



Council Memorandum

To: The Honorable Mayor and City Council
From: Jason T Slowinski, City Manager
Date: March 25, 2021
Re: Intergovernmental Agreements Between Golden and CSM

Purpose of Agenda Item: This item appears before Council following very lengthy discussions in the community and with Colorado School of Mines (Mines) representatives over many years about the use of Intergovernmental Agreements to address areas of mutual interest where Mines and the City have not agreed about the level of City jurisdiction over Mines' activities. This packet includes two Intergovernmental Agreements that, if enacted would provide additional certainty and predictability in coordinating capital construction projects and campus operations. The Agreements have been presented in a public meeting on December 17, 2020 and have been available for community review on the City web site for several weeks. Council is asked to consider taking action on the two agreements.

Background: The concept of negotiating an Intergovernmental Agreement (IGA) between the City of Golden and Colorado School of Mines (Mines) was under discussion as early as 2015. At that time, it was thought that an approach where both the Golden community and Mines could anticipate future construction activities by Mines with a level of certainty and predictability might be preferable to the then current approach where Mines would go through the motions of the City's land use process, while concurrently maintaining that the City had no jurisdiction over their land use or construction decisions. (Some of the legal background surrounding the issue of local jurisdiction over state universities in Colorado can be found in the attached November 2, 2020 memo from the City Attorney).

In 2017, the City conducted neighborhood planning efforts adjacent to the CSM campus. With the completion of the latest Mines Master Plan in 2019, City Council directed staff to negotiate an IGA. After this lengthy process, the parties have developed a draft agreement, which incorporates the following points:

- The Agreement provides predictability and a level of certainty as to the location and intensity of Mines construction for the next several years, especially along the edges of campus.

- The Agreement clarifies the fact that no construction that would impact the 12th Street historic district neighborhood is planned, with the possible exception of the Maple Street tennis court area. In this area, setbacks and height limitations are clearly defined.
- The Agreement specifically address building heights for any new properties acquired by Mines in the area of Washington Avenue and eastward to Ford Street.
- The Agreement includes a commitment to utilize the Secretary of the Interior's standards and guidelines for alterations of any acquired historic structures on the State or National Register of Historic Places.
- The Agreement includes a commitment to contribute to infrastructure improvements necessitated by Mines construction.
- If the Agreement is approved by the City, the City will adopt an ordinance amending the zoning code to formalize the Agreement's provisions related to community review and input process for Mines construction projects.

In addition, City staff has been working on a second IGA with the Colorado School of Mines that is referred to as an Operational Agreement. This IGA focuses on documenting the agreements between the City and Mines about how they will interact together on an on-going basis, including transportation, pedestrian and vehicular traffic and parking, drainage, and utilities. Some key features of this agreement are:

- Joint data collection for transportation projects
- Continued collaboration on parking
- Both agree that pedestrian circulation and safety are a vital element of the community
- Coordinated plans for snow and ice removal
- Plans for usage of City Water, Wastewater and Storm Drainage Utilities
- Guidelines for campus work in Public Rights of Way
- Acknowledgement of campus operations regarding noise, lighting and general hours for activity

Taken together, the two agreements represent an opportunity for Mines and the City to continue to work together regarding the many issues where campus and community interests intersect.

Public Outreach Efforts: As noted above, there has been on-going public debate and input regarding this issue for many years. Initially, the greatest interest was from the 12th Street historic neighborhoods along the north end of campus. More recently, the neighborhoods closer to 19th Street have been more engaged, as much of the anticipated future construction is proposed for the southern edge of campus. The virtual meeting on December 17, 2020 was hosted by Councilors Brown and Fisher and was well attended. The general feeling from attendees was that the IGAs will be an improvement over the experience of the past several years.

Fiscal Impact: The primary fiscal impact of the IGAs and attempts to coordinate and cooperate between Mines and the City would be the savings from avoiding costly litigation.

Community Impact: The overall community impact of Mines' presence in the community and ongoing operations is quite positive and affects us culturally as well as in terms of economic development.

Alternatives: Action by Council on the two Agreements is discretionary. Council may proceed with the IGAs or consider a different approach.

Recommendations: Staff recommends that Council review and discuss the final drafts of the Agreements and to take action as appropriate.

Attachments:

1. Resolution 2782
2. IGA Regarding Coordination of Campus Capital Construction
3. IGA Regarding Operational Cooperation and Coordination
4. November 2, 2020 City Attorney Memo

RESOLUTION NO. 2782

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
AUTHORIZING THE EXECUTION OF TWO INTER-
GOVERNMENTAL AGREEMENTS WITH THE COLORADO
SCHOOL OF MINES**

WHEREAS, the City of Golden (Golden) and the Colorado School of Mines (Mines) have engaged in multiple agreements over the years reflecting the collaborative nature of the partnership; and

WHEREAS, it is the intent and desire of the Parties to continue to work collaboratively to best serve the interests of each party and of the community; and

WHEREAS, Mines and Golden have adopted respective strategic planning documents that enable facility and infrastructure initiatives that meet their respective strategic goals; and

WHEREAS, it is the intent and desire of the Parties to foster transparency, communication, and dialogue between Mines, Golden, and the members of the Golden community; and

WHEREAS, it is the intent and desire of the parties to replace and supersede an existing agreement dated January 28, 2010 about master planning and the 2007 verbal agreement by the then Mines President and the then Mayor of Golden regarding capital development process; and

WHEREAS, Mines and Golden acknowledge their differing legal positions as to the applicability of and compliance with zoning and other municipal regulations; and

WHEREAS, the Parties agree that the other Party is maintaining their respective legal positions in these areas notwithstanding the Agreements; and

WHEREAS, the Agreements do not abrogate the legal authority of either Golden or Mines; and

WHEREAS, Mines completed a Campus Master Plan update in 2019 that identifies projected land uses and capital construction at a conceptual level for the period of the effectiveness of such Campus Master Plan; and

WHEREAS, the Parties desire to formalize their arrangement regarding capital construction in an Agreement in order to clarify expectations for future developments and continue to work collaboratively in a manner that serves the interests of the Parties and the members of the Golden community.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN,
COLORADO:**

City Council hereby approves the Intergovernmental Agreement with the Colorado School of Mines Regarding Coordination of Campus Capital Construction attached hereto as Exhibit 1, and the Intergovernmental Agreement with the Colorado School of Mines Regarding Operational Cooperation and Coordination attached hereto as Exhibit 2, substantially in the form attached. The City Manager is authorized to execute the two Agreements on behalf of the City.

