

**CITY OF STEAMBOAT SPRINGS**  
**AGENDA**  
**SPECIAL MEETING NO. SP-2009-05**  
**TUESDAY, AUGUST 25, 2009**  
**5:00 P.M.**

**MEETING LOCATION:** Citizens' Meeting Room, Centennial Hall;  
124 10<sup>th</sup> Street, Steamboat Springs, CO

A City Council meeting packet is available for public review in the lobby of City Hall, 137 10<sup>th</sup> Street, Steamboat Springs, CO.

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**A. ROLL CALL (5:00 P.M.)**

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**B. CITY COUNCIL DISCUSSION TOPIC:**

- 1. Steamboat 700 Annexation Agreement review and discussion.**

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**C. ADJOURNMENT (7:00 PM)**

**BY: JULIE FRANKLIN, CMC**  
**CITY CLERK**

# AGENDA ITEM # 1

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Gerald Dahl, Special Counsel  
John Eastman, AICP, Planning Services Manager (ext 275)

**THROUGH:** John Roberts, City Manager ( ext 228)

**DATE:** August 25, 2009

**RE:** Steamboat 700 Annexation: Draft annexation agreement

**NEXT STEP:** Conduct review of draft annexation agreement and give direction to staff

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**INFORMATION**  
 **RESOLUTION**

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### **I. PROJECT NAME:**

Steamboat 700.

### **II. APPLICANT:**

Steamboat 700, LLC and Steamboat Victory, LLC.

### **III. ISSUE:**

Conduct review of draft annexation agreement and give direction to staff for production of final agreement.

### **IV. EXECUTIVE SUMMARY:**

City Staff and Steamboat 700 representatives have created the attached draft Annexation Agreement for the project. As Council is aware, this process has been aided by the Council giving direction on specific issues over the past two months. The language of the Annexation Agreement is now largely complete, with only a few minor items needing to be filled in. The

Agreement itself relies heavily on a series of Exhibits, the most significant of which is **Exhibit F**: the Capital Facilities Phasing Plan. The purpose of this agenda item is for the staff to review the entire Annexation Agreement with the Council, to point out areas where conflict has been resolved, and to take direction from the Council on production of the final Agreement.

While Council should carefully review the entire Agreement, the following specific Sections merit special attention:

- Section I.B: Term: The Agreement remains effective until all of the Developer's obligations and those of the Metropolitan Districts (the "Metro Districts") to build facilities or improvements are complete or financially secured.
- Section III.A: Zoning: The property will be zoned Traditional Neighborhood Design (TND), and a Regulating Plan will be approved upon annexation that specifies the uses and densities permitted in each of the various "pods" making up the entire development. A copy of the Regulating Plan (Exhibit B to the Agreement) is attached.
- Section III.B: Approvals upon Annexation: At the October 13, 2009 Council meeting, a public hearing will be held and a series of actions will be taken to annex and zone the property and approve the various agreements, including the Annexation Agreement and certain intergovernmental agreements with the Metro Districts. Also, the service plan for the Metro Districts will be approved. As Council will remember, the Metro Districts will be used by the developer to finance construction of many of the public improvements required for the project.
- Section III.C: Development Review/Large Tract Subdivision: This section creates a special procedure available for this project: Large Tract Subdivision (LTS). The developer is allowed to apply for approval to divide off and potentially sell portions of the property as "super lots" or tracts, which can then be developed by other developers. LTS subdivision do not permit Buildable Lots, meaning the developer of an LTS must still go through the preliminary and final plat approval process. A major challenge for the parties in crafting the LTS process has been to ensure that the public improvements attributable to and needed by the LTS subdivision would be adequately secured. This has resulted in a number of subsections under Section III.C.2, which are intended to accomplish

this goal. We will review this approach in detail on August 25.

- Section III.D: Preconditions to Approval of Final Plats: This section contains a series of protections for the City to ensure that no final plat is approved unless the public improvements and other public dedications and payments necessary for that plat have been completed, paid, or adequately financially secured.
- Section III.J: Residential and Commercial Density: While the Regulating Plan will largely control this issue, this section requires additional public improvements if the density of the project exceeds 2000 primary residential dwelling units or 380,000 square feet of commercial space.
- Section IV: Affordable Housing: This section imposes the land dedication requirement for affordable housing, along with the imposition of a 0.5% real estate transfer fee for that purpose.
- Section V: Developer Financing: This section generally describes the mechanisms the developer will use to finance the project, and specifically as related to the public improvements required, including those in **Exhibit F**, the Capital Facilities Phasing Plan. The following subsections are of note:
  - A.1: Debt service mill levy cap of 50 mills. This does not include non-debt service mill levy for operations and other costs.
  - A.2: If the Metro Districts assume any obligation to construct public improvements, they must post security with the City.
  - A.3: the IGA's between the Metro Districts and the City are exhibits to the Annexation Agreement, and are conditions of the City's approval of the formation of and the service plan for the Districts.
  - C: Cost Reimbursement from Benefitted Properties: Because Steamboat 700 will be "fronting" the entire cost of many of the public improvements, they are entitled to reimbursement from other properties currently outside the City within the WSSAP area, when those properties annex. Steamboat 700 and 360 Village have separately agreed to reimbursement as between themselves, and their agreement is incorporated here.

- Section VI: Revenue Neutrality: It has been important to the Council from the inception of discussions on the Steamboat 700 project that it be “revenue neutral,” that is not have the effect of costing the City and its residents money, either for capital improvements or ongoing operations. This section addresses this important issue directly. It takes note of the Fiscal Impact Study, approved by Council on August 11, 2009, and lists the various studies that have been performed. It is important to note that the entire Annexation Agreement has as a primary focus revenue neutrality. In particular, Exhibit F: the Capital Facilities Phasing Plan, is designed to ensure that as capital facilities are needed for the project or its impacts, they will be constructed and the developer will bear its fair share of the costs.
- Section VII.A.1: Water and Sewer: The City relies upon the updated Water Demand Report to ensure that the water demand of the project can be met by the City
- Section VII.A.2: Water Firming Fund: The City and the developer have negotiated hard on this issue. The parties have agreed on a \$960,000 payment, made in three installments, which will be used for the City to pay legal and engineering costs for three important water firming projects: the Stagecoach contract water, the Hoyle and Knight water right, and the Elk River storage. In light of this payment, the City will not impose its water dedication ordinance requirements on the project.
- Section VI.A.3: Developer’s Construction Obligations: This section lists important elements of the water and wastewater system improvements that the developer must construct, as set out in the City’s Master utilities plan. The project will be subject to the fees pursuant to the City’s rate structure in the Municipal Code.
- Section IX: Transportation Plan and Required Improvements: This section is of great importance, as the required transportation improvements are the largest portion, by cost, of the public improvements required for the project. The timing, phasing, and responsibility for construction of these improvements, most importantly including Highway 40 improvements, are detailed in **Exhibit F**, attached.
- Section XII: Vested Property Rights: In a project of this size it is expected that the developer will require that the right to build the project at the density and for the uses described in the Regulating Plan will be “vested,” such that the City cannot unilaterally reduce those rights, for a period of time.

The vesting allowed by this Section is 10 years after the annexation is effective, and an additional 10 years when the developer has conveyed 25% of the land required for affordable housing to the City, for a total of 20 years. This term, and especially its phasing, is appropriate for a project of this size. The City retains the right to apply amended codes and regulations to the project so long as the effect of those amendments is not to deny the density and uses agreed upon in the Regulating Plan.

- Section XVII: Exhibits: There are currently fifteen (15) exhibits proposed to be attached to the Annexation Agreement. While many of these are simply implementing documents, three are particularly important and are attached for the Council's review:
  - Exhibit B: Land Use Regulating Plan: This exhibit shows the zoning designations within the TND District for each pod within the development, as well as indexing the major public improvements required for development of that pod.
  - Exhibit F: Capital Facilities Phasing Plan: This important exhibit lists all of the required public improvements their phasing, and the responsibility for cost and construction.
  - Exhibit G: Community Housing Plan: This exhibit documents how the developer is to dedicate land and funds for affordable housing.

## **V. RECOMMENDED MOTION:**

No formal action required; Council will have the opportunity to receive the staff report, take public comment and ask questions. The final Agreement will be prepared based on feedback obtained.

## **VI. LIST OF ATTACHMENTS:**

- (1) Draft Annexation Agreement dated August 17, 2009
- (2) Exhibit B: Land Use Regulating Plan for Steamboat 700 Development
- (3) Exhibit F: Capital Facilities Phasing Plan
- (4) Exhibit G: Community Housing Plan

**STEAMBOAT 700**  
**ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT (this “Agreement”) is made and entered into effective October 13, 2009 by and between the CITY OF STEAMBOAT SPRINGS, COLORADO, a Colorado municipal corporation (the “City”); STEAMBOAT 700, LLC, a Nevada limited liability company (“Steamboat 700”); and STEAMBOAT VICTORY, LLC, a Colorado limited liability company (“Steamboat Victory”). Steamboat 700 is sometimes referred to herein as the “Developer.” The City, Steamboat 700 and Steamboat Victory shall hereinafter be referred to collectively as “the Parties.”

**I. Definitions and General Provisions**

A. Definitions.

1. Affiliate. An owner of the any part of the Property which would qualify as an affiliate of Declarant under CRS 38-33.3-103 if Steamboat 700 is deemed to be the Declarant.
2. Agreement. This Annexation Agreement by and among the Parties.
3. Annexation Petition. The petition for annexation of the Property submitted to the City by Steamboat 700 and Steamboat Victory on October 31, 2008.
4. Buildable Lot. A lot established on an approved final plat subdividing any portion of the Property, but excluding any LTS parcel.
5. Capital Revenues. The combined proceeds of the property tax mill levy not exceeding 5 mills imposed by the District pursuant to the Service Plan , the two tenths of one percent (0.2%) real estate transfer fee imposed by covenant as provided in Section \_\_\_\_, and cash advances paid by or on behalf of the District, the developer or any Affiliate to the City for the purposes of financing the acquisition and construction of certain of the Capital Facilities as specified in **Exhibit F** and held and disbursed by the City in an interest bearing segregated fund in accordance with the terms hereof .
6. City. The City of Steamboat Springs, Colorado, a Colorado municipal corporation.
7. Commercial Uses: Includes all non-residential uses allowed within the Code including but not limited to: retail, office, restaurant, industrial, light industrial, or services. Does not include public facilities or utilities such as: fire station, schools, electric substation, community center, City or metro district or homeowners association service facilities, transit facilities, or any non-commercial facility owned and operated by the City or a Metro District associated with the Development.
8. Council. The City Council of the City of Steamboat Springs, Colorado.
9. Developer. Steamboat 700, LLC, a Nevada limited liability company and, except as specifically excluded in certain provisions of this Agreement, its successors and assigns.
10. Development. The mixed use Development to be developed on the Property as generally described in **Exhibit B**.

11. Dwelling Unit. A residential dwelling unit as defined in the Code, but excluding secondary units.
12. Effective Date. As defined in Section I.B.
13. Final Approval. As defined in Section II.B.2
14. Land Use Regulating Plan (“Regulating Plan”). The document which establishes subzoning areas, uses, and their general locations within the Development, to be approved by the City pursuant to the requirements and procedures set forth in the TND Standards in effect as of the Effective Date.
15. Large Tract Subdivision (“LTS” Subdivision”). An approved division of the Property under Section III.C.2 hereof which does not permit Buildable Lots.
16. Metropolitan District(s). The Metropolitan District(s) to be formed as set forth in Section V.
17. Municipal Code, or the “Code”. The City’s Municipal Code as in effect from time to time.
18. Pod. The numbered “pods” shown on the Regulating Plan.
19. Property. The real property described on **Exhibit A** attached to this Agreement.
20. Service Plan. The service plan for the Metropolitan Districts approved by the City dated effective October 13, 2009.
21. Term. As defined in Section I.B.
22. TND Rezoning Ordinance. The ordinance adopted by the City Council rezoning the Property to the Traditional Neighborhood Development (TND) District.
23. Traditional Neighborhood Development (“TND”) Standards. Those sections of the Municipal Code providing standards and requirements for subdivision and/or development in the “Traditional Neighborhood Development,” or “TND” Zone District.
24. Transect. A zoning subdistrict within an area zoned TND.
25. Vested Property Rights Statute. Sections 24-68-101 et seq. of the Colorado Revised Statutes in effect as of the Effective Date, as implemented by Article III of the Municipal Code.
26. WSSAP. The West of Steamboat Springs Area Plan adopted June 19, 2006.

B. Term. The term of this Agreement shall commence on the effective date of the City ordinance or resolution approving this Agreement (the “Effective Date”) and shall continue until all of the obligations of the Developer hereunder, and the Metropolitan districts with respect to their obligations under **Exhibits D and E**, have been either completed, satisfied, or financially secured to the satisfaction of the City (the “Term”), subject to the provisions of Section XII. After the expiration of the Term, this Agreement shall



be deemed terminated and of no further force or effect; provided, however, that such termination shall not affect (a) the annexation of the Property to the City; (b) any common-law vested rights obtained prior to such termination; (c) any right arising from City permits, approvals or other entitlements for the Property or the Development which were granted or approved concurrently with, or subsequent to the approval of this Agreement and the TND Standards and Regulating Plan; or (d) the Parties' rights pursuant to Section XV.M concerning the prevailing party's right to fees and costs in the event of litigation.

C. Amendment. Except as otherwise set forth in this Agreement, this Agreement may be amended or terminated only by mutual consent in writing of the City and Developer, following the procedures required for approval of this Agreement as hereinafter set forth; provided, however, no such approval shall be required of any owner or any person or entity holding any other property interest in any portion of the Property unless such right of approval has been specifically assigned to such owner, person, or entity in a written instrument of assignment, but nothing herein shall prohibit the City from requiring the approval of any such amendment in appropriate cases by other owners within the Property as a condition of the City agreeing to such amendment. An amendment to the Code, the TND Standards or Regulating Plan shall not constitute or require an amendment to this Agreement. All amendments to this Agreement shall be in writing, shall be recorded with the County Clerk & Recorder of Routt County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property unless otherwise specified in the amendment.

## **II. Annexation**

A. Annexation. Annexation of the Property shall be in accordance with this Agreement, the Municipal Code, and the Colorado Municipal Annexation Act of 1965, as amended (C.R.S. §§ 31-12-101, et seq.).

### **B. Conditions Precedent**

1. Annexation of the Property to the City shall not be effective until the following conditions have been satisfied: (a) the Parties have mutually executed and delivered this Agreement and (b) "Final Approval" has occurred. Upon Final Approval the City shall promptly record this Agreement and the Annexation Ordinance and Map.
2. As used in this Agreement, "Final Approval" shall mean the thirtieth (30th) day following the effective date of the latest of the ordinances or resolutions (collectively, the Approval Actions") by which the Council approves (i) this Agreement, (ii) annexation of the Property to the City, (iii) the TND Zoning Ordinance and Standards and Regulating Plan and (iv) the service plan(s) of the Districts. Final Approval shall be deemed not to have occurred if on or before such 30th day either (a) legal proceedings are commenced challenging any of such approvals, or (b) a petition for a referendum is submitted seeking to reverse or nullify any of such approvals; (a "Legal Challenge"). In that event, Final Approval shall be deemed extended pursuant to Subsection B.3 below.
3. If there is a Legal Challenge, the Legal Challenge Period shall mean the period commencing on the date of approval of the Annexation Ordinance by the Council and ending 30 days after the later of (a) in the case of such Legal proceeding, the date on which a final decision is entered which is unappealable or with respect to which the period for appeal has run without either the City or Developer filing an appeal; or (b) in the case of the filing of a petition for referendum, the date on which the election results with respect to such petition are certified, or the petition is finally determined to be inadequate; or (c) any such earlier date upon which the City and Developer may mutually

agree. In such event, Developer and the City shall cooperate in defending such legal proceeding and/or opposing such referenda, pursuant to Section XIII below. If such legal proceeding(s) and/or referenda are not resolved affirming annexation of the Property and the Approval Actions (to the extent such actions are challenged) within the aforementioned Legal Challenge Period, Developer may withdraw the Annexation Petition and either party may withdraw its offer to enter in to this Agreement. Additionally, Developer may withdraw the Annexation Petition and terminate this Agreement in the event a Legal Challenge extends for more than \_\_\_days after the effective date of the Annexation Ordinance.

4. At any time prior to which a Legal Challenge has been finally resolved affirming such approval and during which neither party has terminated this Agreement pursuant to Section XIII below, the City’s responsibility to process applications for approval of the Development, and Developer’s obligations to make payments or dedicate land to the City as provided herein (other than for the costs of consultants and studies, as set forth in Section VI.C), shall not be deemed to have arisen, unless the Parties otherwise agree pursuant to Paragraph II.C below.

