take any further action on the Preliminary Plat Application for a period of six consecutive months following such request to withdraw, the Preliminary Plat Application shall automatically expire and all applicable fees shall be non-refundable. When a Preliminary Plat Application has expired under this Subsection, in the event the applicant wishes to pursue development of the property the applicant must re-apply and pay any applicable fees.
- (10) Upon review by the City Planning Commission, the commission shall make a recommendation to the City Council to approve the preliminary plat, provided that all supporting documentation has been properly submitted and the plat meets all requirements, disapprove the plat if it does not appear to comply with the provisions of this Chapter, or approve the plat with modifications or conditions. The reasons for such recommendation shall be included in the minutes of the Planning Commission meeting and provided in writing to the applicant upon request.
- (11) Unless the subdivider withdraws the preliminary plat from review, or it expires as set forth herein, the plat shall be submitted to the City Council for final review and action. Advance notice of the preliminary plat review by the City Council shall be provided by posted notice.
- (12) Council may approve the preliminary plat, approve the plat subject to conditions necessary to implement the provisions of this Chapter, or disapprove the plat if the Council finds that the requirements of these regulations have not been met.
- (13) No construction of the required subdivision improvements shall commence until approval of the preliminary plat by the City Council and submittal of both a Mylar of the preliminary plat, as finally approved with signed certificates as required by the City, and a copy of the preliminary plat in a digital format acceptable to the City and compatible with City computer systems. Upon approval and submittal of the Mylar, and supporting documentation as required, the City shall then issue a written notice to proceed.

(C) Final Plat.

- (1) No land shall be subdivided, or any parcel thereof sold or conveyed, until a final plat has been approved and either a Letter of Substantial Completion or a Preliminary Letter of Infrastructure Completion has been issued in accordance with this Subsection (C).
- (a) Final plat submittals shall comply with all application and fee requirements. The submittal of final



plats for approval must occur within five years of approval of a related preliminary plat, unless an extension of time is granted by the City Council, or the timing of the submittal is consistent with a phasing plan that has been submitted by the applicant and approved by the City. The applicant may request and the City Council may approve an extension of time for filing the final plat where development of the project in accordance with the preliminary plat has been pursued with due diligence.

(b) Building Permits:

- (i) Until the public improvements are accepted by the City, the City shall not be obliged to issue any building permits within a subdivision, except as provided herein. Provided that all other applicable City codes and regulations have been satisfied, building permits may be issued only to the subdivider for any property with an approved Preliminary Plat. The subdivision must have sufficient access and water to allow for adequate fire protection as determined by the fire protection district. No certificates of occupancy, temporary or otherwise, shall be issued unless and until:
 - (a) All public and necessary on- and off-site improvements have been completed;
 - (b) A Letter of Substantial Completion or a Preliminary Letter of Infrastructure Completion has been issued by the City; and
 - (c) A final plat has been approved and recorded.
- (ii) A Letter of Substantial Completion or a Preliminary Letter of Infrastructure Completion shall evidence City inspection and approval.
- (iii) The two calendar year Construction Warranty shall begin to run from the date of said Preliminary Letter of Infrastructure Completion.

(c) The final plat shall contain all plat elements required as a condition of preliminary plat approval and the following, all in forms acceptable to the City:

- (i) The total number of lots and lot numbers or letters.
- (ii) Sufficient data to determine easily and reproduce on the ground the location of all monuments, and the bearing and length of every street line, boundary line, block line, lot line and building line whether curved or straight, including the radius, central angle and tangent distance for the centerline of curved streets. Other curved lines shall show arc or chord distance and radius. All dimensions shall be to the nearest 1/100 of a foot and all angles to the nearest second. The plat shall include at least two references to City GPS coordinates.
- (iii) A certificate by a registered surveyor, attesting to the accuracy of the survey plat and placement of monuments, and compliance with the requirements of this Chapter and state law.
- (iv) A certificate of dedication for streets, easements and other property dedicated for public use, properly executed and notarized.
- (v) A certificate by a licensed professional engineer that the sanitary sewer, water distribution and storm drainage systems, streets and other improvements are properly engineered, designed and constructed in compliance with all applicable requirements of the City and the state.
- (vi) Separate Certificate of Approval of the plat by the City Attorney.
- (vii) A certificate of an attorney that title to the property is in the name of those parties executing the dedication, and that property dedicated to the City will be free and clear of all liens and encumbrances affecting marketability.
- (viii) A certificate by the City Engineer specifying which improvements have been completed and listing those that require security prior to final plat approval.
- (ix) A certificate by the City Clerk as to receipt of any security for the completion of improvements.
- (x) The name of the subdivision and the name, address and phone number of the subdivider, and his representative if applicable, said information to be included within a title box located on the lower right corner of the plat.



