July 1, 2025

AGENDA ITEM SUMMARY
City Council

STAFF

Josh Birks, Deputy Director, Sustainability Services and Acting Executive Director, Fort Collins Urban Renewal Authority

SUBJECT

Public Hearing and Resolution 2025-059 Approving a First Amendment to the Amended and Restated Service Plan for Foothills Metropolitan District.

EXECUTIVE SUMMARY

Staff is requesting that Council make the following motion to continue the public hearing and postpone consideration of this Resolution to allow the applicant additional time to draft and finalize details concerning the dedication of affordable housing in the related item Resolution 2025-060, Approving the Development Agreement to Secure Public Benefits for the Foothills Mall Redevelopment.

Motion: "I move to continue the public hearing and postpone consideration of Resolution 2025-059, Approving a First Amendment to the Amended and Restated Service Plan for Foothills Metropolitan District, to July 15, 2025."

Per the City's Financial Management Policy 10 – Metro Districts (the "Policy"), authorized by Resolution 2021-045, the procedures for conducting a hearing on metropolitan district service plan or plan amendment will be in accordance with the Council's adopted procedures and Section 3.K. of the Policy, which sets the order of the proceedings on such a public hearing as follows:

1. Announcement of item;
2. Consideration of any procedural issues;
3. Explanation of the application by City staff;
4. Presentation by the applicant;
5. Public testimony regarding the application;
6. Rebuttal testimony by the applicant;
7. Councilmember questions of City staff and the applicant; and
8. Motion, discussion and vote by City Council.

In 2012, the District was organized to redevelop the then existing Foothills Mall (approval of the formation of the District and its original Service Plan by City Council was by Resolution 2012-084). Council approved the current Amended and Restated Service Plan for the Foothills Metropolitan District (the "District") on May 7, 2013 (Resolution 2013-044).

Since the District's formation and redevelopment, some of the planned activation has been successful. However, several factors have affected the commercial leasing of all property, which has impacted the revenues dedicated for debt service payment. To address the underperforming aspects, MXD Fort Collins, LLC (the "Current Developer") is currently designing a new redevelopment plan. The First Amendment supports this new approach to redevelopment by:

1. Increasing the maximum amount of debt the District can have outstanding.
2. Extending the length of the debt the District is allowed to incur and clarifying refunding.
3. Making other changes to ensure consistency with the new redevelopment plan.

The First Amendment expands the list of eligible improvements but does not expand the list of eligible improvements for which the City or the Fort Collins Urban Renewal Authority (the "Authority") are obligated to participate in or contribute revenues to finance. This item is related to another item on the agenda, Resolution 2025-060, Approving a Development Agreement to Secure Public Benefits for Foothills Mall Redevelopment, which, if adopted, would approve a Public Benefits Agreement that would be effective upon the effective date of this Resolution 2025-059.

STAFF RECOMMENDATION

Staff recommends consideration by Council, after conducting a hearing on Resolution 2025-059, of action on Resolution 2025-059.

BACKGROUND / DISCUSSION

Legal and Procedural Requirements

Part 2, Article 1 of Title 32 of the Colorado Revised Statutes ("C.R.S.") authorizes the formation of a metropolitan district within the City by approval of Council of the district's proposed service plan, after a hearing on the proposed service plan which sets forth the public improvements and services which the district will provide, by adoption of a resolution and subsequent voter approval in favor of the organization of the district, per Part 3, Article 1 of Title 32, C.R.S.

Amendments to service plans which constitute a "material modification" of the originally approved service plan require additional approval and process that is similar to those upon formation of a district, including a public hearing on the proposed service plan amendments. C.R.S. § 32-1-207.

The City's Financial Management Policy 10 – Metro Districts (the "Policy"), as authorized by City Council Resolutions 2021-045, 2019-016, 2018-079, and 2008-069, further establishes the criteria, guidelines, and processes for the City in considering applications for service plans for proposed metropolitan districts and amendments to those plans. The Policy was originally adopted in 2008 and revised in both 2018 and 2021. The Policy sets expectations that metropolitan districts will provide broad public benefits, requires applicant assurances and specific commitments, and provides for enforcement of these public benefits by inclusion of related terms in district service plans, development agreements and other contracts. Policy Section 10.1 and Exhibit provide guidance to applicants on the evaluation of public benefits, including the delivery of housing that meets City priorities as articulated in various plans, including affordable housing (permanent, 80% AMI), workforce housing (permanent, 81%-120% AMI), infill/redevelopment projects, and projects that serve the City's economic health.

