

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT LUPTON AND THE CITY OF BRIGHTON
REGARDING GROWTH AND PLANNING AREAS**

This INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made this ____ day of _____, 2019 (the “Effective Date”), by and between THE CITY OF FORT LUPTON, a Colorado municipality with an address of 130 South McKinley Avenue, Fort Lupton, Colorado 80621 (“Fort Lupton”), and THE CITY OF BRIGHTON, a Colorado municipality with an address of 500 South 4th Avenue, Brighton, Colorado 80601 (“Brighton”) (each a “Party” and collectively the “Parties”).

WHEREAS, Fort Lupton and Brighton entered into an intergovernmental agreement on March 10th, 2009, for the joint planning of land use and development of future growth areas (the “2009 IGA”); and

WHEREAS, the Parties now intend for the provisions of this Agreement to wholly replace, repeal, and supersede the provisions of the 2009 IGA; and

WHEREAS, growth, development, and demands for municipal services exist, and will continue to exist within the geographic vicinity of Fort Lupton and Brighton; and

WHEREAS, the Parties have both committed to: orderly growth and quality development; promoting economic viability and environmental integrity of their respective communities; planning the location and timing of activities and development which may result in increased demands for municipal services; providing for the efficient development and extension of municipal services, facilities, and regulations; and avoiding unnecessary duplication of governmental services; and

WHEREAS, the Parties desire to maintain the rural nature of certain geographical areas which are now characterized by the agricultural, non-industrial, residential estate, and open space environmental integrity of those areas; and

WHEREAS, the Parties desire to establish growth areas for their respective jurisdictions as described herein, as well as a joint planning area as described herein, for the purposes of planning for future annexation and regulating the use of land within these described areas; and

WHEREAS, cooperation and increased coordination between the Parties, as represented in this Agreement, in planning for the affected geographic area will enhance the ability of the Parties to achieve their respective and common goals; and

WHEREAS, the State of Colorado has authorized and encouraged local governments to cooperate or contract with each other for the purposes of planning or regulating the development of land pursuant to the Local Government Land Use Control Act, C.R.S. § 29-20-101, *et seq.*, C.R.S. § 29-1-203, and § 18(2)(a) and 2(b) of Article XIV of the Colorado Constitution; and

WHEREAS, pursuant to the Municipal Annexation Act, C.R.S. § 31-12-101, *et seq.*, the Parties each have the authority to annex property; and

WHEREAS, the Parties, after notice and public hearing, have adopted resolutions approving this Agreement, which resolutions are attached hereto and incorporated by this reference.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Fort Lupton Growth Boundary Line.** Fort Lupton is free to accept and act upon any petition for annexation of lands lying north of the Growth Boundary Line as shown on Exhibit A. Brighton may annex and provide its services north of the Growth Boundary Line only with the written approval of Fort Lupton.

2. **Brighton Growth Boundary Line.** Brighton is free to accept and act upon any petition for annexation of lands lying south of the Growth Boundary Line as shown on Exhibit A. Fort Lupton may annex and provide its services south of the Growth Boundary Line only with the written approval of Brighton, except as provided for in Section 4 below.

3. **Fort Lupton's Prior IGA.** This Agreement does not intend to impact or affect a prior Intergovernmental Agreement between the City of Fort Lupton and Todd Creek Village North for wastewater treatment approved by Resolution No. 2006-031, dated September 27, 2006 which is excluded from this Agreement. Fort Lupton agrees not to annex any lands associated with the provision of wastewater treatment to those areas set forth in the 2006 agreement.

4. **Perry Pit Parcels.** If the City of Fort Lupton purchases any of the parcels commonly known as the 'Perry Pit' (Weld County Parcel Numbers: 147130000001, 146925100001, 146925100027, 146925100030, and 1469251000036), shown in further detail in Exhibit B, the City of Brighton will not contest the parcels' annexation to Fort Lupton as long as the purpose is for water storage and it receives a referral with the ability to comment for said action.