C. Failure of Conditions. Until Final Approval, this document shall constitute an offer by Developer and the City to enter into this Agreement (notwithstanding the parties' mutual execution and delivery of this document), the annexation of the Property to the City shall not be effective, and the City shall not file the annexation ordinance and map with the County Clerk and Recorder pursuant to CRS 31-12-113(2). However, the City and Developer, by mutual agreement reflected in a resolution of the City Council and accepted in writing by the Developer, may elect to authorize the recording of the annexation ordinance and map, notwithstanding the fact that a legal proceeding is pending under paragraph II.B.2 above and the date of such recording shall be deemed the date of Final Approval hereunder, provided that on the date of recording the City is not enjoined from recording the Annexation Map and Ordinance. If Developer withdraws the Annexation Petition or either party withdraws its offer to enter into this Agreement as authorized above, then this Agreement shall be terminated and deemed void and of no force or effect, the Property shall be deemed not annexed to the City, and the vested property rights described in this Agreement shall be deemed not established.

### **III. Zoning, Land Use, and Development Review**

#### **A. TND Ordinance and Regulating Plan**

The Parties agree that the Development shall be reviewed by the City pursuant to the TND Standards, which will be adopted and in place within the City's Municipal Code prior to or within 90 days after annexation of the Property. By way of description but not limitation, the process for review and approval of the Development pursuant to the TND Standards is as follows:

1. The entirety of the Property shall be zoned "Traditional Neighborhood Development" ("TND"), pursuant to the TND Standards immediately following annexation.

Simultaneously with its application for zoning of the Property to TND, the Developer will submit and the City will review a Regulating Plan for the Development pursuant to the TND Standards. A copy of the Regulating Plan is attached hereto as **Exhibit B**.

#### **B. Approvals Upon Annexation**

It is the intention of the Parties that the following actions will be taken by the City Council at the same public meeting, and in the following order:

1. approval of a resolution finding the annexation of the Property to be in compliance with statute and approving this Agreement
2. approval of the annexation ordinance
3. approval of the TND Ordinance zoning the entirety of the Property to Traditional Neighborhood Development
4. approval of the Regulating Plan for the entirety of the Development, as Exhibit B to this Agreement
5. approval of the service plans for no more than 5 metropolitan districts (the “Districts”) to serve the Property, substantially in the form attached as **Exhibit C**.
6. approval of an intergovernmental agreement between the Districts and the City, substantially in the form attached as **Exhibit D**.
7. approval of intergovernmental agreement between City and District No. with respect to Maintenance of Public Infrastructure, substantially in the form attached as **Exhibit E**.

C. Development Review.

Subsequent to annexation and zoning of the Property and approval of the Regulating Plan, the Developer shall have the following options for completion of the Development or parts thereof:

1. Preliminary and Final Plat. (permitting Buildable Lots)  
The Developer may apply to the City for approval of one or more plats for portions of the Property pursuant to the Municipal Code and Regulating Plan, approval of which plats shall enable the affected property to be developed.
2. Large Tract Subdivision. (not permitting Buildable Lots)  
The Developer may apply for approval of a Large Tract Subdivision (LTS) for any portion of the Property, pursuant to the procedure for review and approval of such subdivisions set forth herein and in the Municipal Code. Approval of an LTS will have the effect of creating a super lot or tract which may be conveyed for subdivision and/or development by others, but not permitting Buildable Lots, and subject to the limitations of the Municipal Code and the requirements of the Regulating Plan. The transferee of the LTS parcel must then apply for and receive preliminary and final plat approval for Buildable Lots. Any applications for any LTS shall be processed, reviewed and considered for approval under the applicable provisions for the processing, review and approval of preliminary and final plats under the Municipal Code, subject, however, to the following:
  - (a) To the extent the Director of Community Planning and Development deems appropriate, preliminary and final plat approval criteria and Code standards not consistent with the purpose of an LTS shall not be applicable. Examples of approval criteria and Code standards that may not apply include but are not limited to: (1) maximum lot size; (2) maximum lot width; and (3) [insert others].
  - (b) LTS applications shall not be accepted by the City or approved until the Utility Master Plan, Master Drainage Report and Parks and Open Space Plan required under this Agreement, as well as any traffic study required at the LTS stage of development have been completed and approved by the City.

- (c) The Director of Community Planning and Development shall modify the preliminary and final plat submittal requirements for an LTS to be consistent with the purpose of the LTS.
- (d) In addition to other required submittals, the following submittal materials shall be required:
  - Road layout (including plan and profile) and preliminary grading plan for the entirety of all pods included in the LTS containing sufficient detail to demonstrate that the parcel created pursuant to the LTS process can be developed and further subdivided in conformity with the provisions of this Agreement and the TND Standards [Code?].
  - utility plans for all pods included in the LTS as necessary to demonstrate the feasibility of constructing utilities to any LTS parcel and soils reports to the extent necessary to demonstrate the feasibility of road and utility construction to any LTS parcel.
- (e) Recordation of a final plat for an LTS requires completion of all improvements required by the Capital Facilities Phasing Plan (**Exhibit F**) or a subdivision improvements agreement (SIA) guaranteeing such completion in the manner required by the Code for final plat recordation.
- (f) All approved LTS plats shall contain the following notice:

CAUTION

The parcels created on this plat do not constitute Buildable Lots and no improvements may be constructed on any parcel created on this plat except following approval of a final subdivision plat specifically authorizing the further subdivision of this parcel into blocks and/or lots and describing the subdivision improvements to be constructed as a condition of approval of each preliminary or final plat. The recording of a final plat further subdividing the parcels shown hereon into lots and blocks shall be a conditioned on compliance with terms and provisions of the Steamboat 700 Annexation Agreement recorded at Reception No. \_\_\_\_\_ of the Routt County records and may include payment of fees, exactions and charges, conveyance of property to the City or other public entities for public purposes, and the construction of improvements located within or outside the property to be subdivided, which conditions of approval may be outside the control of the owner of the property to be subdivided or may require performance by third parties.

- (g) The City may condition its approval of any LTS final plat on the written undertaking signed by the party proposing to acquire any LTS subdivision acknowledging the terms of this Agreement and the caution set forth above. Such written undertaking shall be subject to the approval of the City, the City's review and approval of the same to be based upon the degree to which the written undertaking adequately addresses the capital improvements and other obligations required by this Agreement as the same pertain to the LTS contemplated for acquisition.

(h) Without the prior written approval of the City, no LTS subdivision shall be conveyed to any party unless at the time of such conveyance, Developer or an Affiliate of Developer then owns land within the Property on which is proposed to be constructed not less than 30% of the dwelling units as calculated under Paragraph III (I) below.

(i) Without prior written approval of the City, no LTS subdivision shall be approved, the effect of which would result in more than \_\_\_\_\_% of the total area of the Property being within LTS subdivisions, excepting therefrom any portion of an LTS subdivision for which a final plat permitting Buildable Lots has been approved.

D. Preconditions to Approval of Final Plats

Pursuant to Section X.V.B of this Agreement, all requirements herein are binding upon the successors in interest of the parties, including subsequent purchasers of any part of the Property (other than purchasers of individual Buildable Lots). The parties agree that in order to fully ensure that the obligations hereof are actually assumed and performed by Steamboat 700 and/or such subsequent purchasers, and notwithstanding the provisions of Section XII (Vested Property Rights) the following requirements shall apply as preconditions to approval of any final plat within the Development unless otherwise specifically provided herein:

1. The capital facilities required by the Capital Facilities Phasing Plan, **Exhibit F**, that are required to serve the portion of the Property represented by the proposed final plat, and taking into consideration the location of the property to be served in relation to other portions of the Development, have been constructed, if so specified in the Capital Facilities Phasing Plan, or have been financially secured to the satisfaction of the City in the manner customarily required by the City for similar improvements, or in the case of the items set forth in the Capital Facilities Phasing Plan which are to be constructed by the City by use of the Capital Revenues, sufficient funds have accumulated and are available to construct the Developer's share of such improvements as specified in the Capital Facilities Phasing Plan.
2. The requirements of Section X and the conveyances of land required by the Community Housing Plan, **Exhibit G**, that are required for development of the portion of the Property represented by the proposed final plat have been made or will be made as a part of or in connection with the approval and filing of the plat itself;
3. The facilities shown on the reports prepared pursuant to the Utilities Master Plan Scope of Work, **Exhibit L**, and the Master Drainage Report Scope of Work, **Exhibit M**, and as required by Section VIII have either been constructed or have been financially secured to the satisfaction of the City in the manner customarily required by the City for similar improvements;
4. All other requirements of this Agreement necessarily related to the portion of the Property represented by the proposed final plat, in the reasonable judgment of the City, have been performed or their performance financially secured as required under this Agreement. ;
5. Neither Developer nor the owner of the portion of the Property represented by the proposed final plat is in default of any requirement of this Agreement;
6. The metropolitan districts permitted by Section V.A are not in default of any of the requirements of this Agreement or of the Intergovernmental Agreements required by Section V.A.2;

E. Jurisdiction over Property.

Except as specifically provided herein or in the TND Standards or Regulating Plan, all codes, ordinances, rules, regulations, and policies of the City shall apply to the Property upon annexation, to the same extent as any other property within the City. Upon annexation, all subsequent development of the Property shall be subject to and bound by the applicable provisions of the City's ordinances and regulations, subject however, to the provisions of this Agreement. Changes or amendments to the Municipal Code after the date of this Agreement shall in no way limit or impair the City's obligations hereunder, except as specifically set forth in this Agreement.

F. Use of Private Covenants.

All private covenants to be recorded against and burdening the Property shall be submitted to the City for review and approval to the extent required under the Code.

G. Avigation Easement.

All approved final plats for all or any portion of the Property shall include a plat note imposing an avigation easement in form approved by the City Attorney, provided, however that the language of said easement shall not be inconsistent with the approved Regulating Plan.

H. Existing Agricultural Uses

All agricultural uses of the Property in existence on the date of approval of the Annexation Ordinance shall be permitted to continue in operation until such time as the improvements required as a condition of approval of a final plat for the relevant portion of the Property are completed and agricultural operations are no longer practical.

I. Capital Facilities Phasing Plan.

The Parties agree that the Capital Facilities Phasing Plan, a copy of which is attached hereto as **Exhibit F**, shall control the timing of construction and/or dedication of the capital facilities described therein. The Capital Facilities Phasing Plan is intended by the Parties to set forth both the capital facilities required to serve the Development, as well as the mechanism for determining when and by whom each listed capital facility must be provided.

J. Residential and Commercial Density.

The parties acknowledge that the improvements described in the Capital Facilities Phasing Plan, **Exhibit F**, are the facilities necessary to serve a Development consisting of not more than 2,000 Dwelling Units and 380,000 square feet of Commercial Uses. If the City determines that any approval under the TND Standards will cause the projected number of Dwelling Units within the Development to exceed 2,000, and/or the amount of square feet of Commercial Uses to exceed 380,000, the City may condition such approval on modification of the Capital Facilities Phasing Plan, **Exhibit F**, as necessary to provide the facilities required to serve such additional Dwelling Units and/or Commercial Uses. In making such a determination with respect to any Pod, the Parties have agreed on the allocation of Dwelling Units within each Pod as set forth in **Exhibit B**, the Regulating Plan. From time to time, upon application to the City, Developer may reallocate the number of Dwelling Units allocated to a Pod. Upon subdivision of a Pod or any portion of a Pod, the Dwelling Units allocated to such Pod or portion of such Pod shall be allocated to each parcel, block or lot shown on the final plat accomplishing such subdivision. Dwelling Units allocated to a parcel, lot or block on any final plat, do not constitute a maximum number of Dwelling

Units, but shall be used by the City in determining if the Dwelling Units in the Development will likely exceed 2,000 for purposes of requiring adjustments to the Capital Facilities Phasing Plan. In making any such determination, the City shall take into account parcels, lots and blocks which have been developed or are likely to be developed at a residential Dwelling Unit density less than allocated to such parcel, lot or block and any agreements between or among owners of property within the Development reallocating Dwelling Units. In addition the Parties acknowledge that the Capital Facilities Phasing Plan does not include impacts that may be associated with development of Large Format Retail uses. Approval of any Large Format Retail development within the Large Format Retail overlay zone shown on the Regulating Plan or elsewhere in the Development may require a revised Capital Facilities Phasing Plan.

#### **IV. Affordable Housing and Community Housing Plan.**

The affordable housing and Community Housing requirements of the City shall apply to and be deemed satisfied with respect to the Development as follows:

A The Developer, at the time of and as a condition of approval of each final plat (but not any LTR plat) for any portion of the Property, shall dedicate and convey to the City that amount of real property for development for affordable housing purposes as shown as may be required pursuant to the community Housing Plan, attached as **Exhibit G**.

##### B. Real Estate Transfer Fee (Affordable Housing).

1. Simultaneously with and as a condition of approval of this Agreement, The Developer shall impose a private covenant imposing a real state transfer fee upon the entirety of the Property, substantially in the form attached hereto as **Exhibit H**. The transfer fee covenant shall contain recitals stating that the expenditure of the revenue generated therefrom touches, concerns and benefits the burdened Property by providing for the development and maintenance of affordable housing, which in turn enables the Property to be approved for development as proposed.
2. The transfer fee amount shall be one half of one percent (0.5%) as set forth more fully in **Exhibit H**. The revenue from imposition of the fee shall be paid directly to the City for use for affordable housing purposes.
3. The City Council shall determine, in its sole discretion, but limited by subsection B.2 above, whether the revenue from the transfer fee shall be expended directly for affordable housing purposes by the City, or indirectly through another agency or nonprofit corporation. The Parties agree that the requirements of this Section IV satisfy the WSSAP requirement, as applied to the Development, of 20% deed restricted affordable housing at an average of 80% AMI for new development.

#### **V. Developer Financing**

##### A. Metropolitan Districts.

1. Formation

The Parties recognize that given the size of the Property and the mixed-use nature of the Development, coordinated development of the Property will require the installation of major infrastructure improvements, many of which will be required to be installed in the early phases of development. The City agrees to consider the approval of the service

plans for four metropolitan districts for financing improvements and one metropolitan district for operational purposes (the "Districts"), pursuant C.R.S. § 32 -1-101, et. seq. for the purpose of levying a property tax on the Property or portions thereof, in order to fund construction, operation and maintenance of specific improvements as set forth in the Service Plan for the Districts. In no event may the debt service mill levy imposed by the Districts result in a total mill levy in excess of 50 mills upon any portion of the Property. The Parties agree that the provisions of Chapter 13, Article VII of the Municipal Code, entitled Special District Control, shall apply to the creation of the Districts and to the review and approval by the City of service plans for the Districts and material modifications thereof.

2. District Permitted to Post Security.

To the extent that one or more of the Districts assume the obligation to construct improvements which are a condition of platting or development hereunder, the District may provide, and the City will accept as financial security satisfactory to the City, assurance of completion in the form of a pledge of budgeted and appropriated funds of the pledging District in an amount equal to 125% of the estimated cost of such public improvements for which the District has assumed responsibility. Such budgeted and appropriated funds of the District will be placed in a segregated escrow account that the City may access in accordance with the terms of a mutually acceptable escrow agreement. The District will be entitled to make progress payments from such escrow account, and the City will have the right to access such funds in the escrow account if the District fails to complete the public improvements in accordance with the terms and conditions of the pertinent Subdivision Improvements Agreement or Intergovernmental Agreement.

3. Intergovernmental Agreements.

As a condition of the approval of the formation of and service plan for each metropolitan district formed by the Developer, said district shall enter into an intergovernmental agreement with the City, substantially in the form attached hereto as **Exhibit D**. In addition, the operating district shall enter into an Intergovernmental Agreement for Public Infrastructure Maintenance, substantially in the form attached as **Exhibit E**.

B. Public Improvement Fee.

The Parties agree that the Developer may impose by private covenant a public improvement fee (PIF) on retail sales within all or any portion of the Development, the revenue from which may be used for the infrastructure and maintenance of facilities and amenities permitted under or required by this Agreement. To the extent the Developer chooses to impose such a fee, the City agrees to collect the fee simultaneously with and in the same manner as collection of the City sales tax, provided, however, that the Developer and the City shall enter into a PIF collecting agreement setting forth the terms under which the City will conduct such collection, including without limitation a reasonable administrative fee for the costs of the City's collection efforts.

C. Cost Reimbursement from Benefitted Properties.

The Parties agree that the Developer shall be entitled to reimbursement of certain of the costs of studies and construction of certain capital facilities, as described in this Subsection C.