Adopted this 6th day of April, 2021.

Laura M. Weinberg
Mayor

ATTEST:

Monica Mendoza, CMC
City Clerk

APPROVED AS TO FORM:

David S. Williamson
City Attorney

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COLORADO SCHOOL OF
MINES AND THE CITY OF GOLDEN REGARDING COORDINATION OF CAMPUS
CAPITAL CONSTRUCTION**

This Intergovernmental Agreement (IGA) is entered into between the City of Golden, hereinafter “Golden” and the State of Colorado, acting by and through the Board of Trustees of the Colorado School of Mines, for the use and benefit of the Colorado School of Mines, hereinafter “Mines” on the last date written below.

WHEREAS, Golden and Mines are longstanding institutions that have grown and thrived together as neighbors over a period of nearly 150 years; and

WHEREAS, Golden and Mines recognize that together they offer the Golden community benefits in the areas of educational opportunities, economic development, and cultural richness; and

WHEREAS, Golden and Mines have engaged in multiple agreements over the years reflecting the collaborative nature of the partnership; and

WHEREAS, it is the intent and desire of the Parties to continue to work collaboratively to best serve the interests of each party and of the community; and

WHEREAS, Mines and Golden have adopted respective strategic planning documents that enable facility and infrastructure initiatives that meet their respective strategic goals; and

WHEREAS, it is the intent and desire of the Parties to foster transparency, communication, and dialogue between Mines, Golden, and the members of the Golden community; and

WHEREAS, it is the intent and desire of the parties to replace and supersede an existing agreement dated January 28, 2010 about master planning and the 2007 verbal agreement by the then Mines President and the then Mayor of Golden regarding capital development process; and

WHEREAS, Mines and Golden acknowledge their differing legal positions as to the applicability of and compliance with zoning and other municipal regulations; and

WHEREAS, the Parties agree to maintain their respective legal positions in these areas notwithstanding this Agreement; and

WHEREAS, this Agreement does not abrogate the legal authority of either Golden or Mines; and

WHEREAS, Mines completed a Campus Master Plan update in 2019 that identifies projected land uses and capital construction at a conceptual level for the period of the effectiveness of such Campus Master Plan; and

WHEREAS, the Parties desire to formalize their arrangement regarding capital construction in this Agreement in order to clarify expectations for future developments and continue to work collaboratively in a manner that serves the interests of the Parties and the members of the Golden community.

NOW THEREFORE, in consideration of the covenants and promises herein contained, the Parties agree as follows:

AGREEMENT

1. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings:

- a. “Campus Master Plan” shall mean the master planning document completed by the Colorado School of Mines in the fall of 2019, for submission to the Colorado Department of Higher Education, as required by C.R.S. § 23-1-106 *et seq.*, that sets forth the guiding principles by which facilities and other capital construction projects will be developed on Mines-owned or controlled land between 2018 and 2028 in support of Mines’ educational mission and goals, including but not limited to the facilities that Mines currently utilizes or that it will need to acquire, land uses, building forms and open spaces. For the purposes of this agreement, Mines agrees that the Campus Master Plan is supplemented to include those building height, setback, and setback restrictions pertaining to Mines’ buildings that are depicted in Exhibit A attached hereto. Any reference to the Campus Master Plan in this agreement shall include such plan as supplemented by Exhibit A.
- b. “Campus Master Plan Area” shall mean the area of land or individual properties that are owned or controlled by Mines, as further described in the Campus Master Plan, together with any facilities, buildings, structures or other improvements situated thereon, that are encompassed within the scope of the Campus Master Plan and that are subject to the scope of this Agreement.
- c. “City Representative” shall mean the City of Golden Director of Community and Economic Development.
- d. “Development Project” shall mean any new construction, addition, alteration, major exterior renovation or expansion of an existing or newly acquired building, facility or structure, consisting of 20,000 square feet or more, by Mines. Renovations that are interior to a building, facility, or structure and do not impact the exterior of the building, facility, or structure are exempt from the review processes set forth in this Agreement.

- e. “Geographic Area Subject to this Agreement” shall mean the area within the Campus Master Plan Area as that area is designated on the date of this Agreement, as well as any additional properties that are in the 12th Street Historic District, or within the area bounded by 15th Street (as extended to US Hwy 6) on the Northwest, Ford Street on the Northeast, 19th Street on the Southeast, and US Hwy. 6 on the Southwest, but excluding any areas of land or individual properties within the Campus Master Plan Area that are surrounded exclusively by Mines-owned properties.
 - f. “Historically Designated Properties” shall mean any properties listed on the National or State Register of Historic properties acquired after the date of this agreement that are located in the 12th Street Historic District, the Courthouse Hill area (which includes the 1400 block of Washington Avenue and the west side of the 1500 block of Washington Avenue), or the neighborhood bounded by 19th Street, Cheyenne Street (both sides), 18th Street and Washington Avenue.
 - g. “Golden Comprehensive Plan” shall mean the City of Golden Comprehensive Plan dated June 1, 2011, as adopted by Planning Commission Resolution No. PC 11-23, and as amended and approved the Golden City Council by Resolution No. 2133 on June 16, 2011, including any amendments.
 - h. “Mines Representative” shall mean the University Architect and/or designated representative.
2. Term. The initial term of this Agreement shall commence upon the date of the latest signature of either party, and shall expire on December 31, 2025 (“Initial Term”), unless earlier terminated as provided herein or extended by mutual, written agreement signed by duly authorized representatives of the Parties.
3. Golden Land Development and Planning. From time to time, Golden may undertake efforts to review and consider amendments or updates to the Golden Comprehensive Plan. Golden will provide an opportunity for Mines to review and comment on any proposed updates or amendments to the Golden Comprehensive Plan involving regions or areas adjacent to the campus or property owned by Mines under the following parameters:
- a. If Golden intends to undertake an amendment to the Golden Comprehensive Plan, it shall notify Mines’ Designated Representative and provide Mines a copy of the most current proposed amendment.
 - b. Before adoption of any substantive amendment, Golden shall hold at least three (3) public meetings to allow public input opportunities to identify areas of mutual interest, including at least once in the beginning of the process prior to the development of alternative scenarios or actions. Such public meeting will be preceded by at least 12 days’ notice.
 - c. Staff from Mines will be represented on any staff or community-based project steering or advisory committee that is established by Golden.