History of the Foothills Mall Redevelopment

Prior to redevelopment, the owner of Foothills Mall – Alberta Development Partners, in partnership with Walton Street Capital (the "Original Developer") – requested the formation of a Metropolitan Districts as allowed by Title 32 of the Colorado Revised Statues. On May 7, 2013, Council approved, by Resolution 2013-44, an Amended and Restated Service Plan for Foothills Metropolitan District (the "District") to operationalize significant components of the Redevelopment and Reimbursement Agreement (the "Agreement") between the City of Fort Collins (the "City"), Fort Collins Urban Renewal Authority, Walton Foothills Holdings VI, LLC and the District.

The Original Developers undertook a comprehensive redevelopment of the Foothills Fashion Mall (the "Original Project"). The Original Project included mixed use redevelopment with a commercial/retail component, a commercial parking structure and 402 multi-family dwelling units on 76.3 acres. Construction of the Project was completed in 2016.

Previous Public Finance Package

The original redevelopment effort was supported by a bond issued by the District which facilitated $53 million of net bond proceeds to fund public infrastructure improvements, the Foothills Mall Activity Center, and an underpass beneath College Avenue connecting the Original Project to the MAX Bus Rapid Transit. The bond was supported by a public finance package that included five revenue sources: (a) Metro District Capital Mills; (b) Metro District Specific Ownership Tax; (c) Property Tax Increment; (d) a Public Improvement Fee; and (e) Sales Tax Increment.

All revenues were pledged to the District for the duration of the tax increment collection period (2014 to 2038) to support repayment of the bond. The pledge of the sales tax revenue was intended to support the bond debt service only if needed and to fill a supplemental reserve account required by bond terms. Any pledged sales tax increment revenue more than that commitment was to be remitted back to the City. Currently, the City has not received any excess sales tax increment revenue.

Current Situation

Since its completion, the Original Project has been able to consistently lease out the retail shops along College Avenue at approximately 90 percent occupancy. However, the interior portion of the property – the enclosed retail shops – have struggled to achieve similarly high rates of occupancy with only 49 percent occupancy today. Further, since 2016, there have been international and national trends that have impacted consumer and other market behaviors within the bounds of the Current Project, including retail consolidation, the 2020 COVID pandemic, rising construction costs, increasing housing costs. These international and national trends are major considerations that factor into renewed investment in the site.

In the near term, activities within Original Project are not generating robust tax and increment revenues. Presently, the pledged revenues, all together, are just sufficient for repayment of annual debt service. The Current Developer's bond underwriter's forecast indicates that pledged revenues may not be sufficient for annual debt service payments sometime in calendar year 2028. To address a potential insufficiency of revenues under the present financing structure, the Current Developer is proposing changes necessary to refinance the debt. To accomplish this, the existing principal balance of the original bonds, approximately $62 million, would be refunded. Then, to align revenues with the debt obligation, the Current Developer is requesting the ability to issue new bonds based on revised and to pledge new revenue sources to support a second approach at redevelopment.

CURRENT PROPOSED PROJECT

The proposed project builds upon a previous redevelopment seeking to address inefficiencies of the current site as well as additional redevelopment not possible under the previous attempt due to outstanding leases and property ownership, namely the redevelopment of the Macy's building). As a result, the proposed project will include the following major components:

- A ***32 percent reduction in existing retail square footage*** with a significant reimagining of the current enclosed mall portion of the property. The goal is to "right size" the amount of retail to position the site for long-term success.

- Approximately ***300 new housing units*** across a range of types including townhomes, stacked condominiums and affordable rental.
- Around ***11 acres of new public space and trails***.

PROPOSED AMENDMENT

The proposed First Amendment to the Amended and Restated Service Plan for the Foothills Metropolitan District (the "First Amendment") changes several aspects of the current service plan, the Amended and Restated Service Plan for the Foothills Metropolitan District (the "Current Service Plan").