1. Studies

The Parties agree that the Developer shall be entitled to reimbursement for an equitable share of the costs of the studies, dedications, and infrastructure construction to the extent the same benefit other properties located west of Steamboat Springs outside the corporate limits of the City, including properties within the WSSAP plan area (the “Benefitted Properties”). Such reimbursement shall be made a condition of approval of any preannexation agreement with respect to such properties, and in the event no preannexation agreement is executed, a condition of any annexation ordinance with respect to such properties. Reimbursement may only be required for those studies listed as “Eligible for Reimbursement” on the table at Subsection VI.C.2 below.

2. Capital improvements and infrastructure

- (a) The City agrees that it will require, as a condition of annexation and/or development (or in the case of the studies set forth in paragraph VI(C)(2) below at the time of execution of a Pre-Annexation Agreement) of any portion of such Benefitted Properties, that the Developer will be reimbursed by the developer of such portion of the Benefitted Properties a proportionate share of the cost of such study, dedication or infrastructure which serves a Benefitted Property. The proportionate share shall be reasonably determined by the City Council at the time of and as a condition of annexation of a Benefitted Property based upon, without limitation, the benefits received by the Benefitted Property, the cost savings to the Benefitted Property by the Developer’s payment for studies, making of a land dedication, and/or construction of the additional infrastructure, the respective size of the Benefitted Property served, physical condition of the infrastructure, prior pro rata allocation to other Benefitted Properties of the use of the study, land dedication or infrastructure, length and capacity of utilities and roadways infrastructure used by the Benefitted Property, the benefit to the Developer of such infrastructure, and the requirements of the City’s reimbursement ordinance
- (b) Notwithstanding the foregoing, with respect to the 360 Village Project, the Parties agree that the reimbursement terms set forth in that certain letter agreement dated August 6, 2009, shall be applicable with respect only to the specific reimbursements items set forth therein, but no others

**VI. Revenue Neutrality**

A. Requirement of Revenue Neutrality.

The Parties agree that the net fiscal effect to the City as a result of the completion of the Development must be at least revenue neutral; that is, the additional costs to the City from providing City services to the Development, as detailed in the fiscal impact study, must not be greater than the revenue received by the City as a result of the Development. Revenue neutrality must be achieved in every year and all years covered by the Fiscal Impact Study; that is, surpluses may not be carried forward to future years and deficits may not be “made up” in future years.

B. Fiscal Impact Study.

The Parties agree that the Fiscal Impact Study approved and adopted by the City Council on August 11, 2009 ("FIS") establishes the mechanism for determining whether the Development will be "revenue neutral" to the City. The parties agree that the FIS is an acceptable basis upon which to determine revenue neutrality and to project the same in future years, and shall not be revised following annexation of the Property. The Parties agree that the FIS satisfactorily demonstrates that the Project will be fiscally neutral if developed in accordance with this Agreement.

C. Costs of Consultants, Studies and City Staff.

1. The Parties agree that Developer shall bear all costs of the studies required by this Section (except to the extent the City otherwise agrees to cost sharing on an individual study, the results of which may be of benefit to the community at large, or to the extent Steamboat 700 is entitled to reimbursement as provided in Section V.C), and of the City's processing and review of the Annexation Petition and all related agreements and procedures required for or necessitated by the City's review and approval, conditional approval, or rejection of the Annexation Petition and all related agreements.

1. City staff time shall be charged to Steamboat 700 at \$50 per hour; consultants to the City shall be charged to Steamboat 700 at the City's cost for the same.
2. The Parties agree that the following studies are required and that the responsibility for contracting for the same shall be allocated to Steamboat 700 and/or to the City as indicated:

Required Studies/Consultants	Study Complete	Eligible for Reimbursement	for Contract	Responsibility
				A = Steamboat 700; C = City
a. Floodplain study	X			A
b. Visual impact analysis	X			A & C
c. US Highway 40 Environmental Assessment		X		C
d. Walkability analysis/transit accessibility report	X			A
e. Traffic study (within the Property)				A & C
f. Fiscal Impact/Public Facilities analysis	X	X		C
g. Build-out analysis	X			A & C

h.	Sustainable design program	X	A
i.	Phasing plan	X	A
j.	Wetlands study	X	A
k.	Slope analysis	X	A
l.	Wildlife study	X	A
m.	Community Housing Demand analysis	X	Yampa Valley Housing Authority and A & C
n.	Water and wastewater capacity analysis		C
o.	Development of TND Standards	X	

3. The City agrees that the studies identified as completed above are complete and that Developer has paid the costs of such studies directly or reimbursed the City for such costs. Developer agrees to pay any invoice that is presented to the City from any consultant on such studies. The only study still pending for which Developer continues to have a financial obligation is the US Highway 40 NEPA study which is addressed in the separate Cost Reimbursement Agreement between the Developer and the City dated July 8, 2008, as amended.

**VII. Utilities**

**A. Water and Sewer.**

1. Water service: determination of adequacy and commitment to serve
  - (a) Prior to and as a condition of adoption of the annexation ordinance, the Developer will update and refine its water demand report so as to indentify with as much certainty as currently possible the water demand for each of the 12 proposed development pods, identifying the number of irrigated acres, the landscaping, and the number of domestic and commercial units, as well as the overall expected demand and consumption for the full development (the “Updated Water Demand Report”). The Updated Water Demand Report must comply with all of the requirements for a water demand report set forth at C.R.S. § 29-20-304(1), and must also be satisfactory to the City’s water resources engineer. The Updated Water Demand Report attached hereto as **Exhibit I** has been determined to be satisfactory by the City’s water resources engineer and is

hereby accepted by the City and shall hereinafter be referred to as the Updated Water Demand Report.

- (b) The City agrees to make a positive adequacy determination pursuant to CRS 29-20-304 at the time each individual final plat (but not Large Tract Subdivision) is submitted to the City for subdivision approval, so long as the water demand for the pods to be developed within that plat has not increased above what was originally estimated in the Updated Water Demand Report for the corresponding pod or pods, and so long as the raw water supply available to the City has not been materially reduced.
- (c) In order for the City to make the adequacy determination, the Developer shall submit with each plat a short letter report referencing the Updated Water Demand Report and the original estimated water demand projection for the corresponding pod, and include a conclusion concerning whether the development as proposed in the plat will exceed what was originally projected for the corresponding pod. The Developer shall reimburse the City for its actual costs per letter report for the staff and consultant time necessary to review the letter report.
- (d) If the letter report for a plat indicates greater water demand than was originally projected for the corresponding pod, the letter report must explain how the overall demand for the entire Development will not exceed the total demand as estimated in the Updated Water Demand Report. If the City is satisfied that the overall demand for the entire Development will not exceed the estimated demand in the Updated Water Demand Report, the City may still issue an adequacy determination for the plat.
- (e) Subject to Developer's performance of all covenants contained herein, including the fees, construction obligations, and additional planning and design required by paragraphs 2-7 of this Section VII below, the City agrees to provide potable water service to the Property up to the water demand and consumptive use numbers in the Updated Water Demand Report, **Exhibit I**, provided, however, that the raw water supply available to City has not been materially reduced at the time final plat approval is sought.

## 2. Water Firming Fund

- (a) Developer will pay the City 960,000.00 for the City to use to develop and enhance its ability to deliver potable water to the City, including the Development. The \$960,000.00 is hereafter referred to as the "Water Firming Fund" or "WFF" and shall be paid as follows: (i) \$320,000 no later than 60 days following the date of recording of the Annexation Ordinance and Plat and (ii) the remaining \$640,000 in two equal payments of \$320,000 payable on the first and second annual anniversary of such date. The WFF funds, when received, may be used by the City for legal and engineering costs incurred on and after September 1, 2009, related to the work described at Subsection VII.A.2(b) below.
- (b) The City will place the Water Firming Fund into a dedicated improvement project account, and will use the WFF only for the work identified in subparagraphs b(i) through b(iii) below:

- (i) Stagecoach contract water. The City has a contract right for 552 acre-feet of Stagecoach water. The City may use the WFF to pay for all engineering and legal work necessary to fully incorporate this Stagecoach water into the City's potable water supply system, including the cost to study, prepare and prosecute any and all water court applications deemed necessary by the City through to a final decree, including the cost of any appeals.
  - (ii) Hoyle and Knight water right. The City was recently conveyed 0.5 cfs of the senior Hoyle and Knight water right on Fish Creek. The City may use the WFF to pay for all legal and engineering work necessary to fully incorporate this Hoyle and Knight water into the City's potable water supply system, including the cost to study, prepare and prosecute any and all water court applications deemed necessary by the City through to a final decree, including the cost of any appeals.
  - (iii) Elk River storage development. The City would like to secure storage in the Elk River basin to firm up its conditional direct flow right on the Elk River. The City may use the WFF to pay for engineering, legal analysis, permitting, negotiation, leasing, purchasing, developing, and other costs associated with securing the right to store water in the Elk River Basin and/or otherwise develop the City's existing conditional direct flow water right decreed for diversion from the Elk River, including the cost to study, prepare and prosecute any and all water court applications deemed necessary by the City through to a final decree, including the cost of any appeals.
- (c) The WFF may be used between and among the work items identified in subparagraphs b (i) through b (iii) above at the complete discretion of the City, so that, for example, the City could spend the entire WFF to extinction on just the Elk River storage development work identified in subparagraph b (iii). The City will keep records to show how the WFF is spent. There is no time limit by which the City must use all or any portion of the WFF. No part of the WFF is refundable to the Developer.
- (d) Absent material changes to the expected water demand of the Development as indicated by the Updated Water Demand Report, **Exhibit I**, the Development will not be subject to any' water dedication requirements as a condition of any City approval, including the City's water dedication policy, adopted as Section 25-77 of the Municipal Code.
3. Developer's construction obligations: The Developer shall construct [or irrevocably commit adequate funds to construct] the following improvements in accordance with the provisions of the Capital Facilities Phasing Plan, **Exhibit F** :
- (a) Water storage tank and connecting waterlines to Steamboat 700: if required by the City-wide master utilities plan
  - (b) Those facilities required by the City-wide Water and Wastewater Master Plan as said plan may be amended to meet SB 700 Development water and Sewer Master Plan requirements at the time of platting.

- (c) Construction shall comply with the applicable requirements in the Municipal Code, except as otherwise set forth herein and in \_\_\_\_\_.
4. SB 700 Development Water and Sewer Master Plan: The Developer shall prepare a water and wastewater master plan for the entire Development. The City-approved scope of work for that plan is attached hereto as **Exhibit L**.
  5. Requirements for oversizing: to the extent any utility infrastructure is required to be sized above that required to serve the Development at its anticipated full build-out, as contemplated by the Regulating Plan, the Developer shall be entitled to reimbursement for the excess capacity so required pursuant to the provisions of Section V. C.
  6. Tap fees: Tap fees shall be charged to buildable lots and other development within the Property as applicable to the City's rate structures as identified in the Steamboat Springs Revised Municipal Code.
  7. Design and construction standards: The design and construction of water and wastewater utility infrastructure within the Property shall be the same as those applicable to the City as a whole.

B. Gas and Electric Service. The City does not provide these services. The Developer shall comply with the requirements of the private suppliers of these services.

C. Communication Services. The City does not provide these services. The Developer shall comply with the requirements of the private suppliers of these services.

### **VIII. Storm Drainage**

A. Drainage Report: The Developer shall prepare a master drainage report for the entire Development. The City-approved scope of work for that report is attached hereto as **Exhibit M**.

B. Developer's Construction Obligations. The Developer shall construct or irrevocably commit adequate funds to construct those facilities shown on the master drainage plan in accordance with the phasing schedule set forth in such plan.

C. Reimbursement From Benefited Parties: to the extent any utility infrastructure is required be sized above that required to serve the Development at its anticipated full build-out, as contemplated by the Regulating Plan, the Developer shall be entitled to reimbursement for excess capacity so required pursuant to the provisions of Section V.C.

### **IX. Transportation Plan and Required Improvements**

#### A. Highway 40 NEPA Improvements.

The Parties have executed a separate agreement whereby the City, as lead agency for the study referred to as the Highway 40 NEPA study, will be reimbursed by Steamboat 700 for the costs of the same. The Parties expect the Highway 40 NEPA study to be completed by \_\_\_\_\_ 2010 and to describe Highway 40 improvements needed for twenty-four (24) years of development of the West Steamboat area. The Parties agree that the cost of the Highway 40 NEPA study shall be shared with other developments in the West Steamboat area which will rely upon the results of the study, and that Steamboat 700 shall be entitled to reimbursement from those developments, using the reimbursement mechanism described at Section V.C and/or other

agreed method. The City will manage completion of the Highway 40 NEPA study in consultation with CDOT and will assign a public works employee to that project.

B. Transit Design and Requirements. [placeholder; Public Works is working with SB700 on list of phases and triggers]

C. Maintenance of Streets, Parks, Sidewalks, Trails and Alleys. [Exhibit E]

The Developer shall cause the operating metropolitan district to execute the Intergovernmental Agreement for Public Infrastructure Maintenance, Exhibit E, promptly upon its formation.

C. Street Design Standards. [placeholder; will either be a part of the CDC or separately adopted]

## X. Public Land Dedications, Exactions and Fees

A. General Requirements

The Developer shall be responsible for dedicating the real property for, and developing, all parks and other public facilities within the Development as shown on the Regulating Plan.

B. School Fees [insert from Steamboat 700/ School District agreement]

C. Parks and Open Space Phasing Plan

Developer shall provide all of the dedications and facilities depicted on the Parks and Open Space Phasing Plan, at the times and in the locations specified in that Plan, attached as **Exhibit N**.

D. Trails

All trails shown on the Land Use Regulating Plan shall be open and dedicated for public access on the relevant plat.

## XI. Sustainability Plan

The governing documents for the Development will contain the provisions set forth in **Exhibit O**, attached.

## XII. Vested Property Rights

A. Generally. The City will approve the creation of vested property rights for the Development pursuant to the Vested Property Rights Act, CRS 24-68-101 *et seq.* and Article III of the Code. In the event of conflict between this Agreement and the Vested Property Rights Statute or Municipal Code, this Agreement shall prevail. In recognition of the size of the Development contemplated under this Agreement, the substantial investment and time required to complete the Development, the potential for phases of the Development and the possible impact of economic cycles and varying market conditions during the course of the Development, Developer and the City agree that vested property rights are approved under the following conditions: the rights to be vested shall extend only to the permitted uses and densities set forth in the zone districts adopted and approved by the City as described in Section III and to the public land dedication, infrastructure, financing, exactions, community housing and other

requirements set forth in this Agreement, and such rights as described in this Section XII shall further be subject to the requirements and limitations of Section III.H.

B. Term. The term of vesting shall be as follows:

1. 10 years commencing upon the date of recording of the Annexation Ordinance and Map:
2. An additional 10 years upon: (a) the conveyance to the City of land sufficient to construct not less than 25% of the required affordable housing land dedication required pursuant to **Exhibit G**, and (b) approval of final plats or issuance of building permits for no less than 20% of the market rate units, all as shown on the approved final Regulating Plan, for a total of 20 years.

C. Site-Specific Development Plans. Steamboat 700 and the City agree that the Regulating Plan and identified sections of this Agreement each constitute an approved “site specific development plan” as defined in the Vested Property Rights Statute, and that pursuant thereto, the Applicant and its successors and assigns shall have vested rights to undertake and complete the development and use of the Property under the terms and conditions thereof.

D. Rights Not Vested.

1. Vested Property Rights Statute Exceptions. Steamboat 700 acknowledges that Section 24-68-105 of the Vested Rights Statute contains certain exceptions to vested property rights and agrees that such exceptions shall apply to those vested property rights granted in this Agreement.
2. General City Regulations, State and Federal Regulations, Special District Regulations; Growth Limitations. The establishment of the rights vested under this Agreement shall not preclude the application by the City of regulations of general City-wide applicability as they exist on the date of recording of the Annexation Ordinance and Map, or such regulations may be enacted or amended after the date thereof, including:
  - (a) City building, fire, plumbing, engineering, electrical and mechanical codes and other similar technical codes and standards of the City.
  - (b) City architectural, landscape and other development standards in the Code.
  - (c) City regulations regarding subdivision of land only to the extent the same do not affect the uses and densities permitted by the approved TND Standards and Regulating Plan.
  - (d) Traditional Neighborhood Development standards only to the extent the same do not affect the uses and densities permitted by the approved TND Ordinance and Regulating Plan.
  - (e) Required state or federal regulations.
  - (f) City regulations regarding special districts.
  - (g) Any other general City-wide regulation not inconsistent with the provisions of this Agreement and the Annexation Agreement.



E. Moratoria and Growth Control Measures

No development moratorium or growth control limitation shall be applied against the Development unless the same is applied throughout the City generally, and which does not, in its structure or application, have a disproportionate impact upon the Development as compared to other properties. For example, but not by way of limitation, a moratorium or growth control limitation on processing of building permits to ten percent (10%) of approved units per year, which would restrict a development with 100 approved units to 10 building permits per year, and the Project (assuming for this example only, 2000 approved units) to 200 building permits per year, would not be disproportionately applied to the Development, as the impact of the moratorium is equally felt as a percentage of total approved units.