5. **Fort Lupton and Brighton Planning Areas.** Each Party shall provide the other with a copy of any annexation petition or application for initial zoning, rezoning, planned unit development, variance, conditional use or special use, subdivision or injection well affecting any property within the two Planning Areas as set forth in Exhibits C and D, for review and comment at least twenty-one (21) days prior to any formal action thereon by any official, commission, agency, council or governing body of the authorizing or permitting Party. Upon review of any such application for initial zoning, rezoning, planned unit development, variance, conditional use or special use, subdivision, or injection well application proposal, each Party shall consider the effects of the proposal on the character and land uses currently existing in the two Planning Areas.

6. **Land Use.** Fort Lupton and Brighton agree to use their best efforts to maintain the character of the two Planning Areas and their adjoining properties, which areas are now characterized by agricultural, non-industrial, residential estate, and open space land uses.

7. **Maintenance.** Absent separate agreement, surface maintenance of any right-of-way shall be the responsibility of the city within which the right-of-way lies.

8. **Transportation Planning.** To facilitate the coordination of transportation planning efforts, the Parties agree to evaluate their respective comprehensive plans to include any jointly designated

transportation plans and standards for roadways that the Parties may develop within the two Planning Areas.

9. **Common Utility Corridor.** The Parties agree to work cooperatively to establish a common utility corridor to service the respective jurisdictions and to minimize surface impacts within the right-of-way of Weld County Road 6.

10. **Recreation and Environmental Planning.** The Parties agree to cooperate with each other and other affected agencies and individuals in the planning of recreational opportunities within the two Planning Areas and in planning to maintain and enhance the environmental integrity of the two Planning Areas. This planning shall focus on preserving the aesthetic values and environmental integrity of the two Planning Areas and restricting land uses that are incompatible with these values and would have a detrimental effect on the recreational and environmental potential of the two Planning Areas.

11. **Term and Termination.** The term of this Agreement shall be ten (10) years from the Effective Date. Thereafter, it shall be automatically renewed for successive one (1) year terms, unless written notice of nonrenewal is served on the other Party at least thirty (30) days prior to the end of a term. This Agreement may be terminated before the end of the term only with the written consent of the Parties, as expressed in a joint resolution passed by a majority vote of the Fort Lupton City Council and the Brighton City Council.

12. **Remedies.** Should either Party fail to comply with the provisions of this Agreement, the other Party, after providing written notification to the non-complying Party and upon the failure of said Party to achieve compliance within ninety (90) days after said notice, may at its option either terminate this Agreement in its entirety or seek appropriate relief, including those remedies described in C.R.S. § 29-20-105(2)(g), but excluding damages. In the event of litigation, each Party shall be responsible for its own costs, including attorney fees.

13. **Consents/Approvals.** When this Agreement calls for the consent or approval of a Party, to be effective, such consent or approval shall be in the form of a resolution duly enacted by the Fort Lupton City Council or the Brighton City Council, as appropriate.

14. **Subject to Annual Appropriation.** 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. To the extent that any obligation under this Agreement is deemed to constitute a multiple fiscal year financial obligation pursuant to Article X, § 20 of the Colorado Constitution, the performance of such obligation is conditioned upon annual appropriation by the Fort Lupton City Council or the Brighton City Council, as appropriate, and in the sole discretion of that governing body.

15. **Amendment.** This Agreement may be amended in writing only by the mutual agreement of the governing bodies of the Parties.

16. **No Third Party Rights.** This Agreement is made solely for the benefit of the Parties, and is not intended to nor shall it be deemed to confer rights to any persons or entities not named as Parties.

17. **Severability.** If any provision of this Agreement is deemed invalid, the validity and effect of any other provision shall not be affected; and such invalid provision shall be deemed deleted from this Agreement in a manner to give effect to the remaining provisions, except that if a requirement or limitation in such provision is declared invalid as to one Party, it shall likewise be deemed invalid as to the other Party.

18. **Notice.** Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

19. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

20. **Entire Agreement.** This Agreement constitutes the entire understanding, contract, and agreement between the Parties as to the subject matters herein set forth, and this Agreement only supersedes prior written or oral understandings, agreements, and commitments, formal or informal, relative thereto between the Parties.

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

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Effective Date.