The first set of proposed changes occurs in Section II of the current Amended and Restated Service Plan (Definitions) and includes:

- **Add-On PIF Revenues** – Amends the definition ("Add-On PIF Revenues") by adding the following in underlines: "has the same meaning as in the Redevelopment Agreement<u>, subject to adjustment as to amount as provided in the PIF Covenant. Throughout the term of the Redevelopment Agreement, the amount of the Add-On PIF Revenue shall not be reduced below 1.00%</u>." ***This change enables the Current Developer to adjust the PIF amount to raise additional revenue to support the District's ability to take on expanded debt.*** The proposed First Amendment caps the PIF at 3.00%. The Current Developer *plans to increase the total Add-On PIF Revenue to 1.25%.*
    - The PIF is a private fee added to the price of goods at the point of sale pledged to support the repayment of District bonds. As a private fee, this component does not require approval by the City Council. However, recognizing that a 1.00% fee was pledged as part of the original agreement. Therefore, it is important to ensure that the amount never falls below this threshold, otherwise it would require additional use of Tax Increment revenues (both property and sales tax).
- **Named Developer** – Changes the named developer from Walton Foothills Holding VI, LLC to MXD Fort Collins, LLC, and from a Colorado limited liability company to a Delaware limited liability company. ***This change updates the Current Service Plan to reflect the Current Developer/property owner.***
- **Eligible Improvements** – Expands the list of improvements eligible to be funded by the District to include those described in *Attachment 1* to the proposed First Amendment. With some additional contingency making the total eligible expenditure $75 million. The original list of eligible improvements remains intact as they were funded with the Foothills Mall Fund. ***This change increases the value of the eligible improvements from the original $53 million to approximately $128 million.*** The expansion of the list of eligible improvements does not increase the obligation of the City or the Fort Collins Urban Renewal Authority (the "Authority") to participate in or contribute revenues to finance the newly identified eligible improvements.
- **Financial Plan** – Updates the definition to reflect the Financial Plan attached to the proposed First Amendment as *Attachment 2* rather than the Financial Plan attached to the original District Service Plan. As the Financial Plan describes how the Eligible Improvements are to be financed and how the debt is expected to be incurred, it requires updating based on new revenue sources and other changes. ***This change swaps out the old Financial Plan for a revised plan based on the new revenue and debt anticipated by the Current Developer.***

The rest of the proposed changes to the District's Current Service Plan occur in Section VI (Financial Plan) of the proposed First Amendment and only the stated aspects of this section change the rest remain in effect as written. ***The changes are intended to enable the Current Developer to ask the District to incur additional debt enabling it to finance the updated list of Eligible Improvements.*** The ability to incur additional debt is created by the following changes (summarized in **Table 1**, below):

- **Maximum Debt Authorization** – Increases the previous amount of $72.95 million to $166.00 million. ***This change enables the District to incur additional debt generating approximately $75 million in net new proceeds to fund Eligible Improvements.*** The net new proceeds number exceeds the current estimated cost of the Eligible Improvements to provide cushion for interest rate fluctuations, reserve fund needs, project delays, and unforeseen cost overruns. As below, this increased maximum debt authorization intended to provide new debt authority to be financed by non-City and non-Authority, District revenues.

- **Total & Annual Net Debt Service** – Increases the previous amount from $180.00 million to $350.00 million. Net Debt Service is the sum of all principal and interest payments on the debt. Thus, an increase in the Maximum Debt Authorization requires a corresponding change to both the total and annual Net Debt Service amounts. ***This change supports the District's ability to incur additional debt to fund additional Eligible Improvements as part of the proposed redevelopment.***
- Maximum Debt Maturity Term – Increases the previous maximum term from twenty-five (25) to forty (40) years from the date of issuance of the debt. ***This change extends the length of the debt incurred by the District. Allowing the Debt Service Mill Levy of fifty (50) mills to be leveraged over a longer period resulting in additional revenue and debt expense.*** Couple this change with the proposed increase in the Add-On PIF and together they create the revenue necessary to support additional debt.

Table 1
Amendments to Section VI – Financial Plan

Item	Previous	Amended
Maximum Debt Authorization	$72.95 M	$166.00 M
Total Net Debt Service	$180.00 M	$350.00 M
Maximum Debt Maturity Term	25 Years (*from issuance*)	40 Years (*from issuance*)

Application of the 2013 Redevelopment and Reimbursement Agreement

The First Amendment does not propose to change the commitments of the City under the 2013 Redevelopment and Reimbursement Agreement, approved by adoption of Resolution 2013-042, which defined the projects to be financed (the "eligible improvements"), the pledged revenues by the parties, and set a "cap amount" of $53 million.

Urban Renewal Authority

This proposal does not change the commitments of the Authority under the 2013 Redevelopment and Reimbursement Agreement, nor does the proposed amendment, by its terms, call for changes to the Urban Renewal Plan.