F. Required Compliance with Applicable Land Use Approvals.

Nothing in this Section XII shall exempt the Development from subsequent reviews and approvals by the City to ensure compliance with this Agreement and the terms and conditions of the City land use approvals granted to the Development.

G. No Obligation to Develop. It is understood that Developer's development of the Development depends upon a number of factors including, but not limited to, the housing, commercial, and industrial markets, the availability of financing, and the general economic climate of the area. Nothing in this Agreement shall be construed as requiring Developer to develop the Development, and any failure to develop the Project shall not be deemed a default of Developer under this Agreement.

H. Pre-existing Vested Rights. Nothing herein shall be deemed to constitute a termination or relinquishment of the rights of Developer under that certain Easement recorded at **Reception No. \_\_\_\_\_** of the Routt County records, but such rights shall be deemed superseded by this Agreement and terminated upon the recording of the Annexation Ordinance and Map, unless the Annexation Ordinance is invalidated by referendum or judicial action.

**XIII. Legal Challenges**

A. If any part of this Agreement is determined by a court of competent jurisdiction to be in excess of the City's power and authority, such part shall be unenforceable by either party to this Agreement. In the event of a judicial determination which has the effect of materially and adversely impairing to a substantial degree any of Developer's vested property rights expressly established pursuant to this Agreement, the TND Standards or the Regulating Plan, Developer may elect either to honor this Agreement as judicially reformed, or to terminate this Agreement and also disconnect the affected portion of the Property from the City, in which event this Agreement shall be of no further force or effect except with respect to items (b) and (c) of Section II.B above. The right to disconnect the Property granted by this Subsection A shall expire and be of no further force and effect on and after the date fifty percent (50%) of the Property has received final plat approval other than an LTS final plat.

B. Indemnification Against Legal Challenges. Developer understands and acknowledges that the annexation and zoning of the Property and approval of the Regulating Plan may be subject to legal or equitable action or other challenge by the filing of litigation in a state or federal court. Neither the Developer nor the City shall bring any such challenge. In the event of such challenge by third parties, the City will incur costs and expenses related to defense of same, including reasonable attorney's fees, filing fees, and court costs. In that event, Developer shall indemnify and hold harmless the City and its officers, agents and employees from and against all liability, claims and demands, including attorney fees and court costs which occur during the Legal Challenge Period and arise out of or are in any manner

connected with the Annexation Ordinances, the TND Rezoning Ordinance and Regulating Plan, the approval of the creation of service plans for the Districts, or with any other action determined necessary or desirable by the City in order to effectuate the annexation of the Property, or which are in any manner connected with the City's enforcement of this Agreement. Developer further agrees to investigate, handle, respond to, provide defense for and defend against, or at the City's option, to pay the attorney's fees for defense counsel of the City's choice for any such liability, claims or demands, regardless of outcome. The City shall cooperate with the Developer in such defense and in minimizing its attorney fees for the same.

C. Indemnification Against Referendum. Developer understands and acknowledges that the annexation and zoning of the Property may be subject to public referendum. In the event of the filing of a public referendum, the City may incur costs and expenses related to conducting a municipal election, including but not limited to costs and expenses of publication, printing, and mailing, reasonable attorney fees, and the costs of retaining the services of election judges. Developer shall indemnify the City and shall pay all reasonable costs and expenses incurred by the City in conducting such election, regardless of outcome.

D. Effect of Referendum or Challenge. If a referendum challenge to the annexation results in the disconnection of the Property from the City, this Agreement and all provisions contained herein shall be null and void and of no further effect. If the referendum challenge fails, then Developer and the City shall continue to be bound by all terms and provisions of this Agreement. In the event that the annexation of the Property or any portion thereof is voided by final action of any court, the City and Developer shall cooperate to cure the legal defect which resulted in disconnection of the Property or zoning challenge, and upon such cure this Agreement shall be deemed to be an agreement to annex the Property to the City pursuant to Section 31-12-121 of the Colorado Revised Statutes. Developer may reapply for annexation when the Property becomes eligible for annexation as determined by the City.

#### **XIV. Default; Remedies; Termination**

A. Default by City. A "breach" or "default" by the City under this Agreement shall be defined as: (a) any action by the City which violates the vested rights of Developer expressly created under this Agreement, the TND Rezoning Ordinances or the Regulating Plan, except as otherwise permitted under Section 24-68-105, C.R.S.; or (b) the City's failure to fulfill or perform any material obligation of the City contained in this Agreement.

B. Default by Developer. A "breach" or "default" by Developer shall be defined as Developer's failure to fulfill or perform any material obligation of Developer contained in this Agreement or in the Regulating Plan.

C. Notices of Default. In the event of a default by either party under this Agreement, the non-defaulting party shall deliver written notice to the defaulting party of such default, at the address specified in Section XV.I, and the defaulting party shall have 30 days from and after receipt of such notice to cure such default. If such default is not of a type which can be cured within such 30-day period and the defaulting party gives written notice to the non-defaulting party within such 30-day period that it is actively and diligently pursuing such cure, the defaulting party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting party is at all times within such additional time period actively and diligently pursuing such cure.

D. Remedies.

1. If any default under this Agreement is not cured as described above, the non-defaulting party shall have the right to enforce the defaulting party's obligations hereunder by an action in equity for injunction and/or specific performance.
2. The parties expressly waive any right to seek or receive any damages in any form, whether actual, compensatory, consequential, punitive, or exemplary, or any form of economic losses or lost profits.
3. In addition to any other available remedies as described herein, the City may withhold any approvals, permits or certificates, including but not limited to approval of any final plat, building permits and certificates of occupancy, for any lot or structure within the Development owned at the time by Developer or a successor of Developer in the event of a breach of this Agreement by the Developer or such developer successor, as applicable. In addition, the City shall have the right to certify any unpaid and delinquent monetary amount required of Developer by this Agreement or the Regulating Plan, to the County Treasurer for collection in the same manner as real property taxes or in any other manner permitted by law.
4. In the event of a default by the City, the Developer may cause the Property or that portion thereof affected by the default, to be disconnected from the City. The parties agree that in the event of such a default, by approving this Agreement, the City is making the legislative determination that a proper public purpose shall then exist for the City Council's legislative action in approving such disconnection.

**XV. Mortgagee Protection; Certain Rights of Cure.**

A. Encumbrances on the Subject Property. The Parties hereto agree that this Agreement shall not prevent or limit the Developer, in any manner, at the Developer's sole and absolute discretion, from encumbering the Property (other than property to be offered for dedication) or any portion thereof or any improvements thereon with any Mortgage securing financing with respect to the construction, development, use or operation of the Project. The City acknowledges that Mortgagee may require, and the City agrees, upon request, from time to time, to execute such statements of the then-current legal obligations of the Developer and the Property, typically in the form of an estoppel certificate. Any Mortgagee and its successors and assigns shall be entitled to the rights and privileges set forth in this section.

B. Mortgagee Protection. This Agreement shall be superior and senior to the lien of any Mortgage. Notwithstanding the foregoing, no breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) shall be subject to all of the terms and conditions of this Agreement.

C. Mortgagee Not Obligated. Notwithstanding the provisions of this section, no Mortgagee will have any obligation or duty under this Agreement to perform the obligations of the Developer or other affirmative covenants of Developer hereunder, or to guarantee such performance, except that, to the extent: (1) such Mortgagee has foreclosed its interest and is in title to any portion of the Property, or (2) that any covenant to be performed by the Developer is a condition to the performance of a covenant by the City, the performance thereof shall continue to be a condition precedent to the City's performance hereunder.

D. Notice of Default to Mortgagee; Right of Mortgagee to Cure. Each Mortgagee shall be entitled to receive written notice from the City of any default by Developer under this Agreement, provided such Mortgagee has informed the City of its address for notices. Each Mortgagee shall have a further right, but not an obligation, to cure such default within one hundred twenty (120) days after receipt of such notice, or, if such default can only be remedied or cured by such Mortgagee upon obtaining possession of the Property, such Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure such default within one hundred twenty (120) days after obtaining possession, and the City may not exercise any of its remedies under this Agreement until expiration of such one hundred twenty (120) day period; provided, that in the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced within such one hundred twenty (120) day period, the Mortgagee shall, before the expiration thereof, first propose in writing to the city a plan for cure of such default and the reasons that it cannot be cured in the 120 day period. The City shall have the right to grant, or not grant, such additional time as it determines reasonably necessary to remedy or cure such default.

E. Bankruptcy. Notwithstanding the foregoing, provisions of this Article XV, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Developer, the times specified in this Article XV for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition.

## **XVI. Miscellaneous**

A. Interpretation. Nothing in this Agreement shall constitute or be interpreted as a repeal of the City's ordinance or resolutions or as a waiver of the City's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the City and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the City of any tax or fee.

B. Binding Effect. This Agreement shall be binding upon and to the benefit of the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent developers of any lots or parcels within the Development, and shall constitute covenants or servitudes which shall touch, attach to and run with the land comprising the Property, and the burdens and benefits of this Agreement shall bind and inure to the benefit of all estates and interest in the Property and all successors in interest to the parties to this Agreement, with the exception of purchasers of individual platted lots or units. The Developer may request, and the City shall reasonably execute, such estoppel certificates as are reasonably necessary to confirm the non-applicability of this Agreement to any such lot, parcel or unit and confirming that this Agreement is not intended to be and shall not be listed as an exception to title on any title policy or commitment for any such lot, parcel or unit.

C. No Right or Remedy of Disconnection. No right or remedy of disconnection of the Property from the City shall accrue from this Agreement, other than as provided by Sections XIII and XIV hereof and applicable state laws. In the event the Property or any portion thereof is disconnected at Developer's request or pursuant to Sections XIII or XIV hereof, the City shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.

D. Annexation and Zoning Subject to Legislative Discretion. Developer acknowledges that the annexation and subsequent zoning of the Development are subject to the legislative discretion of the City Council. No assurance of annexation or zoning has been made or relied upon by Developer. In the event that the City Council, in the exercise of its legislative discretion, does not approve the TND Rezoning

Ordinance or Regulatory Plan, then the sole and exclusive remedy of Developer shall be withdrawal of the Annexation Petition and termination of this Agreement.

E. Timely Submittal of Materials. Developer agrees to provide legal documents, surveys, engineering work, maps, reports and other documents necessary to accomplish the annexation of the Property and the other provisions of this Agreement.

F. Entire Agreement. This Agreement embodies the whole agreement of the parties with respect to the subject matter hereof. This Agreement replaces that certain Preannexation Agreement between the parties dated August 5, 2008. There are no promises, terms, conditions, or obligations other than those contained herein and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

G. Assignment. The rights and obligations of Developer under this Agreement may not be assigned without the prior written approval of the City, which may be granted or denied by the City Council, acting in its sole and exclusive discretion. Such approval shall not be unreasonably withheld or delayed unless the City Council reasonably believes such denial is justified based upon the reputation, credit, standing, or other similar qualifications of the proposed assignee. **[Qualifications of successor developer: Steamboat 700 to propose list ]**

H. Waiver. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

I. Addresses for Notice. Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

**CITY:**

John Roberts  
City Manager  
City of Steamboat Springs  
137 10<sup>th</sup> Street  
PO Box 775088  
Steamboat Springs, CO 80477

**DEVELOPER:**

Daniel Mulcahy  
President  
Steamboat 700, LLC  
345 Lincoln Avenue, Suite 206  
Steamboat Springs, CO 80487

With copy to:

Anthony Lettunich  
City Attorney  
Lettunich & Vanderbloemen LLC  
200 Lincoln Avenue, Suite 300  
PO Box 773990  
Steamboat Springs, CO 80477

With a copy to:

Robert G. Weiss, Esq.  
Weiss & Van Scoyk LLP  
600 South Lincoln Avenue, Suite 202  
PO Box  
Steamboat Springs, CO 80487

Or to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective three (3) days after mailing or upon personal delivery in compliance with this paragraph.

J. Termination. If this Agreement is terminated for any reason, notwithstanding anything herein to the contrary, the obligation of Developer for legal defense and payment of fees under Sections XIII and XIV.M shall not terminate and shall continue in force until fully performed.

K. No Third Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and Developer, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intent of the City and Developer that any party other than the City or the Developer receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

L. Compliance with Colorado Constitution Article X Section 20. This Agreement is not intended by the Parties to, and does not, create any multi-year fiscal obligation of the City under Article X, Section 20 of the Colorado Constitution. All obligations of the City herein are expressly subject to annual appropriations for the same by the City Council, acting in its sole and exclusive discretion.

M. Governing Law and Enforcement. This Agreement shall be governed by the laws of the State of Colorado. This Agreement may be enforced at law or in equity. Jurisdiction and venue for all such suits shall be proper and exclusive in the district court for Routt County, Colorado.

N. Attorney Fees & Costs. In any litigation between the parties arising under this Agreement, the prevailing party shall be entitled to its attorney fees and costs to the extent it prevails only.

O. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

P. Recordation of Agreement. This Agreement shall be recorded by the City with the Clerk and Recorder's Office of Routt County, Colorado. The Developer shall pay the reasonable cost of recordation of this Agreement, the Annexation and Zoning Ordinances, the Annexation Map, and any and all other documents necessary to perfect the Annexation, promptly upon request by the City.

Q. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

R. Authority/Ownership. The parties to this Agreement represent and warrant that they have the full power and authority to enter into and perform this Agreement, and to bind their respective principals. Developer and Steamboat Victory represent that they are the owners and are in title to the Property and agree to deliver good marketable title of easements and all other public dedications to the City, free and clear of liens and encumbrances or with all lienholders' consent, except those lien and encumbrances acceptable to the City which do not affect the purpose of the dedication. Developer shall provide appropriate entity resolutions authorizing the execution and performance of this Agreement. Existing lienholders have consented to the annexation of the Property within the City and to the terms of this Agreement as set forth below following the Parties' signatures.

S. Compliance. The Developer shall abide by all terms of this Agreement and comply with all applicable Federal, State, County and City statutes, laws, rules, regulations, ordinances, policies and resolutions. Further, the Property will be subject to all assessments and other charges of the City from the date of the annexation, and Developer shall comply with all rules, regulations, and rate structures of the City, both existing and as may be enacted in the future, except as provided herein.

## **XVII. Exhibits**

The following exhibits are attached and fully incorporated herein by this reference:

- A. Property: Legal Description **[Patton]**
- B. Regulating Plan for Steamboat 700 Development **[Weiss/Eastman]**
- C. Metro District Service Plan **[developed; being reviewed by Ankele/Kuechenmeister]**
- D. Metro District/City Intergovernmental Agreement **[developed; being reviewed by Ankele/Kuechenmeister]**
- E. **Metro District/City Intergovernmental Agreement for Maintenance of Public Infrastructure [developed; Weiss draft revised by Dahl and Anderson]**
- F. Capital Facilities Phasing Plan **[developed; draft being refined by SB700/City subgroup]**
- G. Community Housing Plan **[Eastman edits being reviewed by Weiss]**
- H. Form of Real Estate Transfer Fee Covenant (Affordable Housing and Capital Revenues) **[drafted; Dahl reviewing J.Johnson edits]**
- I. Updated Water Demand Report **[drafted; Public Works and SB 700 confirming final version]**
- J. **[Reserved; potentially use as an exhibit to describe process to impose mill levy in Service Plan; Kuechenmeister/ Ankele]**
- K. City-Wide Water and Wastewater Master Plan **[Public works; McLaughlin: may simply refer to this plan in text and not attach, as was have done for the Fiscal Impact Study]**
- L. SB 700 Development Utilities Master Plan Scope of Work **[Anderson has drafted; SB 700 to review and approve]**
- M. Master Drainage Report Scope of Work **[Anderson has drafted; SB 700 to review and approve]**
- N. Parks and Open Space Plan Scope of Work **[Chris Wilson has drafted; SB700 to review/review]**
- O. Sustainability Plan **[SB700]**

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date first set forth above.