- (xi) The name of the registered surveyor preparing the plat, the date of the plat, said information to be included within a title box located on the lower right corner of the plat.
 - (xii) A certificate of recording to be executed by the County Clerk and Recorder.
 - (xiii) The scale used, direction of true north, and basis of bearing.
 - (xiv) A location map, of approximately four inches by four inches, showing the project location in relation to the City of Montrose, with appropriate reference to significant roads or highways. The location map shall be provided both on the final plat and separately on letter size paper.
 - (xv) The location and ownership interest of all watercourses including lakes, swamps, ditches and floodprone areas; the location and names of streets, sidewalks, easements, utility lines, poles and towers, sewer lines, water lines, drains, culverts and other underground utilities and stormwater drainage facilities.
 - (xvi) The layout of all lots showing the building lines, dimensions and lot areas.
 - (xvii) The layout and location of all parks, trails, recreation paths and open space.
 - (xviii) The location of all land to be reserved or dedicated for public or other uses and the boundaries of the base flood (100-year flood) and floodway and base flood elevation data, as defined and specified in the City's floodplain management regulations.
 - (xix) Plat notes and restrictions as appropriate to implement compliance with this Chapter, conditions of approval as necessary or desirable to implement the City's Master Plan.
 - (xx) Plat notes, easements and restrictions as appropriate to implement required FAA aviation regulations.
- (2) The final plat shall be accompanied by a computation showing closure of the tract boundary to one foot in 5,000 feet or better. The final plat and accompanying plans shall be drawn to a scale of not less than one inch equals 100 feet. If discrepancies are believed to exist, the City may have the plat checked by an independent registered surveyor at the subdivider's expense.
 - (3) Any conditions or improvements imposed on the applicant by the City Council under the preliminary plat approval must be shown on the final plat and either completed, or the appropriate security under Subsection (C)(5) of this Section, prior to approval by the City Council.
 - (4) The final plat may be submitted for a portion of the preliminary plat, or phased, subject to the following conditions:
 - (a) The applicant has submitted a phasing plan that has been approved by the City.
 - (b) All required improvements, utilities and road infrastructure must be accessible to the remaining aggregate of unsubdivided land, or outlot.
 - (c) In instances where completion of required improvements, utilities or road infrastructure within the outlot is determined by the City to be necessary as a condition of approval of that final plat, the developer shall be required to complete said improvements, utilities or road infrastructure upon approval of that final plat. This may include, but not be limited to, completion of necessary road infrastructure, stormwater drainage system, trails and park development.
 - (d) In instances where the dedication of land for public purposes within the outlot is determined by the City to be necessary as a condition of approval of that final plat, the developer shall be required to dedicate said lands upon approval of that final plat. This may include, but not be limited to, the dedication and development of land for parks, trails, open space, rights-of-way and easements.
 - (5) The final plat shall be accompanied by security for the completion of any uncompleted improvements in accordance with Section 4-7-8 of these regulations.
 - (6) Accompanying the final plat shall be two copies of the as-built plans or record drawings for sanitary sewers, storm sewers or drainage systems and the water and fire systems showing grades, pipe sizes, pipe types, outlets, connection points and other information which the City Engineer may require



along with as-built plans for all other utility systems. As-built plans and data shall also be provided in a digital format compatible with City computer systems, and in accordance with City specifications. As-built plans for any improvements not completed at the time the final plat is submitted shall be submitted prior to inspection or approval of the improvements and release of any security. All as-built plans and data shall be signed and stamped by a licensed professional engineer.