- d. At any point during the respective planning processes, at the request of Mines, the City will host an informal briefing of their proposed amendment for the benefit of the governing board of Mines.
 - e. Golden shall, in good faith, give careful and comprehensive consideration to the input and suggestions provided by Mines in the preparation and evaluation of alternatives and recommendations of the respective plan amendments.
 - f. Golden's project team for any such project will maintain on-going informal communication channels throughout the project for campus and community updates and engagement through appropriate media, such as websites or other suitable means.
4. Mines' Land Development and Planning. As a Colorado state institution of higher education, any property owned by Mines is subject to the laws and regulations promulgated by the State of Colorado. Mines agrees that use and development of Mines' property within the Geographic Area Subject to this Agreement will substantially conform to its Campus Master Plan. Mines will provide an opportunity for Golden to review and comment on any proposed amendments to the Campus Master Plan, as well as any proposed Development Project renovations, pursuant to the following process:
- a. As soon as practical, Mines will notify the City Representative of its intent to amend the Campus Master Plan or to engage in a proposed Development Project. Following the completion of a schematic design or proposed Master Plan amendment, Mines will present details of the proposed Development Project or Master Plan amendment to the City Representative for internal review by City departments.
 - b. Following submission of the proposed Development Project or Master Plan amendment to the City Representative, Mines will hold a public, neighborhood informational session for the purpose of presenting the proposed Development Project or Master Plan amendment to the public and to gather input related to the proposed Development Project or Master Plan amendment. Mines shall be responsible for scheduling the neighborhood informational session and agrees to provide sufficient and reasonable notice to the Golden community in advance of the neighborhood session. The Parties agree that any neighborhood informational sessions may be delivered and conducted utilizing different formats, which may include, but are not limited to, in-person meetings, remote/virtual meetings, or some combination thereof. Mines will, in good faith, consider revising the design of the proposed project or Master Plan amendment based on the input received.
 - c. Mines will hold a second public meeting to present the revised Development Project design or revisions to the proposed Master Plan amendment in relationship to any input provided, and explain what changes have been made or rejected. Notice will be provided in the same manner as provided for the initial neighborhood

informational session. In addition, the City Council will be invited to this second meeting. The presentation will include a discussion of the Development Project purpose and design or Master Plan amendment, a review of the input received from City staff and the community, and a discussion of what changes have been made or rejected according.

- d. Within 20 days after the second meeting, the City Council may provide a written set of comments on the project. Based upon the mutual goals stated herein, Mines will, in good faith, give serious consideration to any issues of significant concern raised by the City Council. For any written comments submitted by the City Council, Mines will provide a written reply as to how it intends to address specific City Council concerns prior to the start of construction of the Development Project or adoption of the Master Plan amendment or why it has determined that such concerns cannot be addressed. Discussion of Mines' written reply to the City Council in this meeting, and potential resolution of any differences between the parties, may include a discussion of whether additional joint discussion could help resolve remaining issues, such additional joint discussions not to exceed an additional 14 days. The entirety of the process set forth in Paragraphs 4(b) – (d) shall not extend beyond forty-eight (48) days from the date of the first public, neighborhood informational session.
- e. Golden staff will be represented on any Campus Master Plan steering or advisory committee that is established by Mines.
- f. Mines acknowledges that Mines' Development Projects can create infrastructure impacts on the community. As a means of addressing the potential impact of its Development Projects, Mines agrees to work with the City to allocate responsibility (including financial contributions, as appropriate) for infrastructure impacts that are created as a direct result of Mines' Development Projects.
- g. Mines agrees to keep the community informed of Development Projects on campus through the Mines website, email lists, or meetings, as appropriate.

5. Mines' Property Acquisition.

- a. For property acquired by Mines that is located within the Geographic Area Subject to this Agreement, but outside the Campus Master Plan Area, Mines will amend its Campus Master Plan to incorporate such property prior to commencement of a Development Project on such property. Master plan amendment review will proceed under the provisions described in Section 4 of this agreement.
- b. For property fronting on Washington Avenue or located to the east of Washington Avenue acquired by Mines after January 2018, Mines recognizes the important

community character issues related to building scale and design, and commits to the following limitations:

- i. Building heights facing Washington shall not exceed thirty-five (35) feet in height as measured at the Washington Street front property line.
 - ii. Building heights facing Jackson Street shall not exceed fifty (50) feet in height as measured at the Jackson Street front property line.
 - iii. Building heights for buildings located east of the alley alignment between Jackson and Ford Streets shall not exceed thirty-five (35) feet as measured at the Jackson and Ford Streets property line.
 - iv. For those structures located within a flood zone as defined by the Federal Emergency Management Administration (FEMA) maps, the grade shall be defined as one foot above the base flood elevation (BFE) as defined by (FEMA), but not to exceed five feet above grade as typically defined.
 - c. The limitations set forth in paragraph 5(b)(i) – (iv) herein shall not apply to any property that exceeds these limitations at the time of acquisition by Mines.
 - d. In the event Mines acquires ownership or control of any Historically Designated Properties, Mines shall follow the National Park Service regulations with regard to such properties.
 - e. Mines hereby indicates that at this time it has no intention of acquiring additional residential properties in the below two neighborhoods, however, in the event of such an acquisition, Mines agrees, for the term of this Agreement, not to initiate redevelopment of any acquired properties located in the 12th Street Historic District, and the neighborhood bounded by 19th Street, Cheyenne Street (both sides), 18th Street and Washington Avenue.
6. Mediation. Should the Parties have a disagreement regarding the interpretation of this agreement or any Mines project, in a good faith attempt to resolve the conflict amicably, the Parties shall meet to discuss the disagreement prior to discussing the conflict with any outside agency or entity or pursuing litigation. At a minimum, the meeting shall include the City of Golden Mayor and Mines University President. In addition to discussing resolution of the conflict, the Parties agree to discuss whether further mediation may be appropriate to achieve resolution.
7. Reservation of Rights.
- a. Nothing in this Agreement shall be construed to prejudice, limit, impair or otherwise abrogate Mines' legal position that it is immune from local zoning ordinances or land use regulations in the course of exercising its statutory powers with regard to state-owned or state-controlled land.

- b. Nothing in this Agreement shall be construed to prejudice, limit, impair or otherwise abrogate Golden’s exercise of its zoning authority with regard to land within its territorial jurisdiction.
- 8. **Termination.** Either Party may terminate this Agreement by providing ninety (90) days advance written notice to the other Party. Notices shall be mailed to the designated parties as specified in Section 8.
- 9. **Notices.** For purposes of notice required to be provided under this Agreement, all such notices shall be in writing, and shall be either sent by Certified U.S. Mail - Return Receipt Requested, Electronic Mail (Email) or hand-delivered to the following representatives of the parties at the following addresses:

For Mines: **Colorado School of Mines**
Attention: Kirsten Volpi, Executive Vice President
1500 Illinois Street
Golden, CO 80401
kvolpi@mines.edu

For Golden: **City of Golden**
Attention: Jason Slowinski, City Manager
911 10th Street
Golden, CO 80401
jslowinski@cityofgolden.net

- 10. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in any instrument delivered pursuant to this Agreement
- 11. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which is to be deemed original for all purposed, but all of which together shall constitute one and the same instrument.
- 12. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and venue for any litigation arising out of or relating to this Agreement shall be in the Jefferson County District Court.
- 13. **Contingencies.** This Agreement shall be subject to, and the effectiveness of this Agreement shall be contingent upon, the enactment of certain amendments to the Golden Municipal Code as are necessary, in Golden’s sole discretion, to authorize the use of land and buildings owned or controlled by Mines as contemplated in this Agreement. If Golden does

not enact any such Code amendments within twelve months of the date of this agreement, then this Agreement shall be void and of no effect.

CITY OF GOLDEN

STATE OF COLORADO, acting by and through the Board of Trustees of the Colorado School of Mines, for and on behalf of the Colorado School of Mines