CITY of STEAMBOAT SPRINGS, COLORADO,  
a Colorado municipal corporation

By: \_\_\_\_\_  
Paul Antonucci, City Council President



ATTEST:

\_\_\_\_\_  
Julie Franklin, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Anthony B. Lettunich, City Attorney

Steamboat 700, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_  
Daniel Mulcahy, President

STATE OF COLORADO            )  
  )ss.  
COUNTY OF ROUTT            )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by Daniel Mulcahy as President of Steamboat 700, LLC a Nevada limited liability company.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Steamboat Victory, LLC,  
a Colorado limited liability company

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO            )  
  )ss.  
COUNTY OF ROUTT            )

The foregoing was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_ as \_\_\_\_\_ of Steamboat Victory LLC, a Colorado limited liability company.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

## Subordination and Consent of Mortgagee

\_\_\_\_\_, a \_\_\_\_\_ corporation with its principal office located at \_\_\_\_\_, (“Mortgagee”) as the holder of a secured debt in the form of a \_\_\_\_\_ made by \_\_\_\_\_ Mortgagees, dated \_\_\_\_\_, in the original principal amount of \$ \_\_\_\_\_ (the “Secured Debt”), which is secured by a deed of trust encumbering the Property described on **Exhibit A**, which deed of trust is dated \_\_\_\_\_, recorded on \_\_\_\_\_ at Reception Number \_\_\_\_\_ in the Records of Routt County, Colorado (the “Mortgage”), hereby consents and does subordinate the Mortgage to the terms of the foregoing Annexation Agreement, which Mortgagee has reviewed and approved. Mortgagee agrees that:

1. The Mortgage is subordinated and hereafter shall be junior to the Annexation Agreement.
2. In the event of the foreclosure of the Mortgage, whether by judicial decree or pursuant to a power of sale, the Annexation Agreement shall not be extinguished but shall survive and continue to encumber the Property.
3. This Agreement shall be binding upon and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns.
4. An endorsement has been placed upon any Secured Debt documentation stating that it has, by this instrument, been subordinated to the Annexation Agreement to the extent described herein.

MORTGAGEE:

Name of Institution: \_\_\_\_\_

By: \_\_\_\_\_

its: \_\_\_\_\_



# Steamboat 700

# Annexation Application

# Land Use Regulating Plan

July 13, 2009  
rev. August 17, 2009

## LEGEND

- T5-TC: Town Core
- T4-NC: Neighborhood Center
- T3-NG2: Neighborhood General Medium
- T3-NG1: Neighborhood General Low
- T2-NE: Neighborhood Edge
- SD: Special District
- Use Overlay-Large Format Retail Alternative
- Parks
- Natural Open Space
- primary street corridor
- annexation boundary see annexation plat
- primary trail
- secondary trail trail alignments are approximate
- soft surface trail
- trail underpass
- improved transit stop location conceptual

illustrative of minimum required inter-pod & primary road connections (final locations tbd at preliminary plat)

conditional road connection see note #6

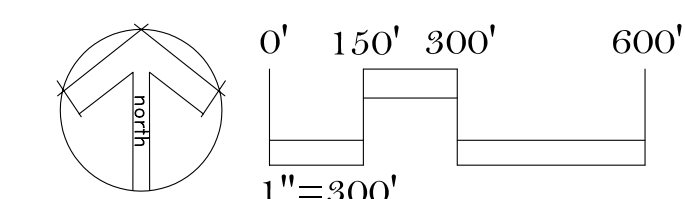
wetlands  
potential future road connections approx. location

conditional road connection approx. location

potential future road connection approx. location

## PRIMARY STREET TYPES

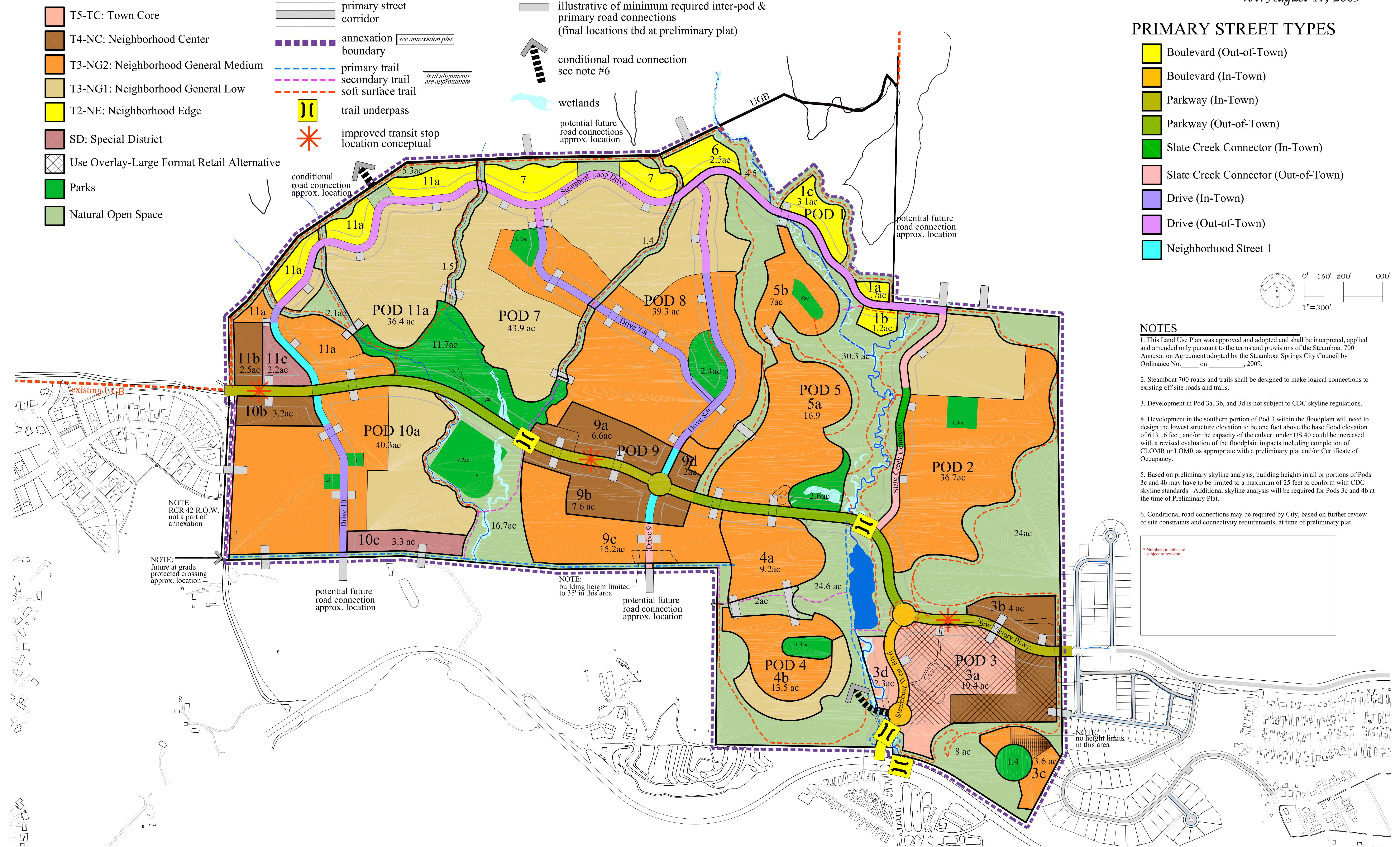
- Boulevard (Out-of-Town)
- Boulevard (In-Town)
- Parkway (In-Town)
- Parkway (Out-of-Town)
- Slate Creek Connector (In-Town)
- Slate Creek Connector (Out-of-Town)
- Drive (In-Town)
- Drive (Out-of-Town)
- Neighborhood Street 1



## NOTES

1. This Land Use Plan was approved and adopted and shall be interpreted, applied and amended only pursuant to the terms and provisions of the Steamboat 700 Annexation Agreement adopted by the Steamboat Springs City Council by Ordinance No. \_\_\_\_\_ on \_\_\_\_\_, 2009.
2. Steamboat 700 roads and trails shall be designed to make logical connections to existing off site roads and trails.
3. Development in Pod 3a, 3b, and 3d is not subject to CDC skyline regulations.
4. Development in the southern portion of Pod 3 within the floodplain will need to design the lowest structure elevation to be one foot above the base flood elevation of 6131.6 feet; and/or the capacity of the culvert under US 40 could be increased with a revised evaluation of the floodplain impacts including completion of CLOMR or LOMR as appropriate with a preliminary plat and/or Certificate of Occupancy.
5. Based on preliminary skyline analysis, building heights in all or portions of Pods 3c and 4b may have to be limited to a maximum of 25 feet to conform with CDC skyline standards. Additional skyline analysis will be required for Pods 3c and 4b at the time of Preliminary Plat.
6. Conditional road connections may be required by City, based on further review of site constraints and connectivity requirements, at time of preliminary plat.

\* Numbers in table are subject to revision



NOTE: RCR 42 R.O.W. not a part of annexation

NOTE: future at grade protected crossing approx. location

potential future road connection approx. location

NOTE: building height limited to 35' in this area

potential future road connection approx. location

NOTE: height limits in this area



**EXHIBIT F**  
**Capital Facilities Phasing Plan**  
**Section 1 - Summary of Infrastructure Requirements**

**Categories**

**Category A:** Facilities for which SB 700 is exclusively responsible, both as to financing and construction.

**Category B:** Facilities for which SB 700 is required to pay its identified share, as well as the remaining share, for which SB 700 is entitled to reimbursement; City responsible for initiating purchase/construction.

**Category C:** Facilities for which SB 700 is required to provide its share at a specified point in the development; City responsible for initiating purchase/construction.

**Category D:** Facilities for which SB 700 is required to provide its share of financing when as, and if the remaining share is available; City responsible for initiating purchase/construction.

Item	CAPITAL IMPROVEMENT REQUIREMENTS	Steamboat 700		Other funding
		%	Category	
<b>Within 60 days of complete annexation</b>				
1a	1st Water rights enhancement payment of \$320,000	100%	A	
<b>First Anniversary of annexation</b>				
1b	2nd Water rights enhancement payment of \$320,000	100%	A	
<b>Second Anniversary of annexation</b>				
1c	2nd Water rights enhancement payment of \$320,000	100%	A	
<b>Prior to or concurrent with first Final Plat</b>				
2	Funds for design and right of way (ROW) acquisition for Hwy 40 Phase 1 - US 40 (12 <sup>th</sup> St. to CR 129/ includes intersections @ 13 <sup>th</sup> & Elk River Road)	77%	B	CDOT, Federal Highway funds, other west steamboat annexations
3	Funds for Hwy 40 Phase 2 – Intersection at US 40 @ Steamboat West Blvd (SWB)	77%	B	
<b>Prior to or concurrent with Final Plat of 390 du (cumulative total)</b>				
4	Funds for construction of Hwy 40 Phase 1 - US 40 (12 <sup>th</sup> St. to CR 129/ includes intersections @ 13 <sup>th</sup> & Elk River Road)	77%	B	other west steamboat annexations
5	Funds for Downhill Drive- NVP to 129 shoulder & sidewalks as required	30%	B	
6	Funds for Downhill Drive- NVP to US 40 shoulder & sidewalks as required	30%	B	
7	Funds for CR 42 - NVP to US 40 shoulder & sidewalks as required	90%	B	
8	Funds for CR 129- Downhill Drive to US 40 shoulder and sidewalks as required	25%	B	
9	Funds for intersection improvements at CR129 and Downhill Drive	30%	B	
<b>Prior to or concurrent with Final Plat of 500 du (cumulative total)</b>				
10	Funds for Hwy 40 Phase 2 – Intersection US 40 @ CR 42	77%	B	CDOT, Federal Highway funds, other west steamboat annexations
11	Funds for Phase 3 – US 40 (CR 129 to SWB)	77%	B	
12	Dedication of regional park/open space development of fields and facilities to be completed per Steamboat 700 Parks and Open Space master plan	100%	A	Grant funding if available
<b>Prior to or concurrent with Final Plat of 700 du (cumulative total)</b>				
13	Funds for non-grant portion of 2 transit coaches (20% of total cost max)	20%	C	grants/City

Item	CAPITAL IMPROVEMENT REQUIREMENTS	Steamboat 700 %	Category	Other funding
<b>Prior to or concurrent with Final Plat of 1000 du (cumulative total)</b>				
14	Construction of Community Center	100%	A	
<b>Following Final Plat of at least 1000 du (cumulative total)</b>				
15	Construction of roundabout at intersection of New Victory Parkway and County Road 42 to replace T-intersection constructed during initial development	100%	A	<b>Note:</b> County will track rate of construction and provide notice of when reconstruction of the intersection will be required.
<b>Prior to or concurrent with Final Plat of 1500 du (cumulative total)</b>				
16	Funds for non-grant portion of 2 transit coaches (20% of total cost max)	20%	C	grants/City
17	\$50,000 towards Transit Master Plan	NA	C	
<b>Prior to any Final Plat - Roads, Transit stops, and Trails</b>				
18a	Final plat of all or a portion of a development pod shall require construction and dedication of roads and trails as shown on the phasing diagrams included in section 3 of this exhibit.	100%	A	
18b	Heated Transit Stops(2) - location & phasing per sect. 3	100%	A	
18c	Transit "Super Stop" (1) - location & phasing per sect. 3	100%	A	
<b>Prior to any Final Plat - Utilities</b>				
All onsite and offsite utility infrastructure required to serve the platted area including but not limited to:				
19a	1) Electric main and service lines and substation as required by utility provider	100%	A	
19b	2) Gas main and service lines as required by utility provider	100%	A	
19c	3) Tel/CATV main and service lines as required by utility provider	100%	A	
19d	4) Water system improvements consistent with requirements of applicable City master plan.	100%	A	
19e	5) Wastewater system improvements consistent with requirements of applicable City master plan, including underground water storage tank if needed.	100%	A	
19f	6) Drainage improvements consistent with City requirements including any offsite improvements required by Steamboat 700 Drainage Master Plan	100%	A	
Note: All utility infrastructure must be sufficient to serve each individual parcel platted as part of a Large Tract Subdivision and/or each individual Buildable Lot without additional offsite construction.				
<b>Prior to City accepting maintenance responsibility for Public Roads</b>				
20a	Site and funds to construct of Public Works/Parks shop	up to 100%	B	other west steamboat annexations
20b	Funds to construct Public Works scoria shed	up to 100%	B	other west steamboat annexations
20c	Funds for plow truck	up to 100%	B	other west steamboat annexations
20d	Funds for front end loader	up to 100%	B	other west steamboat annexations
<b>Prior to City accepting maintenance responsibility for Public Parks</b>				
21a	Site and funds to construct of Public Works/Parks shop	up to 100%	B	other west steamboat annexations
21b	Funds to construct Parks & Rec equipment barn	up to 100%	B	other west steamboat annexations
21c	Funds to purchase Parks & Rec equipment	up to 100%	B	other west steamboat annexations
<b>Notes:</b>				
1. Final Plat: As used in this table means recordation of a plat for a "Large Tract Subdivision" or "Buildable Lots" as those terms are defined in the Steamboat 700 annexation agreement				
2. References to "Pods" shall mean the pods shown on the Land Use Regulating Plan.				