- (7) Upon complete submittal of all required information, City staff shall, within 30 days, provide initial review of the final plat. Upon completion of an initial review of the final plat and submission by the applicant of any supplemental materials or necessary revisions as requested by City staff, the application shall be placed on an upcoming City Council agenda for which space is available. No final plat shall be placed on a City Council agenda unless and until all necessary materials have been submitted, reviewed and determined by City staff to meet all applicable City codes and regulations.
- (8) City Council may approve the final plat, approve it subject to conditions necessary to implement the provisions of this Chapter, or disapprove the plat if it finds that the requirements of these regulations have not been met.
- (9) No final plat shall be approved by the City Council until:
 - (a) All of the improvements required by these subdivision regulations have been installed, inspected and approved by the City Engineer, or properly secured in accordance with the provisions of Section 4-7-8 of these regulations on forms approved by the City.
 - (b) Two hard copies of as-built plans and data for completed utility improvements have been provided, reviewed and accepted by the City Engineer, and also provided in a digital format acceptable to the City and compatible with City computer systems. As-built plans for any improvements not completed at the time the final plat is submitted, and secured in accordance with the provisions of Section 4-7-8, shall be submitted prior to inspection or approval of the improvements and release of any security. All as-built plans and data for completed utility improvements shall be signed and stamped by a licensed professional engineer.
 - (c) The final plat has been submitted in final form on two reproducible Mylars, with all requisite signatures, and also in a digital format acceptable to the City, and compatible with City computer systems.
 - (d) Payment to the City of any costs incurred by the City within the subdivision review process, which costs are specifically subject to reimbursement.
 - (e) The security for the two calendar year construction warranty has been provided by the subdivider in a form acceptable to the City.
- (10) Following City Council approval of the final plat and verification that the documentation has met all applicable codes and regulations, the final plat shall be executed by the appropriate City staff and recorded with due diligence.

(Code 2012, § 4-7-5; Ord. No. 2062 , 6-2-2005; Ord. No. 2092 , 11-17-2005; Ord. No. 2173 , 11-15-2007; Ord. No. 2229 , 11-5-2009)



ORDINANCE NO. 2588

AN ORDINANCE OF THE CITY OF MONTROSE, COLORADO, GRANTING AND AUTHORIZING THE CONVEYANCE OF AN INTEREST IN CITY-OWNED REAL ESTATE PURSUANT TO § 1-9-2 OF THE OFFICIAL CODE OF THE CITY OF MONTROSE

WHEREAS, the City of Montrose owns property along the southern side of Grand Avenue immediately north and adjacent to the Montrose County Justice Center; and

WHEREAS, a portion of this property is obsolete and does not serve a public need or benefit to the City of Montrose; and

WHEREAS, the City wishes to dispose of this obsolete portion of property described in **Exhibit A** hereto and convey to the adjacent property owner, Montrose County; and

WHEREAS, the City owns and operates an active sanitary sewer utility across this obsolete property and wishes to retain a 20 foot wide utility easement centered about the sanitary sewer line, also as described in **Exhibit A**.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MONTROSE, COLORADO, as follows:

SECTION 1: **Disposal of Property**

The portion of property particularly described on **Exhibit A**, attached hereto and incorporated herein, is hereby disposed of by the City of Montrose and shall be conveyed to the adjacent property owner, Montrose County. The City shall retain a public utility easement across the vacated right of way as shown on **Exhibit A**.

SECTION 2: **City Council Findings**

The City Council hereby finds, determines, and declares that this Ordinance is necessary and proper to serve the best interest of the citizens of Montrose.

SECTION 3: **Power to Adopt**

The City Council hereby finds, determines, and declares that it has the power to adopt this Ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the City of Montrose Charter, and pursuant to Section 1-9-2 of the Official Municipal Code of the City of Montrose.

SECTION 4: **Effective as Provided by City of Montrose Charter**

The Ordinance shall be published and shall become effective as provided by the City Charter of the City of Montrose.

The City Council hereby authorizes the Mayor and City Staff to execute all documents required to consummate said conveyance to the adjacent property owner, Montrose County.

You will please take notice that the Montrose City Council will hold a hearing upon the above Ordinance and its passage on first reading on Tuesday, the 17th day of May 2022, at the hour of 6:00 p.m. at the Elks' Civic Building in Montrose, Colorado.

INTRODUCED, READ, and PASSED on first reading this 17th day of May 2022.