By: _____
Laura Weinberg
Mayor
City of Golden

By: _____
Paul C. Johnson
President
Colorado School of Mines

Date: _____

Date: _____

DRAFT

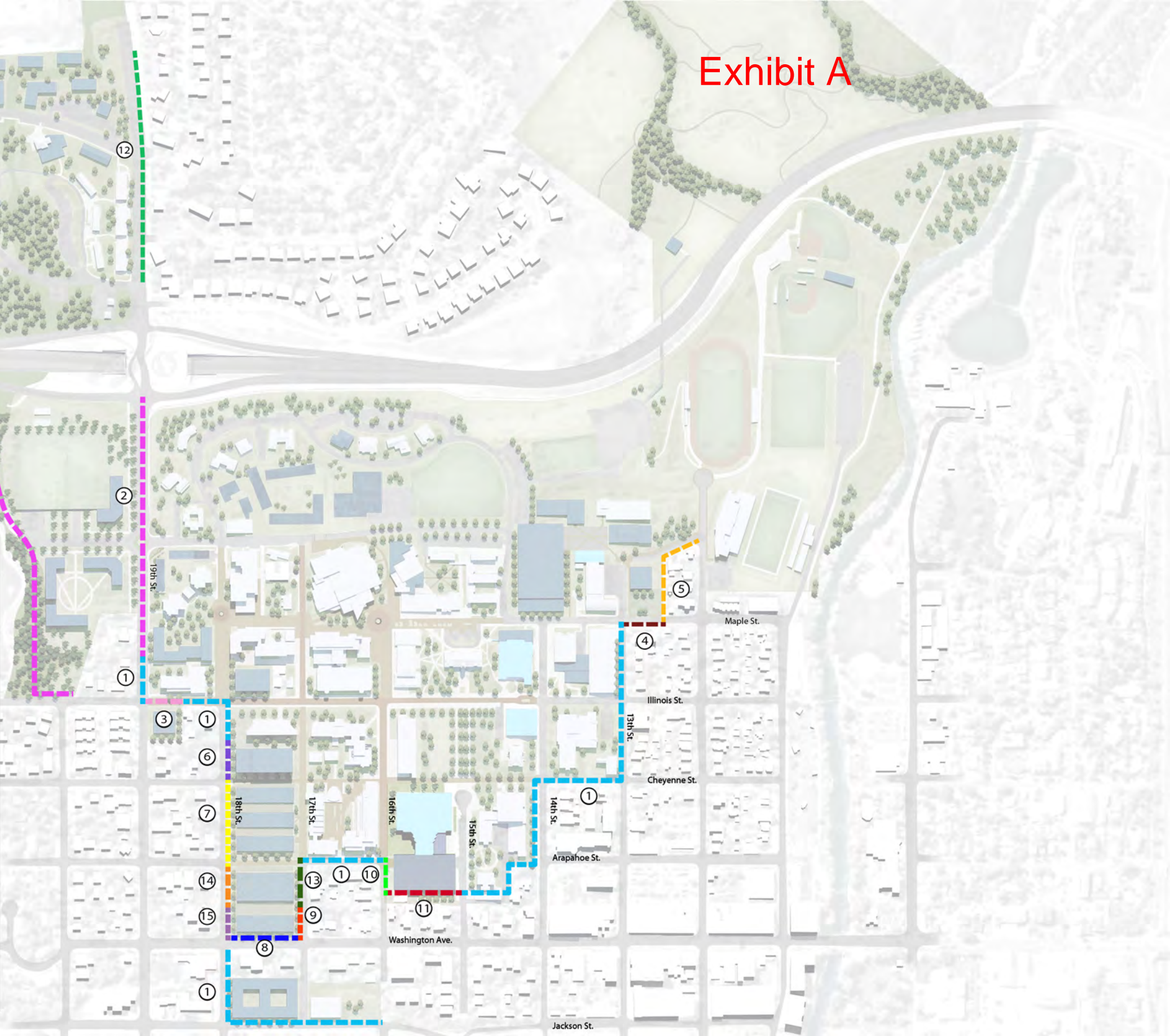
Exhibit A

Heights of flat roofed buildings are measured from the 1st floor of the building to the highest point of the roof plane.

Heights of sloped roof buildings are measured from the 1st floor to the midpoint of the sloped roof.

Rooftop mechanical equipment is excluded in determining building height up to 10' above the highest point of the roof plane.

SYMBOL	SETBACK FROM PROPERTY LINE	BUILDING HEIGHT AT SETBACK	BUILDING STEPBACK	BUILDING HEIGHT AT STEPBACK	TITLE
①					Existing Campus Edge
②	30'	50'	30'	65'	South Campus Corridor
③	15'	35'			Welcome Center Corner @ Illinois St.
④	80'	35'			Tennis Courts @ Maple St.
⑤	10'	35'			Tennis Courts @ Alley
⑥	40'	80'	50'	95'	18th St. @ Subsurface Frontiers
⑦	40'	65'	50'	95'	18th St. Research Corridor
⑧	15'	50'			Washington Ave.
⑨	5'	50'			17th St. @ Washington Ave.
⑩	25'	65'			Green Center Parking @ 16th St.
⑪	5'	65'			Green Center Parking @ Alley
⑫	25'	50'			19th Street @ Mines Park
⑬	15'	65'			17th St. @ Arapahoe St.
⑭	40'	65'			Parking Structure South Facade
⑮	40'	50'			Beck Venture Center South Facade



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE COLORADO SCHOOL OF
MINES AND THE CITY OF GOLDEN REGARDING OPERATIONAL
COOPERATION AND COORDINATION**

This Intergovernmental Agreement (IGA) is entered into between the City of Golden, hereinafter “Golden” and the Colorado School of Mines, hereinafter “Mines” on the last date written below.

WHEREAS, The City of Golden and the Colorado School of Mines are longstanding institutions that have grown and thrived together as neighbors over a period of nearly 150 years; and

WHEREAS, it is the intent and desire of the parties to work in collaboration to best serve the interests of each party and of the community;

WHEREAS, it is the intent and desire of the parties to replace and supersede an existing Intergovernmental Agreement pertaining to traffic and parking control dated December 7, 1995, including any and all formal and informal amendments to that agreement; and

WHEREAS, the parties desire to formalize their arrangement in this Agreement in order to clarify expectations of the parties with respect to various operations, including transportation, pedestrian and vehicular traffic and parking, drainage, and utilities.

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

1. Transportation.

The parties will collaborate on a joint data collection effort to understand and manage transportation systems that impact both Mines and Golden, any associated cost of this data collection and traffic analysis shall be split evenly between parties. This effort began in 2019, and the parties agree to update the data once during the term of this Agreement. It is anticipated that the update will occur in 2022 in order to reflect traffic conditions related to the new Maple Street parking garage.

2.

Vehicular and Pedestrian Traffic and Parking. The parties agree to collaborate on the following activities related to vehicular and pedestrian traffic and parking:

- a. Pursuant to its authority under C.R.S. § 23-5-107, Mines will continue to develop, expand and manage off-street campus parking facilities, in order to provide parking facilities adequate for its students, faculty, staff, partners, and visitors.

- b. Golden shall have responsibility for the posting or placement of signs and devices in Golden municipal street rights of way as authorized by Golden, in compliance with all city codes, rules, and regulations.
- c. Mines and Golden will continue to evaluate how Mines students, faculty, and staff utilize parking areas on Golden municipal streets located within, and near, the Mines campus. Consistent with efforts started in 2018, Mines and Golden have been coordinating their own parking management programs, and currently intend to continue to do so as generally characterized below:
 - i. Golden has two residential neighborhood permit parking programs for areas north (zone 1), and south and east of campus (zone 2). On-street parking in these areas is limited to either permit holders from the specific zone, or permit holders and 2 hour general parking.
 - ii. Golden has a system in the Golden downtown core where downtown employees are able to secure permits for specific locations, where all streets allow 2 hour free parking and where city lots and parking structures are available on a paid basis, with the first 2 hours free.
 - iii. Mines issues different classes of permits to students, faculty and staff. These permits allow the holder to park in specific locations. Holders of a Mines' issued permit can be authorized to park, or prohibited from parking, by Mines, on Golden Municipal streets within the campus core and on streets adjacent to Mines property, Golden agrees with Mines process as Golden views this as proper management by Mines of its affiliates.
 - iv. Mines manages parking by students, faculty staff, and campus visitors, but not the general public, on Golden Municipal streets within campus limits.
 - v. Mines provides paid visitor parking opportunities in many of its off-street lots.
- d. Mines acknowledges that as it acquires properties outside of the traditional campus areas, it will not be feasible or practical to utilize Golden Municipal streets surrounding the area of any such new acquisitions to meet Mines' parking requirements. Mines will not seek to implement an on-street parking management system for students, faculty, or staff that includes parking on 19th Street, Washington Avenue, or any street east of Washington Avenue, unless specifically provided for in a separate intergovernmental agreement between the parties.
- e. Mines and Golden agree that pedestrian circulation and safety is a vital element of campus life and the community as a whole. As such, Mines and Golden staff will coordinate proposals for traffic flow improvements and designated pedestrian crossings, relying on sound engineering and Golden's adopted manual.