Item	CAPITAL IMPROVEMENT REQUIREMENTS	Steamboat 700		
		%	Category	Other funding
	3. Units shall mean completed residential units, excluding secondary units.			
	4. For the purposes of calculating dwelling units (du) for Large Tract Subdivision (LTS) the target buildout for each pod shall be applied to the pro rata portion of the developable area of the pod included in the Final Plat			
	5. DU: Dwelling Unit			

**EXHIBIT F**

**Section 1 - Summary of Infrastructure Requirements (cont)**

Item	Contingent Capital Items	Pro rata share	Category	Other funding	Contingency details
22	Partial funding for new Public Safety Building (excluding land cost)	21%	D	City	Required within XX? months of written request but not before XXX? DU platted
23	Fire Station site ready for construction (roads and utilities to site including upgraded intersection of Hsy 40 & CR 42 per capital item # 10)	100%	A	NA	Required within XX? months of written request
24	Partial funding for new Fire Station construction cost	44% of City share	D	City & SSRFPD	Required within XX? months of written request
25	Partial funding for Phase I Fire Equipment - Engine and Ambulance	44% of City share	D	City & SSRFPD	Required within XX? months of written request
26	Partial funding for Phase I Fire Equipment - BT and Tender truck	44% of City share	D	City & SSRFPD	Required within XX? months of written request
27	Partial funding for Phase I Fire Equipment - Aerial truck	44% of City share	D	City & SSRFPD	Required within XX? months of written request
28	Partial funding for Slate Creek Connector	18%	D	adjacent development	Only required if Slate Creek connector road not developed with adjacent property and 1,200 du have been platted within Steamboat 700
29	Partial funding for US Hwy. 40/13th Street bottleneck	25%	D	unknown	May only be required upon selection of a preferred alternative and platting of 800 units in SB700
30	Partial funding for Hwy 40 improvements from Steamboat West Blvd (SWB) to CR 42	?	?	adjacent development	?
<b>Notes:</b>					
1. Final Plat: As used in this table means recordation of a plat for a "Large Tract Subdivision" or "Buildable Lots" as those terms are defined in the Steamboat 700 annexation agreement					
2. References to "Pods" shall mean the pods shown on the Land Use Regulating Plan.					
3. Units shall mean completed residential units, excluding secondary units.					
4. For the purposes of calculating dwelling units (du) for Large Tract Subdivision (LTS) the target buildout for each pod shall be applied to the pro rata portion of the developable area of the pod included in the Final Plat					
5. DU: Dwelling Unit					



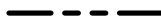
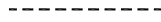

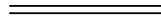
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**EXHIBIT F**



**Section 2 – Additional details for certain Capital Facilities Items**


<b>ITEM # 12</b>	<b>DEDICATION OF REGIONAL PARK/OPEN SPACE DEVELOPMENT OF FIELDS AND FACILITIES TO BE COMPLETED PER STEAMBOAT 700 PARKS AND OPEN SPACE MASTER PLAN</b>
Details	This section under construction...
Notes	
<b>ITEM # 17</b>	<b>\$50,000 TOWARDS TRANSIT MASTER PLAN</b>
Details	System-wide transit study to analyze current operations and recommend strategies to mitigate impacts of large developments and ensure balanced and efficient transit operation as Steamboat 700 project approaches full buildout. Developer contribution limited to \$50,000 with no inflation adjustment.
Notes	
<b>ITEM # 18 C</b>	<b>TRANSIT "SUPER STOP" (1) - LOCATION &amp; PHASING PER SECT. 3</b>
Description	6,000 sf of ground floor space in a commercial building adjacent to bus stop on New Victory Parkway. The transit center is intended as an attractive centralized facility that facilitates transit use even during inclement weather. The transit center would include secure storage areas for personal belongings and bikes to allow bike and pedestrian commuters who wish to utilize transit for a portion of the trip to do so comfortably and conveniently. Includes an indoor seating area (possibly with lockers and restrooms) in association with an adjacent public facility or commercial building, bike lockers, an informational kiosk. Upon completion space will be subdivided through a condominium plat and dedicated to the City.
Notes	
<b>ITEM # 20A</b>	<b>SITE AND FUNDS TO CONSTRUCT OF PUBLIC WORKS/PARKS SHOP</b>
Description	Site: includes all utilities, roads, and sidewalk improvements  Building: minimum of 600 sf for offices and restrooms; costs include architectural and engineering fees, landscaping, site development, and furnishings, fixtures and equipment.
Notes	

**LEGEND**

 ANNEXATION BOUNDARY  
 PRIMARY TRAILS  
 EXISTING ROADWAYS  
 REQUIRED PRIMARY ROADWAYS AND ASSOCIATED PEDESTRIAN/BICYCLE IMPROVEMENTS

 IMPROVEMENT SEGMENT OR LOCATION POINT, TYPICAL (SEE PHASING BY DEVELOPEMENT POD TABLE)  
 TRANSIT STOP / TRANSIT CENTER  
 DEVELOPMENT AREA: INCLUDES CONSTRUCTION OF ALL INTERNAL ROADS, UTILITIES, PARKS, ETC.

 ENHANCED MID-BLOCK AT GRADE PEDESTRIAN CROSSING WITH REFUGE MEDIAN  
 PEDESTRIAN/BICYCLE UNDERPASS

 ILLUSTRATIVE OF MINIMUM REQUIRED INTER-POD & PRIMARY ROAD CONNECTIONS (FINAL LOCATIONS TBD AT PRELIMINARY PLAT)

NOTE:  
LOCATION AND PHASING OF SOFT SURFACE TRAILS INCLUDED IN STEAMBOAT 700 PARKS AND OPEN SPACE MASTER PLAN

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REVISIONS

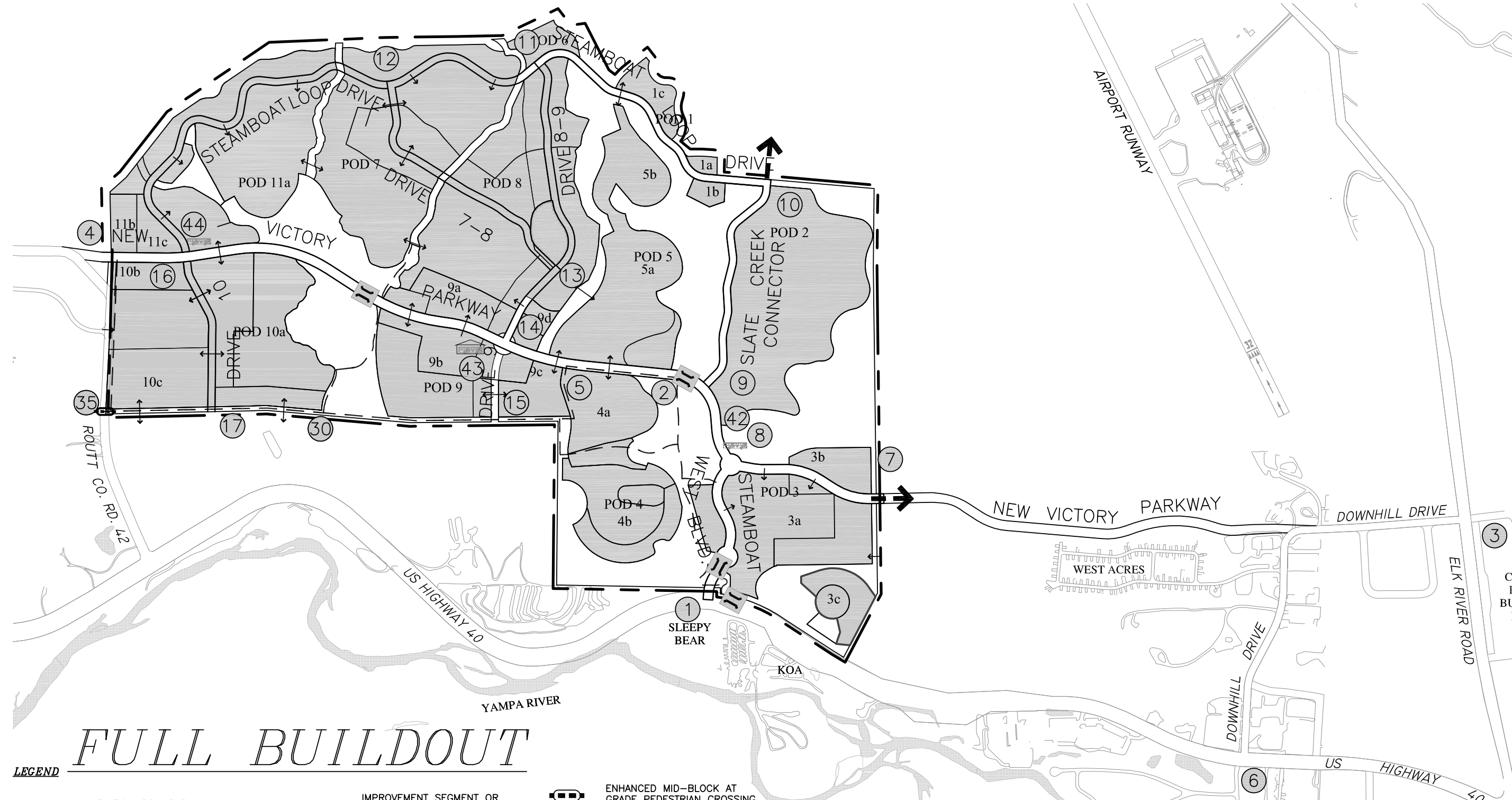
No.	Item	Date

SHEET INDEX

SHEET 1	INFRASTRUCTURE IMPROVEMENT TABLE
SHEET 2	FULL BUILDOUT
SHEET 3	POD 1
SHEET 4	POD 2
SHEET 5	POD 3
SHEET 6	POD 4
SHEET 7	POD 5
SHEET 8	POD 6
SHEET 9	POD 7
SHEET 10	POD 8
SHEET 11	POD 9
SHEET 12	POD 10
SHEET 13	POD 11

Date: 8/18/09	<b>STEAMBOAT 700</b>
Drawn: BB	
Designed: RWS	ROADS, TRAILS, AND TRANSIT STOPS PHASING PLAN
Scale: As Noted	
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SHEET NO. 1 OF 13	PROJECT NO. 4151.001A

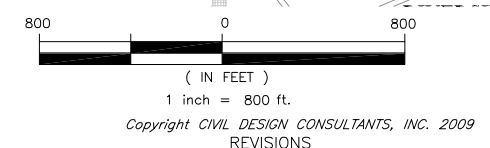
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# FULL BUILDOUT

## LEGEND

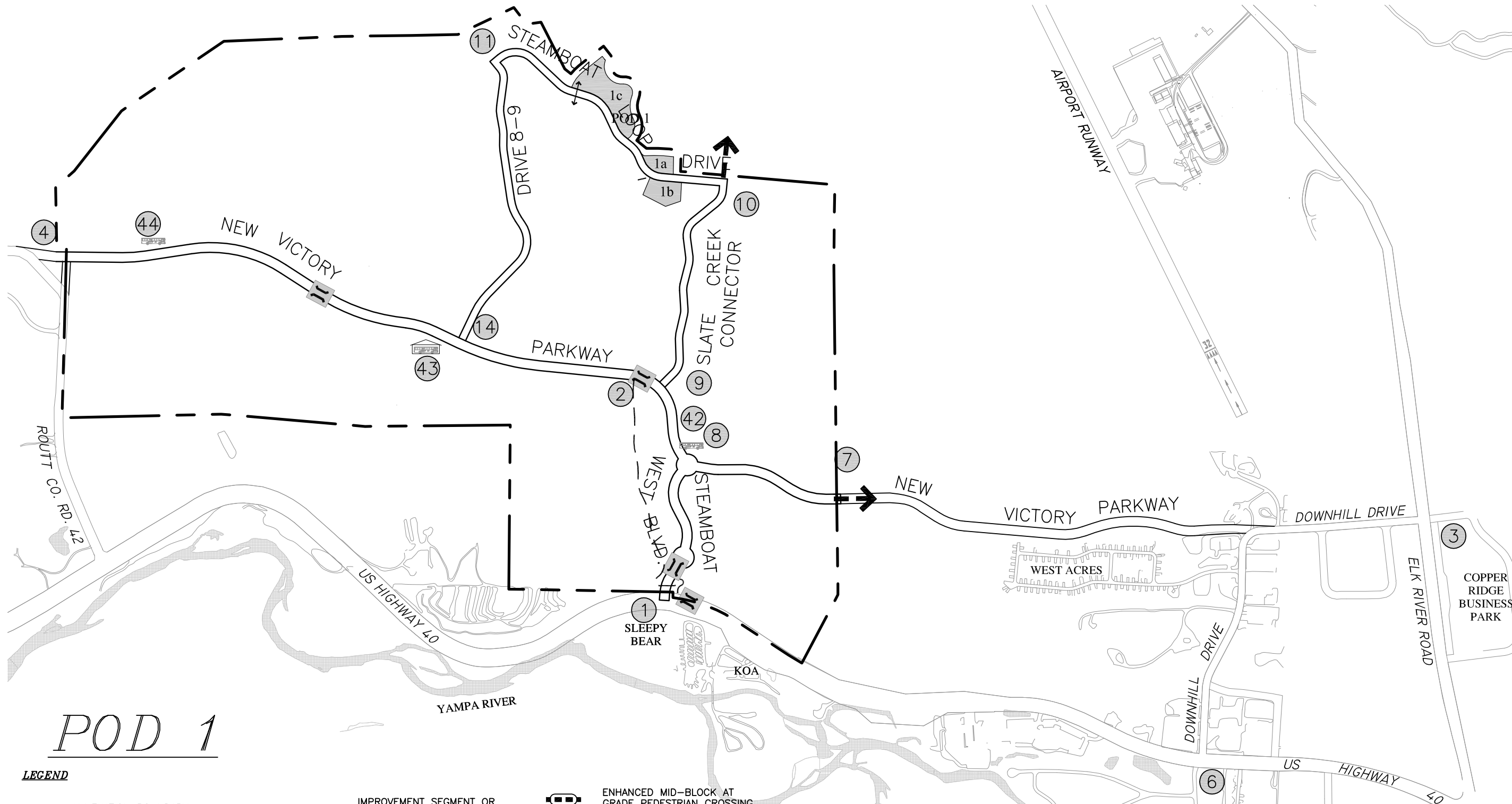
- ANNEXATION BOUNDARY
- PRIMARY TRAILS
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No.	Item	Date

Date: 8/18/09	<b>STEAMBOAT 700</b>
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# POD 1

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- PRIMARY TRAILS
- EXISTING ROADWAYS
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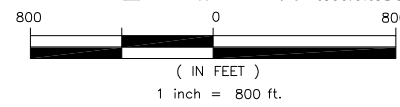
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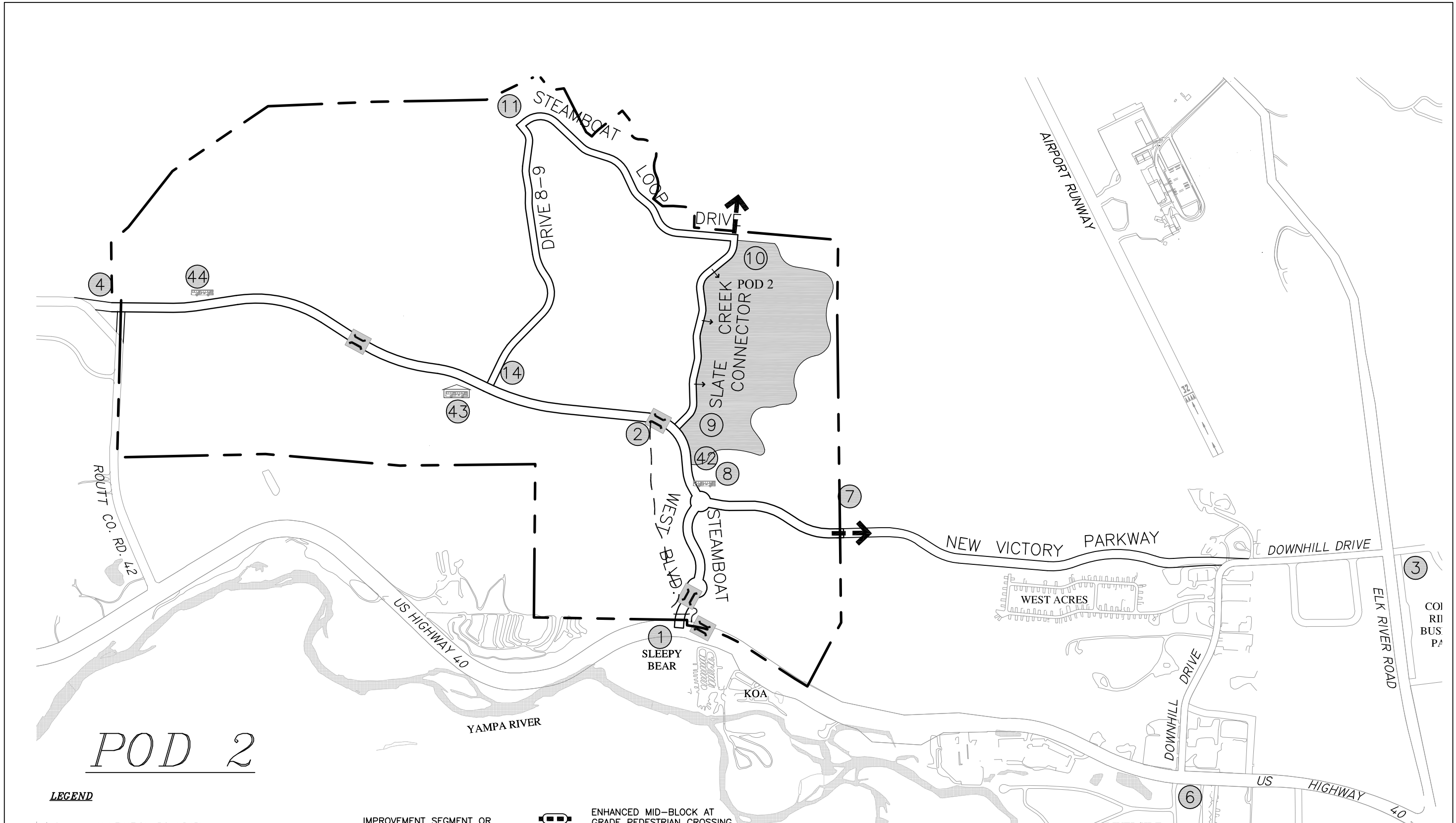
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ROADS, TRAILS, AND TRANSIT STOPS PHASING PLAN

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SHEET NO. 3 OF 13 PROJECT NO. 4151.001A