David Frank, Mayor

ATTEST:

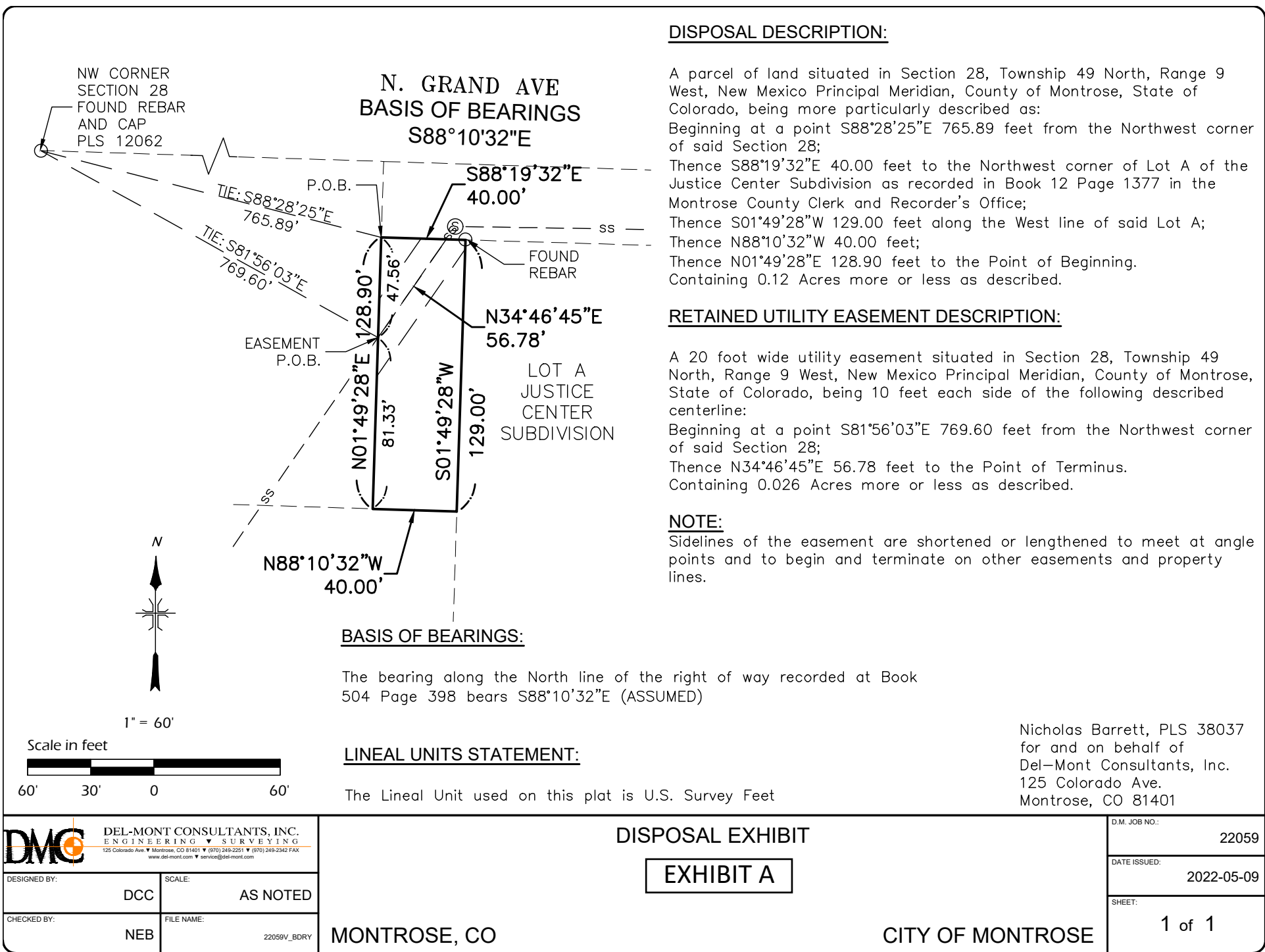
Lisa DelPiccolo, City Clerk

INTRODUCED, READ, and ADOPTED on second reading this 7th day of June 2022.