CITY OF FORT LUPTON, COLORADO

CITY OF BRIGHTON, COLORADO

Zo Stieber, Mayor

Kenneth J. Kreutzer, Mayor

ATTEST:

ATTEST:

Mari Pena, City Clerk

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM

J. Andrew Ausmus, City Attorney

Jack D. Bajorek, City Attorney

Perry Pit Parcels

-  Perry Pit Parcels
-  Fort Lupton City Limits
-  Brighton City Limits

Scale = 1:12,000
Fort Lupton

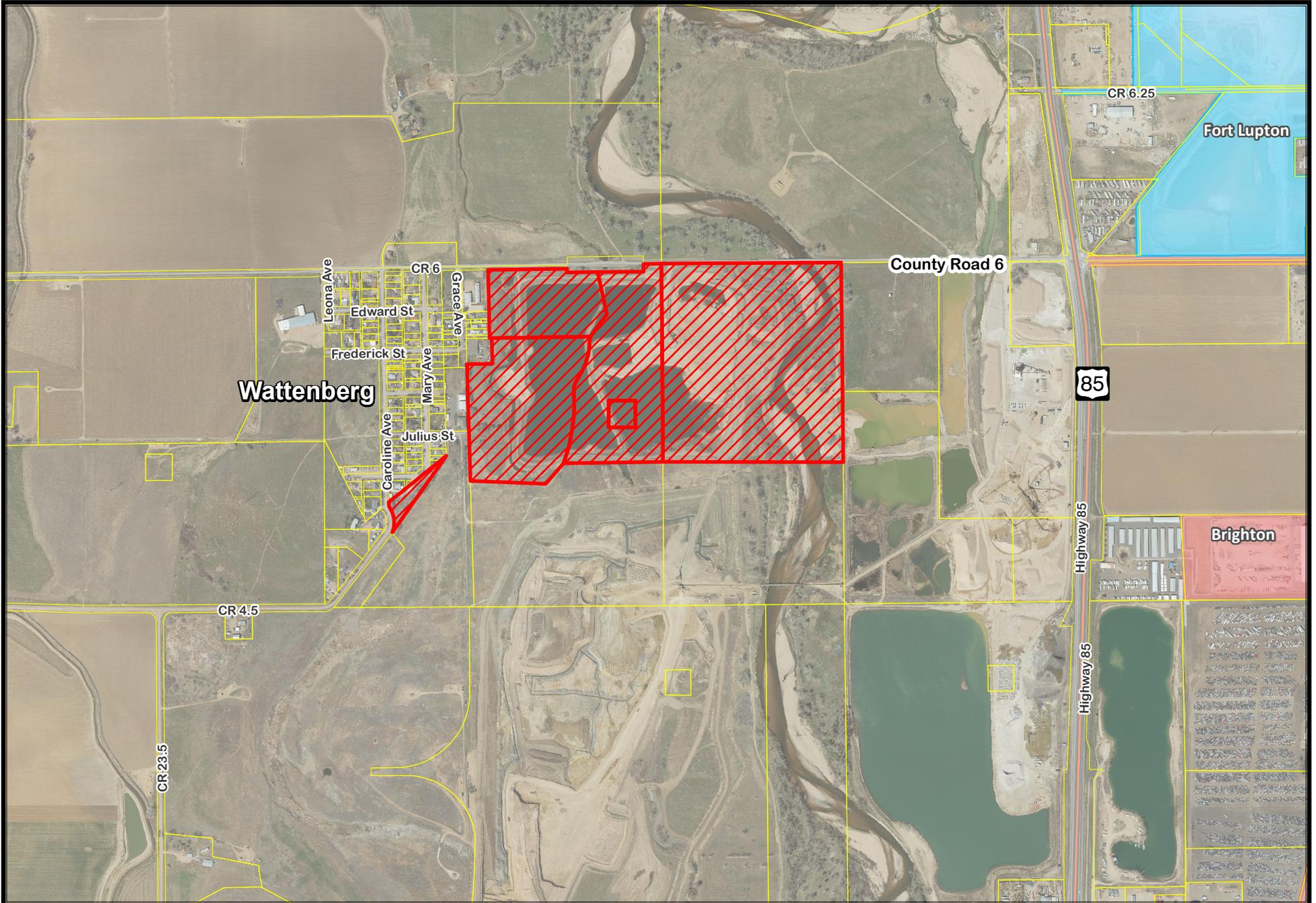


Exhibit B

Brighton Planning Area

Scale = 1:64,000



-  Brighton Planning Area
-  Fort Lupton City Limits
-  Brighton City Limits

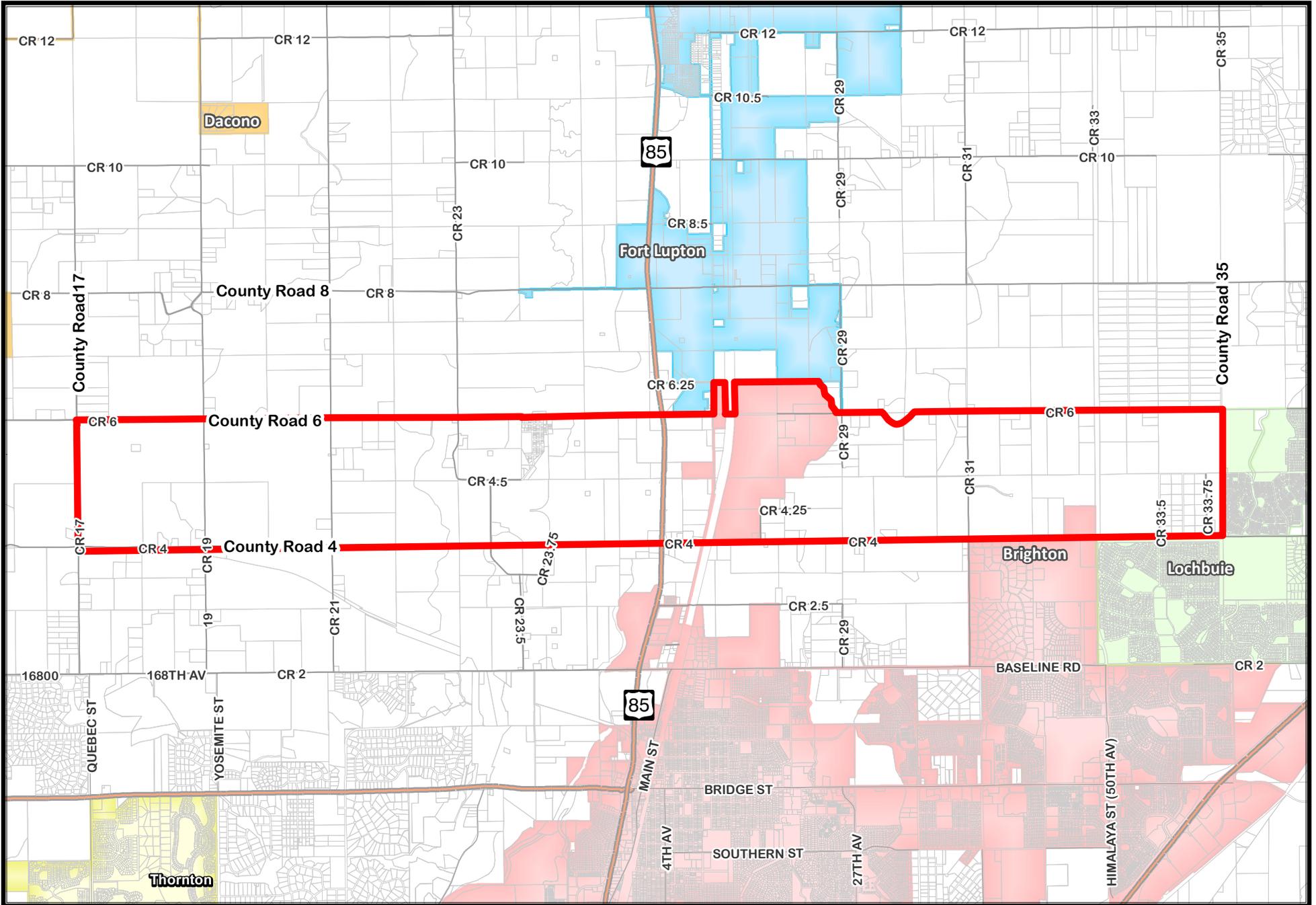


Exhibit D