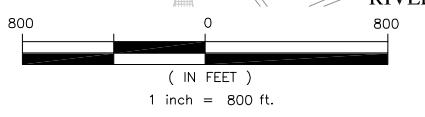
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# POD 2

## LEGEND

- ANNEXATION BOUNDARY
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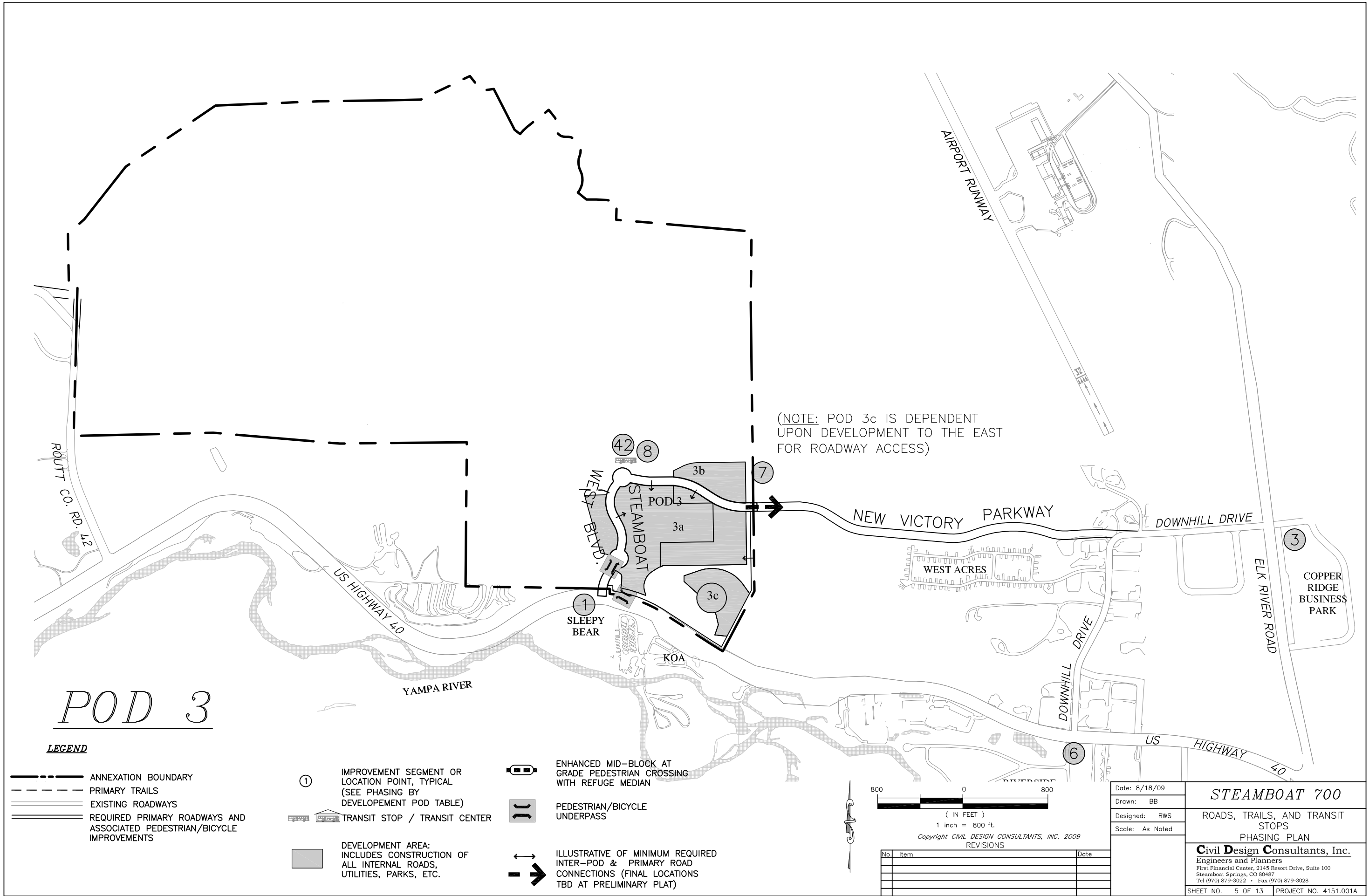
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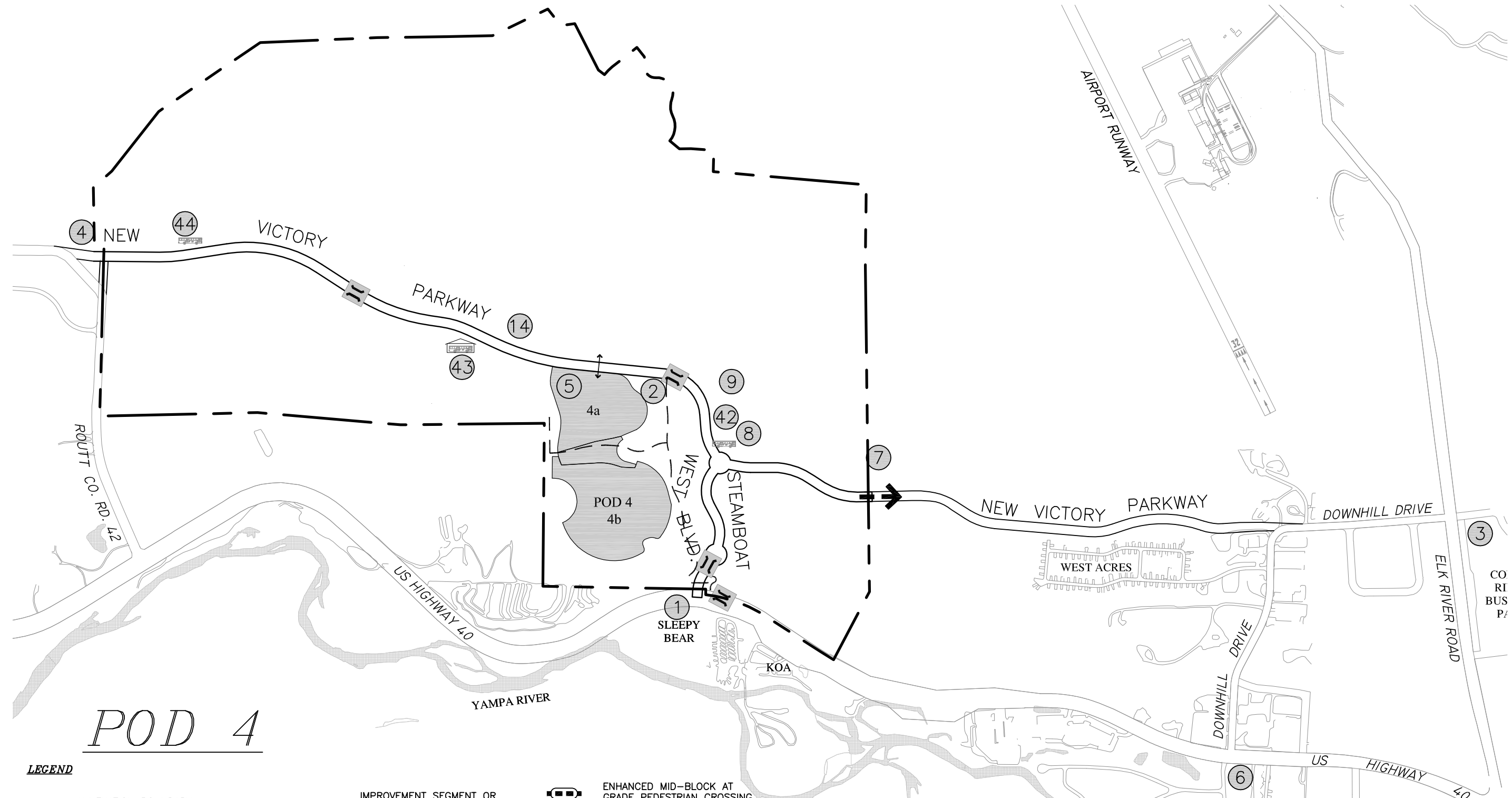
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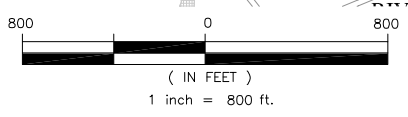
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# POD 4

## LEGEND

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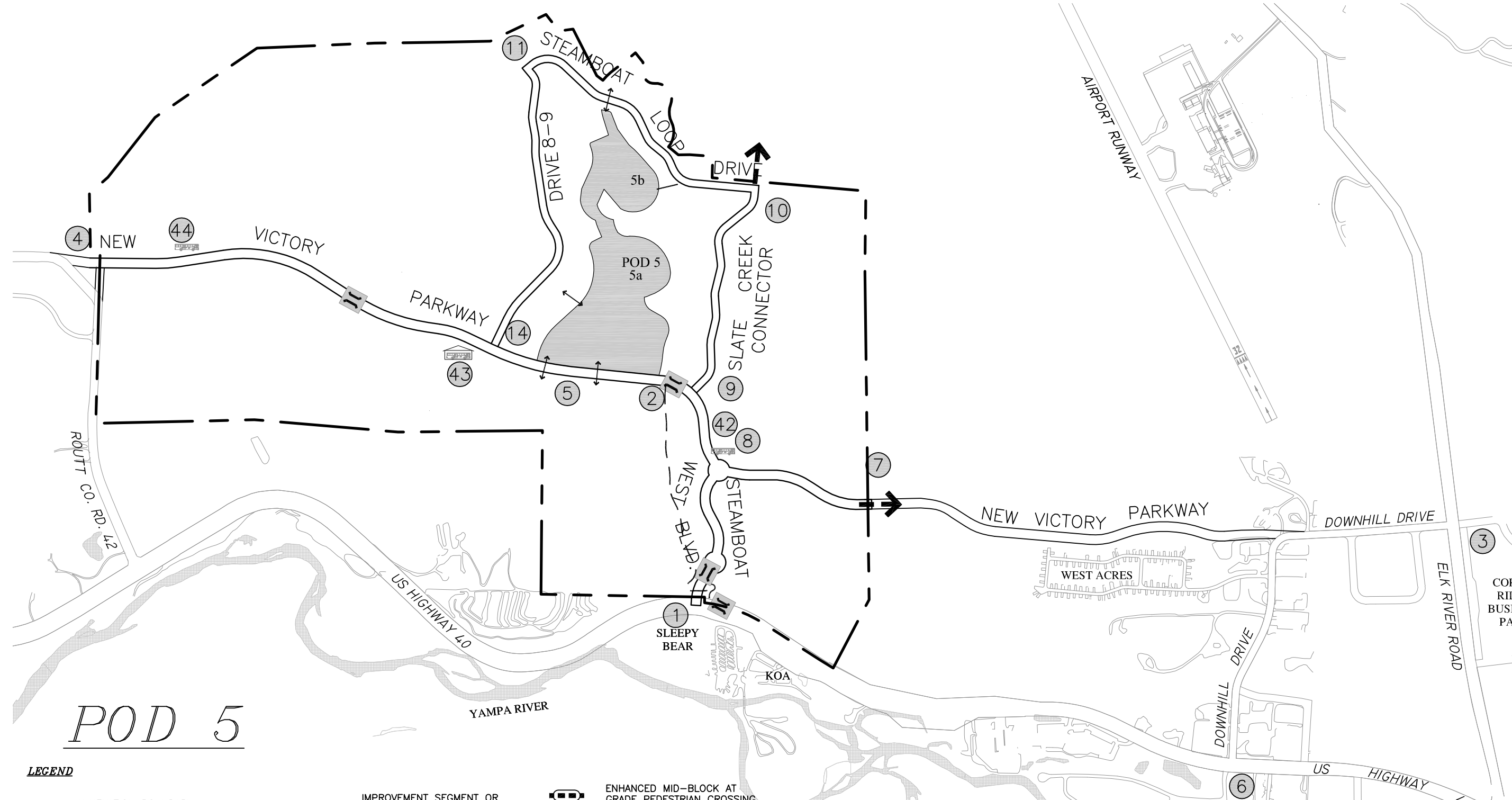
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### STEAMBOAT 700

ROADS, TRAILS, AND TRANSIT STOPS PHASING PLAN

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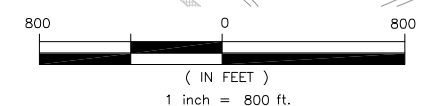
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# POD 5

## LEGEND

- ANNEXATION BOUNDARY
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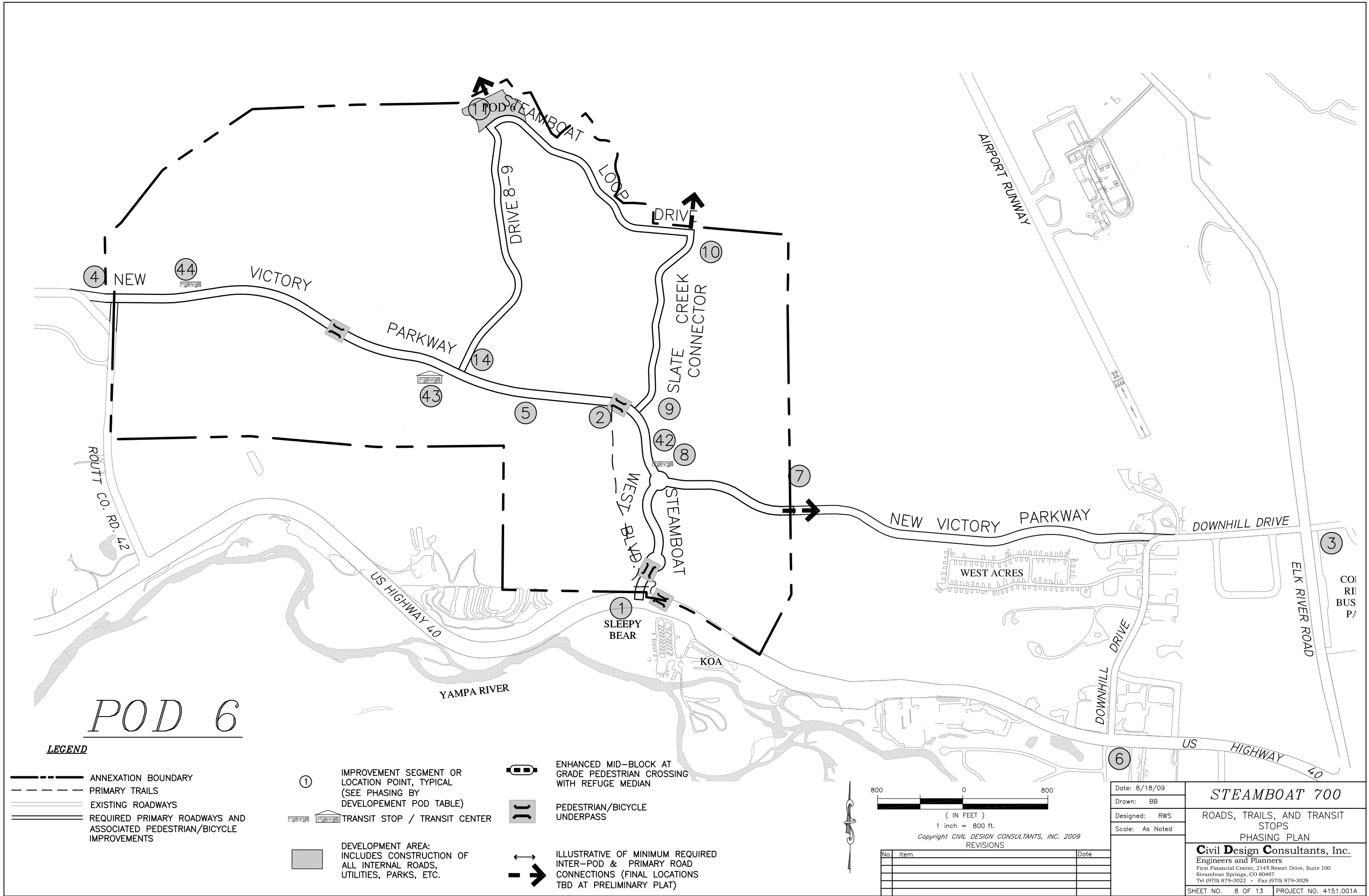
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SHEET NO. 7 OF 13 PROJECT NO. 4151.001A	



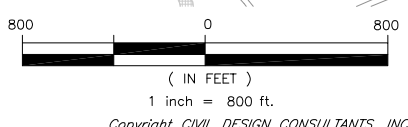
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# POD 6