David Frank, Mayor

ATTEST:

Lisa DelPiccolo, City Clerk



CONTRACT AWARD RECOMMENDATION



TO: Honorable Mayor and Members of the City Council
FROM: Scott Murphy, *City Engineer*
DATE: May 6, 2022
RE: 6700 Road Extension Design Contract Recommendation
CC: William Bell, Shani Wittenberg

Action

Consider the award of a professional services contract to Del-Mont Consultants in the amount of \$97,200.00 for completion of design studies and civil design associated with the 6700 Road Extension Project.

Background

The City of Montrose comprehensive plan calls for the eventual completion of 6700 Road as a minor arterial where currently missing between Sunnyside and Miami Roads (see Figure 1). This project has remained a high-priority capital project due to continued traffic growth in the area; however, the City did not own all of the rights of way necessary to complete this missing link. The City recently entered into a development agreement to secure these outstanding rights of way which is now allowing the design of the roadway to move forward.

Request for Proposals and Design Team Recommendation

On April 7, 2022 the City of Montrose issued a request for proposals to procure a design team for the road design project. This design team would be responsible for performing the following key tasks:

- Perform all property and basemap surveys for the project area
- Perform geotechnical, hydrologic, and hydraulic design studies to aid in design of project elements (pavement thickness, pipe sizes, stormwater retention pond sizing, etc).
- Design utility extensions for water and sewer utilities.
- Perform horizontal and vertical design of the new roadway. This roadway will be configured at Miami and Sunnyside as traditional intersections initially but the design will establish footprints for the eventual construction of roundabouts at these intersections once future traffic volumes warrant their construction. This exercise will ensure that all utility construction and relocations are situated such that they would be outside of any future roundabouts.
- Prepare plans for relocation of conflicting utilities, irrigation infrastructure, and undergrounding of electrical infrastructure.
- Prepare project plans, specifications, and cost estimates.
- Assist with platting of adjacent remnant parcels as half-acre residential lots (six lots per side).

Proposals were publically received on May 4, 2022 from three consultants summarized in Table 1 below. Following receipt of the proposals, each was evaluated by the City of Montrose Engineering Department and a score between 0 and 4 was assigned to each based on weighted evaluation criteria. The resulting scores are summarized in Table 1. The weighted evaluation criteria are intended to objectively quantify the best-value consultant for the project.

TABLE 1		
Summary of Consultant Proposals		
Consultant & Location	Price	Rating
Del-Mont Consultants (Montrose, CO)	\$87,200.00	3.8
KLJ Engineering (Montrose, CO)	\$121,815.00	3.0
River City Consultants (Grand Junction, CO)	\$219,480.00	2.8

Based on the evaluation criteria and ratings, City staff recommends contract award to Del-Mont Consultants.

The prices presented in Table 1 are for the scope of work described above. However, this project contains the following design elements that could not be priced at this time as their scope is not yet defined:

- **Bureau of Reclamation Permitting.** The 6700 Road extension will cross the “H-Drain” ditch owned by the US Bureau of Reclamation (BOR) and operated by the Uncompahgre Valley Water Users Association. Crossing of this ditch with infrastructure requires special permitting with the BOR. The BOR also takes the stance that no urban stormwater may be discharged into this particular facility which will require special design and permitting considerations to address this constraint.
- **US Army Corps of Engineers (USACE) Permitting.** The H-Drain may contain jurisdictional wetlands along its bottom that may require special permitting with the USACE in order to pipe the ditch where crossing with the new roadway.

In order to provide an allowance for these undefined design elements, City staff recommends award of an additional \$10,000 to the as-bid contract price for a total contract award of \$97,200.00. All work for the project will be contracted on a time-and-materials, not-to-exceed basis.

Related Project Elements and Potential Expenditures

In addition to the design work discussed herein, the following project elements will also be focused on for the project in 2022:

- **Outstanding Right of Way Purchase.** The right of way purchase recently secured with the 6700 DeJulio Addition Annexation and Development agreement is schedule to close around July of 2022.
- **“Pink House” Demolition and Relocation.** Once the City closes on the 6700 Right of Way, we will take possession of the blighted “Pink House” located at the intersection of 6700 and Miami Road and in conflict with the proposed roadway. In order to limit liability issues associated with a vacant and blighted house, staff will immediately begin work on asbestos evaluation and abatement and then relocation (if possible) or demolition of the house. Depending on the nature and costs of this work, these expenditures may come before council for consideration in 2022.
- **Communication Cabinet Relocations.** A large regional communications cabinet, the same style as recently relocated for the Woodgate Realignment Project, is situated at the intersection of 6700 and Miami Roads and in conflict with the future roadway. Given the current lead times associated with getting these cabinets relocated, the City may attempt to start relocation efforts in 2022 if possible. This would come before council as a supplemental expenditure consideration should this work element move forward.