Furthermore, the purpose of the Urban Renewal Plan, which is the remediation of blight and the prevention of its further spread, may align with the high-level plans presented by the Current Developer to the City. Other conditions arising since the completion of the Original Project may be relevant to a determination of blight, including the vacancy of the former anchor tenant location of the core, legacy shopping center. These conditions may arguably be remediated the continued development of the site by shifting from enclosed retail space, which may be considered an outmoded form of development, to a more flexible and viable form of development. Therefore, the First Amendment and the plans presented for the site by the Current Developer may be consistent with the purposes for which the Authority and the Urban Renewal Plan were established.

METRO DISTRICT POLICY

As above, the City adopted its Policy for reviewing service plans for metropolitan districts. The 2021 Policy revisions focused on emphasizing disclosure and transparency requirements and add an evaluation points system for the public benefits provided by metropolitan districts ("Metro Districts") serving primarily residential development.

CITY FINANCIAL IMPACTS

When City and FCURA originally considered the approval of the 2013 Amended and Restated Service Plan and associated public finance package, staff prepared an estimate of the total amount of incremental sales tax anticipated to be invested in the project. The 2013 staff estimate relied on several assumptions, many of which have not been borne out in the development of national and global markets and trends since that time. While experience (and optimism) informed the assumption that overall growth would moderate the potential maximum City reimbursement pledge, the 2013 Redevelopment and Reimbursement Agreement did not include a hard cap or other limitation; rather, the agreement pledged 100 percent of the sales tax increment associated with the then 2.25% General Fund tax rate. Please note that, while the City's General Fund sales tax rate increased, the original rate of 2.25% that was committed to the project did not increase.

In May 2013, staff estimated that the total incremental sales tax invested in the project would total approximately $8.8 million, see **Table 2** below. To date, the City has contributed $3.5 million significantly below the original estimate due to several factors including:

- Lower than expected financing costs – the original bond closed at 5.92%, which was lower than the rate assumption of 7.00% when estimates were developed.
- Higher than expected property values – Actual property values of the Original Project were assessed higher than original estimates resulting in higher-than-expected property tax revenue collections – both increment and metro district – from 2015 to 2023.
- Lower than expected sales tax increment revenue – Due to the market conditions described below, actual retail sales performance of the project from 2015 to 2023 came in much lower than originally estimated resulting in less sales tax increment revenue to remit to the project.

Table 2
Original Sales Tax Estimates, May 2013

Original Assumptions							
Year	Metro District Revenue	City Sales Tax Revenue	Non-Pledged Sales Tax	Pledged Increment	Bond Payments & Reserve	Increment Returned to City	City Contribution
2012		4.8					
2015	2.1	5.0	5.0	2.5	4.6	-	2.5
2016	2.3	5.3	5.3	3.1	5.4	-	3.1
2017	6.5	5.4	5.4	3.2	9.7	-	3.2
2018	6.5	8.8	5.5	3.3	6.0	3.3	-
2019	6.7	9.0	5.6	3.4	5.7	3.4	-
TOTAL				**15.4**		**6.6**	**8.8**

To evaluate the impact on the City, staff evaluated the following: (1) the impacts of the proposed First Amendment on revenues pledged to repayment of Debt through the Redevelopment and Reimbursement Agreement (the "Agreement"), and (2) the estimated sales tax "invested" towards repayment of debt because of the tax increment pledge.

Impact on the City's Debt Obligation

The First Amendment does not propose to alter the nature of the obligation of the City to participate in the repayment of current debt, because it does not require or condition is approval on amendment of the 2013

Redevelopment and Reimbursement Agreement or otherwise create new obligations for the City. The proposed First Amendment, further, does not change the pledged revenues of either the City or Authority. The property tax increment pledge remains 100 percent until its expiration in 2038. Additionally, the sales tax increment remains limited to the 2.25 percent portion of the rate, excluding recent increases to the General Fund rate and all dedicated sales taxes. The current pledge of the City of its sales tax increment is unchanged by the First Amendment, so will remain 100 percent of the increment until the plan expires. Therefore, the proposed First Amendment does not, by its terms, change the City's or Authority's obligation to participate in the repayment of the debt; however, please see the below discussion on revenues***.***

Impact on Estimated Sales Tax

While the City's obligation is not changed in the First Amendment, the estimated City sales tax revenues that will be applied towards the repayment of the project debt requires additional evaluation.