- f. Mines and Golden have coordinated plans and programs for management of snow and ice. The respective Snow and Ice Plans are coordinated annually by Mines and Golden staff members.

3. Drainage.

- a. Golden is obligated by its MS4 Stormwater Permit, issued by the Colorado Department of Public Health and Environment, to enforce all applicable stormwater quality requirements on all disturbance and construction activities in Golden. Mines and its contractors will comply with such adopted regulations.
- b. Such disturbance and construction activities may also include the design and implementation of permanent best management practices (BMPs) related to stormwater quality. Mines' projects will continue to incorporate such BMPs in compliance with adopted standards, currently including the Urban Drainage Volume 3 (as amended).
- c. Per Golden requirements, stormwater detention is triggered by an increase in impervious area for a project or defined group of projects greater than 10,000 square feet. Golden has previously granted to Mines a storm water exception for detention on the southern portion of Mines' campus when storm water was diverted during the 19th street overpass project. Even when additional detention is not mandated, Mines and Golden recognize that peak rainfall events have impacts on campus and in community areas "downstream". Mines and Golden will look to implement measures to lessen the impacts of drainage flows, in general, and specifically in project design. Drainage reports in accordance with Golden's adopted preparation and submittal requirements will be timely submitted, with no project area disturbance until such drainage plans are approved.

4. City Water, Wastewater and Storm Drainage Utilities

- a. Mines will submit for review and approval, and obtain necessary permits when applicable, applications, plans, specifications, details and other forms and submittals in accordance with City of Golden standards, specifications, and requirements for any work that includes:
 - Addition, removal or relocation of any public water, sewer, or stormwater mains, facilities or appurtenances.
 - Addition, removal or relocation of any taps, services, or connections to City of Golden water, sewer or stormwater distribution or collection systems.
 - Payment of all applicable fees, including without limitation System Development Fees and user fees for any new connections to public Water, Sanitary Sewer or storm water system, in accordance with the utilities provisions of the City of Golden Municipal Code.
- b. Upon written request, Mines and Golden will share as-built information for any existing or newly placed utility within Public Rights of Way. As-built information shall include documented locations of said utilities.

5. Non-City Owned Utilities within City Rights of Way

- a. Mines will submit plans and specifications for review and approval by Golden of any new utility proposed to be placed or operated by Mines within Golden rights of way, specifically including Mines utility steam tunnels, prior to commencement of any work in such right of way.
- b. Mines will submit as-built information for any newly placed utility operated within Golden rights of way. As-built information shall include documented locations of said utilities. As built information for existing utilities will be provided if readily available.
- c. Golden shall not unnecessarily interfere with or disturb Mines' utilities within Golden rights of way. In the event that non-emergency work within Golden rights of way may interfere with Mines' utilities, Golden will make all reasonable efforts to provide Mines a minimum thirty (30) days' notice of proposed work.
- d. Mines shall at its sole cost and expense temporarily or permanently remove, relocate, change or alter the position of any Mines' utilities in Golden rights of way, excluding Mines utility tunnel infrastructure that are in existence as of the date of this Agreement, the location of which has been identified by Mines, and excluding any Mines utility that are approved by Golden pursuant to subparagraph a above, whenever Golden shall determine that such removal, relocation, change or alteration is necessary for the completion of any Public Project. For all relocations, Mines and Golden agree to cooperate on the location and relocation of the Mines' utilities in Golden rights of way in order to achieve relocation in a reasonably efficient and cost-effective manner. Notwithstanding the foregoing, once Mines has relocated any utilities at Golden's direction, if Golden requests that the same Mines' utilities be relocated within two years, the subsequent relocation shall not be at Mines' expense. For the purposes of this agreement, Public Project means (1) any public work or improvement within the City that is or will be wholly or beneficially owned by the City; or (2) any public work or improvement within the City Where fifty percent (50%) or more if the funding is provided by any combination of the City, the federal government, the State of Colorado any Colorado county, the Regional Transportation District, or any other governmental entity, but excluding all other entities established under Title 32 of the Colorado Revised Statutes.

6. Work in Public Rights of Way

- a. Mines will utilize licensed and insured contractors and require contractors to obtain permits for all work within Golden rights of way.

7. Campus Operations. The parties acknowledge that, from time to time, Mines has temporary construction activities, and also hosts events, such as athletic competitions and

other event programming, that generally take place on evenings and weekends outside hours outlined below.

- a. Noise. Mines will use reasonable efforts to minimize noise levels related to normal campus operations and activities prior to 7:00 a.m. and after 7:00 p.m. in accordance with the permissible noise levels set forth for light industrial zones under C.R.S. 25-12-103. Reasonable exceptions to permissible noise levels include Mines' temporary construction activities as scheduled, seasonal maintenance activities, and sponsored events including, but not limited to, athletic events, special programming such as homecoming, e-days, commencement, and fireworks displays.
 - b. Lighting. Mines will use reasonable efforts to minimize direct light and glare from impacting adjacent private properties at an elevation equal to that at the base of the lighting at the subject site. Mines shall consider the utilization of shrouding, placement, and/or other design features to reduce negative lighting impacts without compromising campus safety and security.
 - c. Vendors and Subcontractors and Facility Users. Mines shall communicate the above expectations and standards related to parking, noise levels, and lighting, to all of its vendors and subcontractors, and any other entities contracting for use of Mines facilities, and contractually require compliance therewith, where practical.
 - d. Point of Contact. Mines shall maintain an operational point of contact for which members of the public can direct all questions and/or concerns related to campus operations and activities. Mines shall make the contact information for such person publicly available on its website.
8. Miscellaneous Provisions.
- a. Term and Termination. The initial term of this Agreement shall commence upon the date of the latest signature of either party, and shall expire on December 31, 2025 ("Initial Term"), unless earlier terminated as provided herein or extended by mutual, written agreement signed by duly authorized representatives of the Parties. Either Party may terminate this Agreement by providing ninety (90) days advance written notice to the other Party.
 - b. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as applicable now or hereafter amended.
 - c. Subject to Annual Appropriation. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of either party not performed during the current fiscal year is subject to

annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year. Any failure of either party annually to appropriate adequate monies to finance its obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the other party of any failure to appropriate such adequate monies.