- **Retention Pond Land Purchase.** Depending on requirements imposed by the BOR for the H-Drain, it may become necessary for the City to seek the purchase of an additional small strip of land from vacant land areas to allow for the construction of a stormwater infiltration pond alongside the drain. If required, this would come before council as a supplemental expenditure consideration.

Project Schedule

Project design is proposed to be completed by February of 2023 as to allow for the project to go to construction in the summer of 2023 if approved by council.

Contract Administration and Project Financials

Contract administration and project management will be performed by the City of Montrose engineering department. The 2022 budget included \$100k in the capital improvement fund for this project; placing the anticipated cost approximately \$3k under budget.

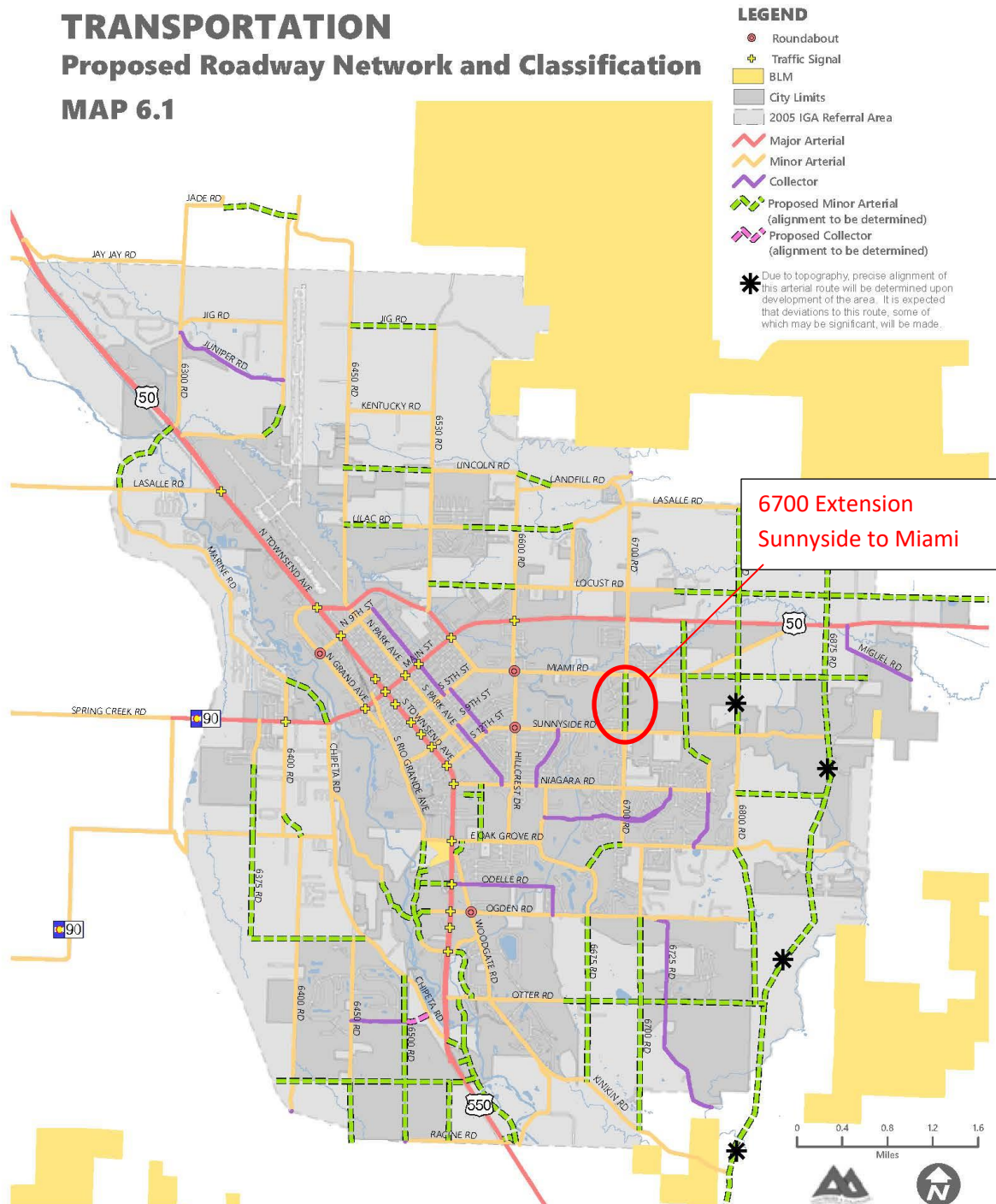


Figure 1 – Comprehensive Plan Road Network Excerpt

CONTRACT AUTHORIZATION RECOMMENDATION



TO: Honorable Mayor and Members of the City Council
FROM: Jim Scheid, Public Works Manager
DATE: May 16, 2022
RE: Park Ave and Main St Improvements Contract Award Recommendation
CC: William Bell, Ann Morgenthaler, Shani Wittenberg, Jackie Bubenik

Action

Consider the authorization of \$238,000.00 for improvements to the northeast corner of the intersection of Park Ave and Main St. Included in the total amount authorized is a contract with Kuboske Construction, LLC in the amount of \$215,908.94.

Background