Please note that the May 2013 estimates of sales tax revenue necessary to meet the City's pledge were presented to provide context and perspective for policymakers. Widely accepted economic assumptions that were applied in 2013 did not include the subsequent structural changes in national and international retail markets, such as the growing share of retail sales by remote sellers and other global shifts in consumer behavior. The May 2013 estimates were conservative and based on general economic assumptions during the term of the debt repayment; but the estimate was not a limit on the City's sales tax revenue obligation. The assumed early "retirement" of the sales tax increment, in whole or part, beginning in 2018 were not realized. With or without the First Amendment, the City's pledge of its sales tax increment will extend well into the debt repayment term.

The activities and properties within the District do not currently generate robust sales and property tax revenue for debt payment under the current financing structure. When actual pledge revenues are less than those forecasted, it is common to consider restructuring debt, including refunding the initial bonds and then refinancing the project. Here, refunding the initial bonds would likely increase the City revenues pledged for its sales tax increment – in part because the overall cost of financing will increase based on rate assumptions. Therefore, the City's pledged sales tax revenues from the current agreement will likely exceed the original estimate of $8.8 million – it is unclear by how much. Again, the City's pledge will likely exceed this amount, with or without the First Amendment.

It is possible, however, to more clearly estimate the amount of City sales tax revenue which may be necessary to meet the City's pledge per the Redevelopment and Reimbursement Agreement under the proposed First Amendment. Based on the Financial Plan attached to the proposed First Amendment, *the estimated sales tax increment "invested" into the project would be approximately $30.5 million*, see **Table 3** below. However, it should be noted that the same conditions apply to the current sales tax pledge that applied when the Redevelopment and Reimbursement Agreement was put in place in 2013. This current estimate is moderated by a larger assumption that economic conditions for the entire term of the pledge cannot be forecasted through the period of the City's pledge, ending in 2038.

As additional context, it is important to note that the City's sales tax increment pledge was designed to increase overall revenue to the City, both in the near and long term, from increased retail sales. Currently, it is estimated that the City may realize $78.4 million in non-pledged and base sales tax; however, if vacancy rates and other trends in the area continue to deteriorate, the City may not receive the estimated non-pledged sales tax receipts. Setting aside dynamics and trends outside of local control, one of the larger purposes that may be served in refinancing the debt of the District would be to redevelop the site to increase the likelihood of continued, robust activities in this area.

Table 3
Revised Sales Tax Estimates, 2025

Tax Revenue Year	Est. Taxable Sales	City Sales Tax Revenue (@4.35%)	Dedicated & Non-Pledged Taxes (2.10%rate)	Pledged Sales Tax (2.25%rate)	LESS: Collection Admin Fee	LESS: Base Collections (2.25%rate)	Pledged Increment (2.25%Rate)
2025	$ 119.7	$ 5.2	$ 2.5	$ 2.7	$ 0.0	$ 1.8	$ 0.8
2026	$ 75.3	$ 3.3	$ 1.6	$ 1.7	$ 0.0	$ 1.8	$ -
2027	$ 75.3	$ 3.3	$ 1.6	$ 1.7	$ 0.0	$ 1.8	$ -
2028	$ 164.3	$ 7.1	$ 3.5	$ 3.7	$ 0.1	$ 1.8	$ 1.8
2029-2038 (Annually)	$ 208.1	$ 9.1	$ 4.4	$ 4.7	$ 0.1	$ 1.8	$ 2.8
Total	**$ 2,515.6**	**$ 109.4**	**$ 52.8**	**$ 56.6**	**$ 0.8**	**$ 25.6**	**$ 30.5**

At the Council Finance Committee, there was a request for additional details on the revenue received to-date by the metro district and additional anticipated revenues to be received by the metro district. Agenda Item Summary (AIS) **Attachment 1** provides the requested detailed information on the metro district revenue and debt.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Presented to the Council Finance Committee on February 6, 2025, with a recommendation to refer to Council for consideration with additional information on district revenues, firm details on affordable housing commitment, and clarity on the Public Improvement Fee amount.

PUBLIC OUTREACH

Public notice of the First Amendment was provided consistent with statutory requirements of Title 32, C.R.S. and the City Metropolitan District Policy (see AIS **Attachment 2**, “Certificate of Mailing Notice of Hearing and Publication”).

ATTACHMENTS

1. Staff Summary of Metropolitan District Revenue and Debt
2. Certificate of Notice of Public Hearing
3. Staff Presentation
4. Applicant Presentation
5. Resolution 2025-059