- d. Police Powers Reserved. This agreement shall not be construed as a waiver by either party of any police powers to which they are entitled to under law, said powers being fully reserved to the respective parties.

- e. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all other prior and contemporaneous agreements, representations, and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties. No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement or in any instrument delivered pursuant to this Agreement.

- f. Counterparts. This Agreement may be executed in multiple counterparts, each of which is to be deemed original for all purposes, but all of which together shall constitute one and the same instrument.

CITY OF GOLDEN

STATE OF COLORADO, acting by and through the Board of Trustees of the Colorado School of Mines, for and on behalf of the Colorado School of Mines

By: _____
Laura M Weinberg
Mayor
City of Golden

By: _____
Paul C. Johnson
President
Colorado School of Mines

Date: _____

Date: _____

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DAVID S. WILLIAMSON
WILLIAM P. HAYASHI
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Telephone: 303-443-3100
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MEMORANDUM

TO: Mayor and City Council

FROM: Dave Williamson

DATE: November 2, 2020

RE: Application of City and Zoning Land Use Regulations to
Colorado School of Mines--- up-dated

In 2019 the Colorado School of Mines (“CSM”) adopted its Capital Improvement Plan Master addressing anticipated capital improvement projects on the CSM campus over the next several years. The City’s staff has been in discussions with CSM officials in order to determine how best to coordinate the CSM Master Plan with the City’s land use regulations.

On numerous occasions throughout our tenure with the City over the past 30 years we have been requested to offer legal opinions as to the City’s authority to impose land use regulations upon property owned and used by other governmental entities such as CSM and Jefferson County. On several occasions we have provided City Council with formal written opinions that are confidential and protected from public disclosure by the attorney-client privilege.¹ While City Council does not wish to waive its privilege with respect to such opinions, Council has indicated that it would be beneficial to provide its constituents with a summary legal opinion in order provide a better understanding of the legal issues involved.

Over the years we have consistently concluded that CSM is not exempt or immune from the City’s zoning and land use regulations. While the Colorado Supreme Court had not ruled directly on that question, our office was of the opinion that the City’s broad home rule power to regulate land use within the limits of the City applies to use of land by CSM. There have been a few recent Supreme Court decisions that bear on our opinion, however we continue to believe that Golden’s home-rule powers cannot be ignored by CSM.

¹ Preventing public disclosure of such protected legal opinions allows the City to protect its legal position and arguments in the event of litigation.

HISTORICAL CONTEXT

In 1986, a former city attorney for Golden opined in a letter to Jefferson County that “the County ... may acquire and use property and erect buildings without regard to the zoning, building, or subdivision regulations or laws of the City of Golden.” Our office undertook legal representation of the City of Golden in 1990. In 1991, Jefferson County proposed to utilize a building that it owned on 19th Street, west of U.S. 6, as a detoxification facility. The City’s zoning for the property did not allow such a use. In response to the County’s proposal, our legal research in 1991 indicated that the opinion of the former city attorney regarding the applicability of the City’s zoning laws to the county was contrary to the law in Colorado at that time, and that Jefferson County was not exempt from the City’s zoning regulations. We relied primarily upon a 1988 Court of Appeals case (*La Plata County Commissioners vs. Board of Adjustment of the City of Durango*, 768 P.2d 1250 (Colo. App. 1988)). In that case, La Plata County leased a house that was to be used for office purposes. These purposes violated Durango’s zoning ordinance. The County sought an exemption from the City’s Board of Adjustment; however, that exemption was denied. The County then filed a lawsuit to request a declaration that the property was exempt from the City’s zoning ordinance.

In addressing the issue, the Colorado Court of Appeals analyzed the state statute that authorized *statutory cities* to adopt zoning regulations. (Section 31-23-301, C.R.S.) The Court held, based upon the statute, that the County was not immune from the City’s zoning laws. The Court also ruled that in order to obtain an exemption that was afforded under the statute for “public buildings”, the County must meet the standard of establishing “reasonable necessity,” and that proof of the proposed use was “more convenient” would not be sufficient.

The exemption provided for in Section 31-23-301, C.R.S., remains in the statute and it appears that it must be made available to county governments in *statutory cities*. In 1991 we maintained that, although the Colorado courts had not addressed the issue, there is a good argument that the exemption procedure afforded to county governments in statutory cities was not required in home rule cities. The state legislature did not declare the exemption provisions of Section 31-23-301, C.R.S., to be a matter of statewide concern. Colorado court decisions have consistently held that zoning and land use matters within home rule cities are matters of local concern and may preempt statutory provisions. Therefore, we reasoned that the City of Golden, as a home rule municipality, was not required to accommodate the statutory exemption procedure, and could exercise its land use regulation over property held by the county, as the county was not exempt from local land use regulations.

The County abandoned its efforts to use the property for a detoxification facility and has complied with the City’s zoning processes since that time. The Jefferson County Government Center has been zoned by the City as a PUD, and there have been relatively few, if any, land use conflict with the County since then.

In 1993, the City made significant amendments to its zoning regulations. The City, working with CSM and recognizing the ongoing nature and use of property at the CSM campus, adopted zoning regulations that permitted, as a use of right, “college and university buildings and uses, when incorporated into a residential campus” in the R-3 zone district. The density requirements of the

R-3 district remain applicable to the college and university buildings. By doing so, the City asserted its land use regulations over CSM's properties, yet allowed a certain amount of autonomy for CSM to design and plan its campus to meet its needs.