In an effort to further beautify our Downtown, City Staff is recommending that we take advantage of an opportunity to utilize a qualified and reputable contractor to complete both a façade improvement and a street scape improvement at the same time. Kuboske Construction, LLC is scheduled to complete a façade improvement for Montrose Hardware in 2022. City staff has requested that Kuboske also provide pricing for a streetscaping improvement in the same area that they would be working. The City provided Kuboske with a conceptual sketch (image 1) of the streetscaping and specifications to match the other downtown infrastructure such as decorative lights and trees. Kuboske Construction provided a bid with a detailed breakdown and City staff were able to review this in detail to ensure the pricing provided is fair.

The existing sidewalk and curb and gutter surrounding this building are in poor condition. The lights and trees that are unique to our Main St are not present at this time on this corner of Main St (image 2). A project like this presents an opportunity to improve our downtown at a time when contractors are not available for this type of project and at a current price that is likely to rise in the future.

The owner of Montrose Hardware on the corner of Park Ave and Main St applied for and is a recipient of a façade grant through our DART program and has committed to doing a façade improvement to their building in 2022. If the streetscaping is approved, Kuboske would complete both the façade and the streetscaping at the same time in late summer of 2022.

Contract Administration and Project Financials

Oversight and management of this project would be handled through the City's Streets Division. This is not a budgeted project and the funding would be pulled from General Fund Reserve.