In December of 2002, we provided Council with a specific opinion addressing the application of the City's zoning and land use regulations to CSM. In that opinion, our office updated the 1991 opinion that was rendered with respect to the County, and concluded that CSM was in the same position, vis-à-vis zoning and land use regulations, as the County. As of 2002, there had been no appellate court decisions in Colorado that altered our conclusion in that regard. Over the years there had been ongoing discussion with the Attorney General's Office and CSM regarding the authority of the City to impose its land use regulations on the school, and that there was no agreement on the City's authority. However, since before 2002, and continuing to date, CSM, while not conceding the issue, has complied with the City's zoning processes and procedures in conjunction with construction and uses on campus. On numerous occasions, site plans, variance requests and rezoning applications have made their way through the City's processes, and CSM has modified its construction plans in response to the City's process in order to obtain City approval. Of particular note was the construction of Marv Kay stadium, the design of which was significantly modified as a result of the City's process and input.

In addition to acknowledging and following the City's land use regulatory proceedings, CSM has involved the City in CSM's master planning process. Likewise, the City has specifically involved CSM in its comprehensive planning process. The end result over the past 30 years, is that both the City and CSM have acknowledged and respected their relative differences of opinion as to the City's land use authority over CSM property, and worked cooperatively to resolve land use issues without resorting to expensive, and uncertain, litigation.

RECENT COURT DECISIONS

There have been no definitive appellate court cases announced since our opinion in December of 2002 that directly clarify the extent of the City's power to regulate land uses on the CSM campus. The City's primary position, that the authority to regulate land uses is a matter of "local concern", thus the City may, through its home rule power, fully and lawfully exercise this authority over property owned and used by CSM, remains viable. CSM's likely position is that it is mandated by statute to provide for higher education and that such a mandate represents a matter of "statewide concern", which would pre-empt the City's powers.

While the courts have not addressed the conflict between the City's home rule authority over land use and the CSM's interest in providing a higher education, the Colorado Supreme Court did issue an opinion in 2003 wherein a home rule city's land use authority was preempted by the state's interest in fulfilling its statutory obligation to place and supervise adjudicated delinquent children in foster care homes. In *Northglenn v. Ibarra*, 62 P.3d, 151 (Colo. 2003), the Colorado Supreme Court invalidated a Northglenn zoning ordinance that prohibited unmarried registered sex offenders from living together in a single family residence, to the extent that the ordinance prohibited placement of adjudicated delinquent children in foster care homes pursuant to a state statute. The *Ibarra* case does not resolve the current issue pertaining to CSM or Jefferson County, or, for that matter, shed any light on how the Supreme Court would rule on this issue. However, it

does provide an instance where the home-rule authority to regulate land use did not trump a specific statutory duty carried out by the state.

On January 25, 2016, the Colorado Supreme Court issued an opinion in *Ryals v. City of Englewood* that upheld the City of Englewood's home rule power to adopt an ordinance that, in effect, prohibited certain sexual offenders from residing in the city. The plaintiff in the case argued that Englewood was preempted from adopting such an ordinance as the regulation of sexual offenders was a matter of statewide concern. In a 5-2 decision, the Supreme Court somewhat shifted its analysis of home rule authority when it determined that the case involved a matter of "mixed local and statewide concern," and because Englewood's ordinance did not conflict with the state's interest in regulating sexual offenders, the home rule powers to enact the ordinance was upheld. While the Englewood case does lend support to the City's position that its height regulations should apply to CSM's buildings, the case certainly is not definitive with respect to the potential dispute.

The Colorado Supreme Court also announced two additional decisions in 2016 addressing the ability of a home rule city to use its land use powers to regulate fracking (*City of Ft. Collins v. Colo. Oil and Gas Ass'n. and City of Longmont v. Colorado Oil and Gas Ass'n.*), again holding that the land use power of the home-rule cities and the states authority to regulate the oil and gas industry presented matters of "mixed state and local concern", meaning that the cities could legislate in the field, but not to the extent that such legislation would materially impair or impede the state's objectives.

The cases that have been announced by the Supreme Court since 2002 only underscore the uncertainty of the outcome should either the City or CSM choose to litigate the issue.

CONCLUSIONS

We believe that Golden is justified, and should continue to preserve and vigorously assert, its home rule authority to exercise land use regulations over properties owned by CSM (as well as Jefferson County). However, Council and Golden's citizenry should also be aware of a general reluctance of the courts to intervene in disputes between governmental entities, the courts most always encouraging a cooperative resolution if possible. This appears to be the same approach that has been followed by other Colorado municipalities that are faced with this issue, such as Boulder (University of Colorado), Ft. Collins (CSU) and Denver (Auraria Campus), none of whom have pushed the issue to litigation. When I have contacted the city attorneys for these cities, all agree that there is no clear and definitive answer from the courts on the supremacy of the zoning power. All acknowledge that the ability to cooperate and work with the universities on land use matters was the key to a resolution that was ultimately acceptable to all sides.

In light of the uncertainties associated with the exercise of Golden's land use powers, Golden should continue to work closely with CSM on land use matters so as to achieve a result that serves both the citizens of Golden and CSM. In the event that the issue pertaining to the extent of Golden's home rule power is litigated and an appellant decision is issued, the ability of CSM and the City to cooperate will, to some degree, be stifled.

The proposed Intergovernmental Agreement with CSM allows development on the CSM campus only if that development is in accord with the approved CSM Master Plan. It also specifically limits height and set-backs on the edges of the campus. The IGA would only become effective if the Agreement is incorporated into Golden's land use code through the ordinance process. If the IGA is violated or otherwise terminated, then the City's current legal arguments as to the extent of its home rule powers will be preserved and could be asserted as such time.

Cc: Jason Slowinski
Steve Glueck
Rick Muriby

DRAFT