Image 1

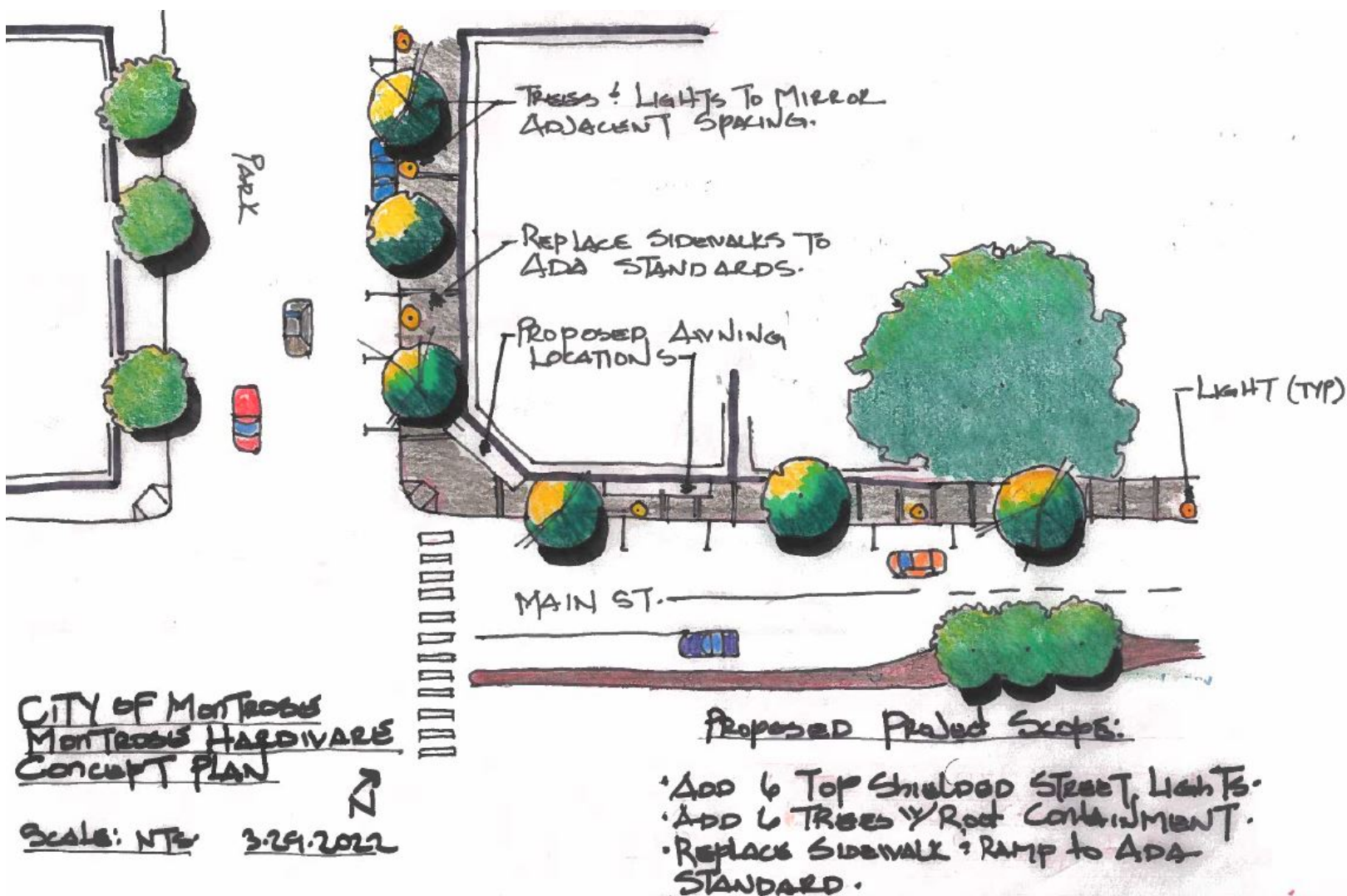


Image 2



CONTRACT AUTHORIZATION RECOMMENDATION



TO: Honorable Mayor and Members of the City Council
FROM: Jim Scheid, Public Works Manager
DATE: May 16, 2022
RE: 22-009 400 E. Main St Asbestos Abatement Contract Award Recommendation
CC: William Bell, Ann Morgenthaler, Shani Wittenberg, Mark Armstrong

Action

Consider the authorization and award of funds in the amount of \$77,616.20 for the asbestos abatement in the City facility at 400 E. Main St (previously the Wells Fargo building). Including the award of a contract with Asbestos Professionals LLC in the amount of \$67,492.35

Background

The City of Montrose hired Grand River Environmental to perform a non-destructive interior asbestos assessment of the 400 East Main Street facility in early 2022. This assessment revealed a number of interior finish materials that contained asbestos. Grand River Environmental developed a scope of work and bid documents for the abatement project.

Utilizing the formal invitation to bid process the City received two qualifying bid packages for this project.

Contractor:	Primary office location:	Price to complete project:
Asbestos Professionals LLC.	Aurora, Colorado	\$67,492.35
MFH Environmental Corporation	Littleton, Colorado	\$74,875.00

Contract Administration and Project Financials

City Staff recommend that Asbestos Professionals LLC. of Aurora Colorado be awarded the 400 East Main Street asbestos abatement project. Included in the authorized total is a 15% owner's contingency to cover unanticipated costs associated with the project. The total project budget, including owner's contingency is \$77,618.20.

This contract award is an anticipated cost associated with the purchase and remodel of the building at 400 E Main and is funded from the General Fund Reserves.