## LEGEND

- ANNEXATION BOUNDARY
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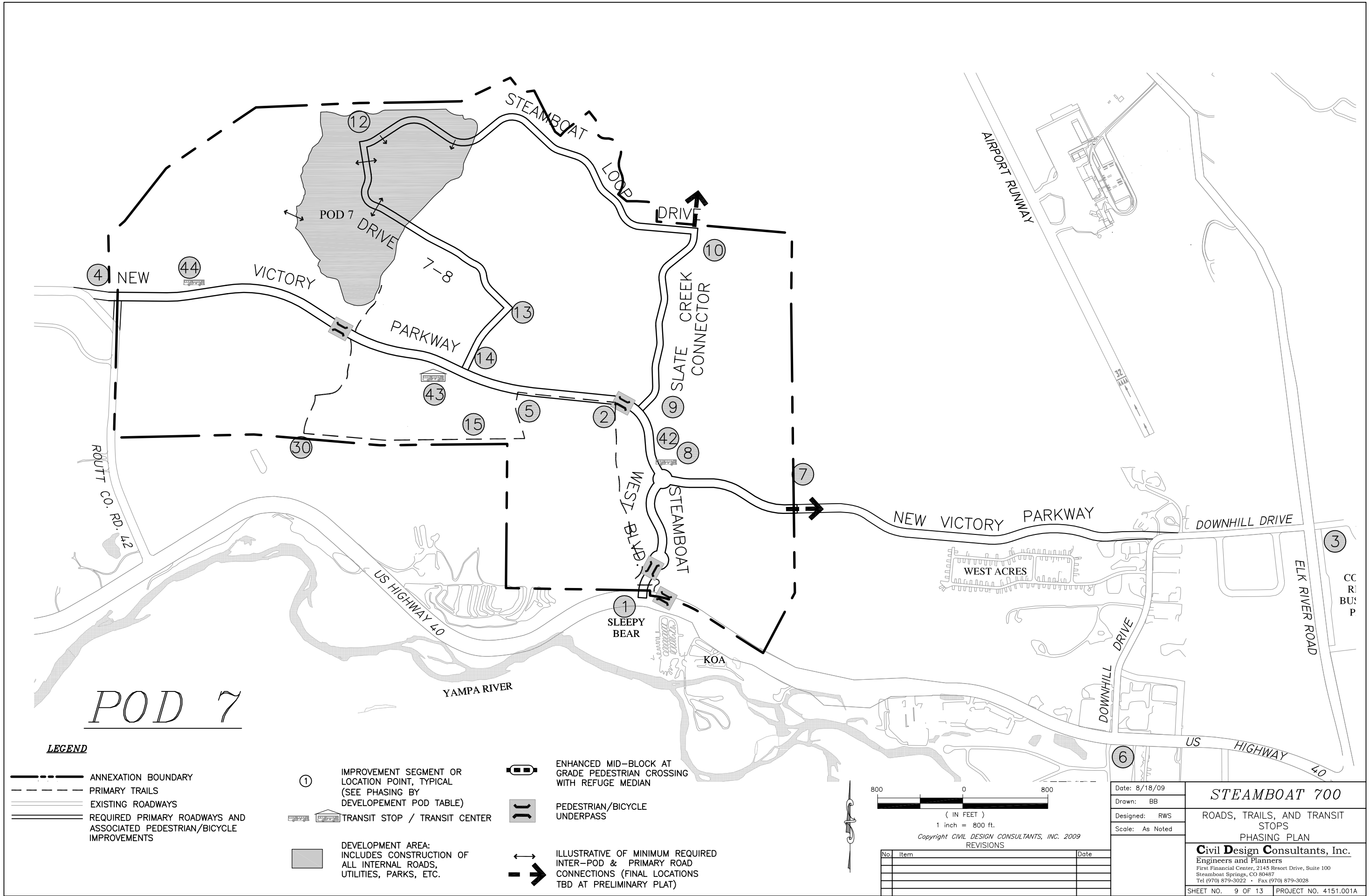


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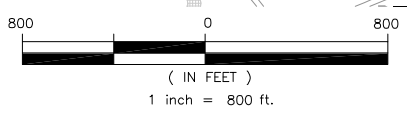
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- ANNEXATION BOUNDARY
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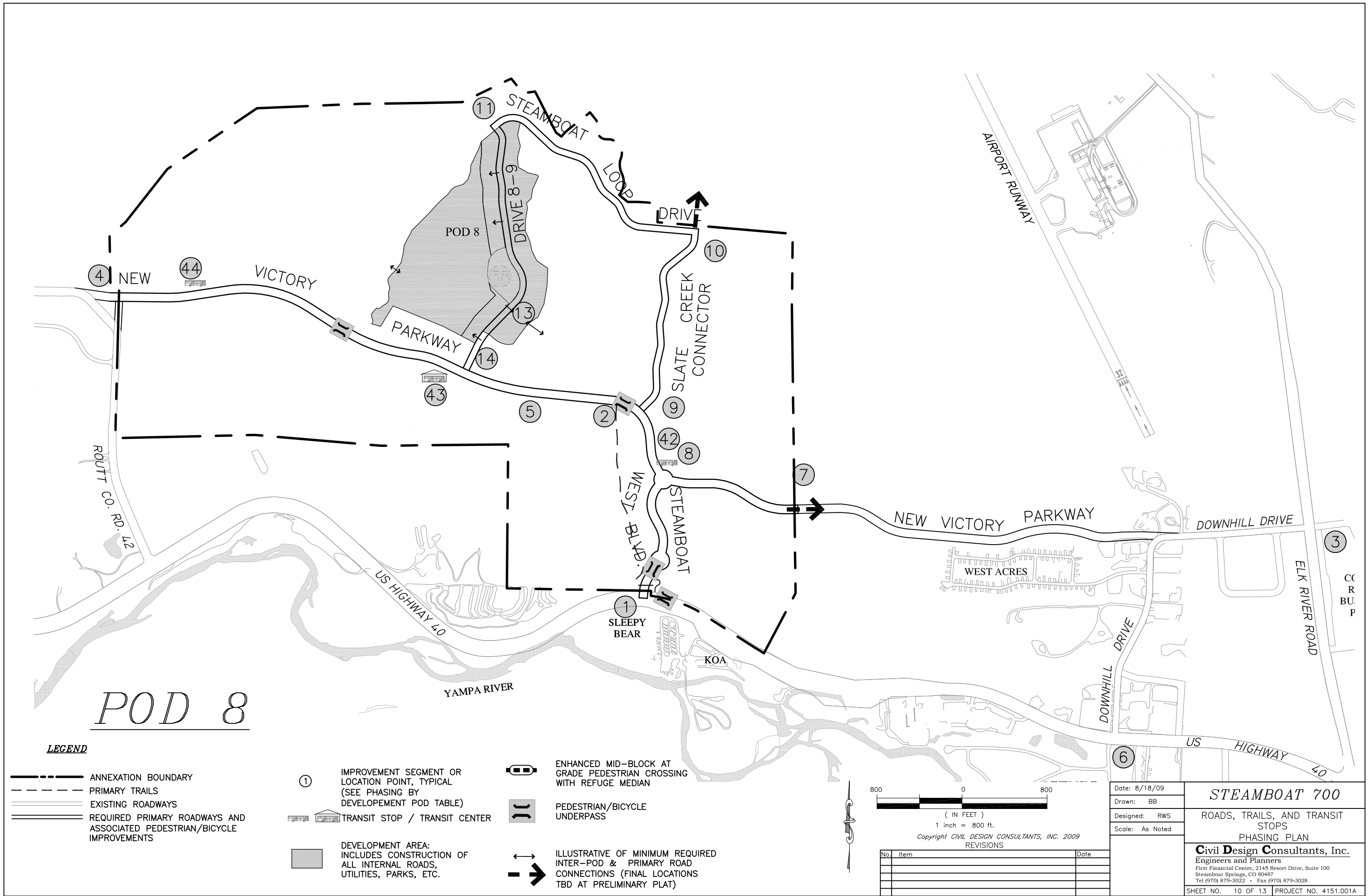
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- ILLUSTRATIVE OF MINIMUM REQUIRED INTER-POD & PRIMARY ROAD CONNECTIONS (FINAL LOCATIONS TBD AT PRELIMINARY PLAT)



No.	Item	Date

Date: 8/18/09	<b>STEAMBOAT 700</b> ROADS, TRAILS, AND TRANSIT STOPS PHASING PLAN
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SHEET NO. 9 OF 13	PROJECT NO. 4151.001A

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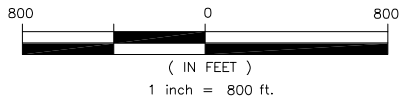
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- ANNEXATION BOUNDARY
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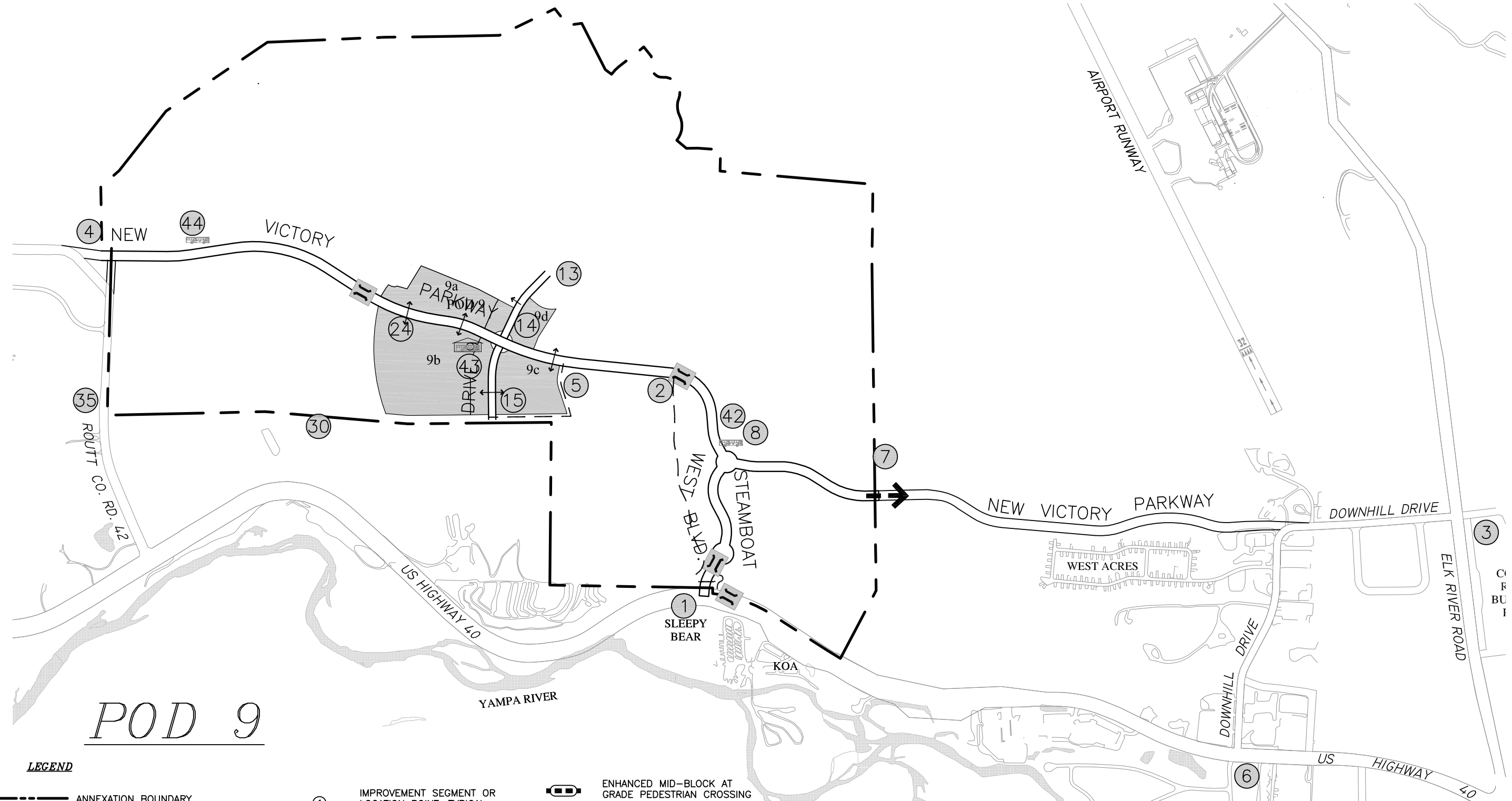
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No.	Item	Date

Date: 8/18/09	<b>STEAMBOAT 700</b>
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SHEET NO. 10 OF 13	PROJECT NO. 4151.001A

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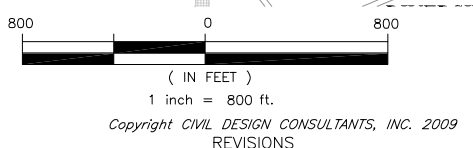
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## LEGEND

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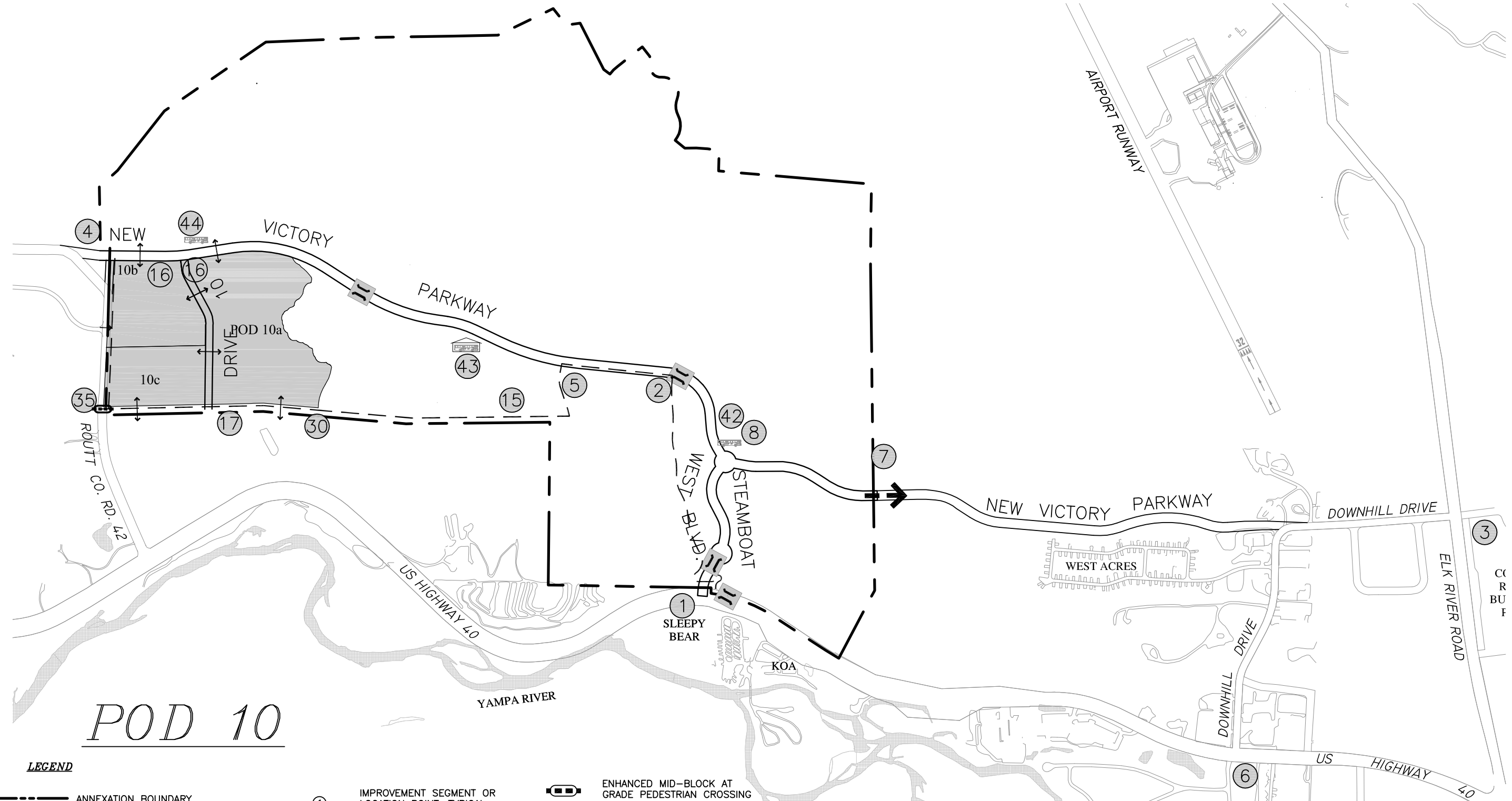
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## STEAMBOAT 700

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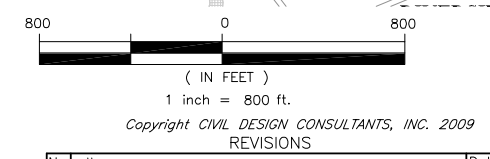
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## LEGEND

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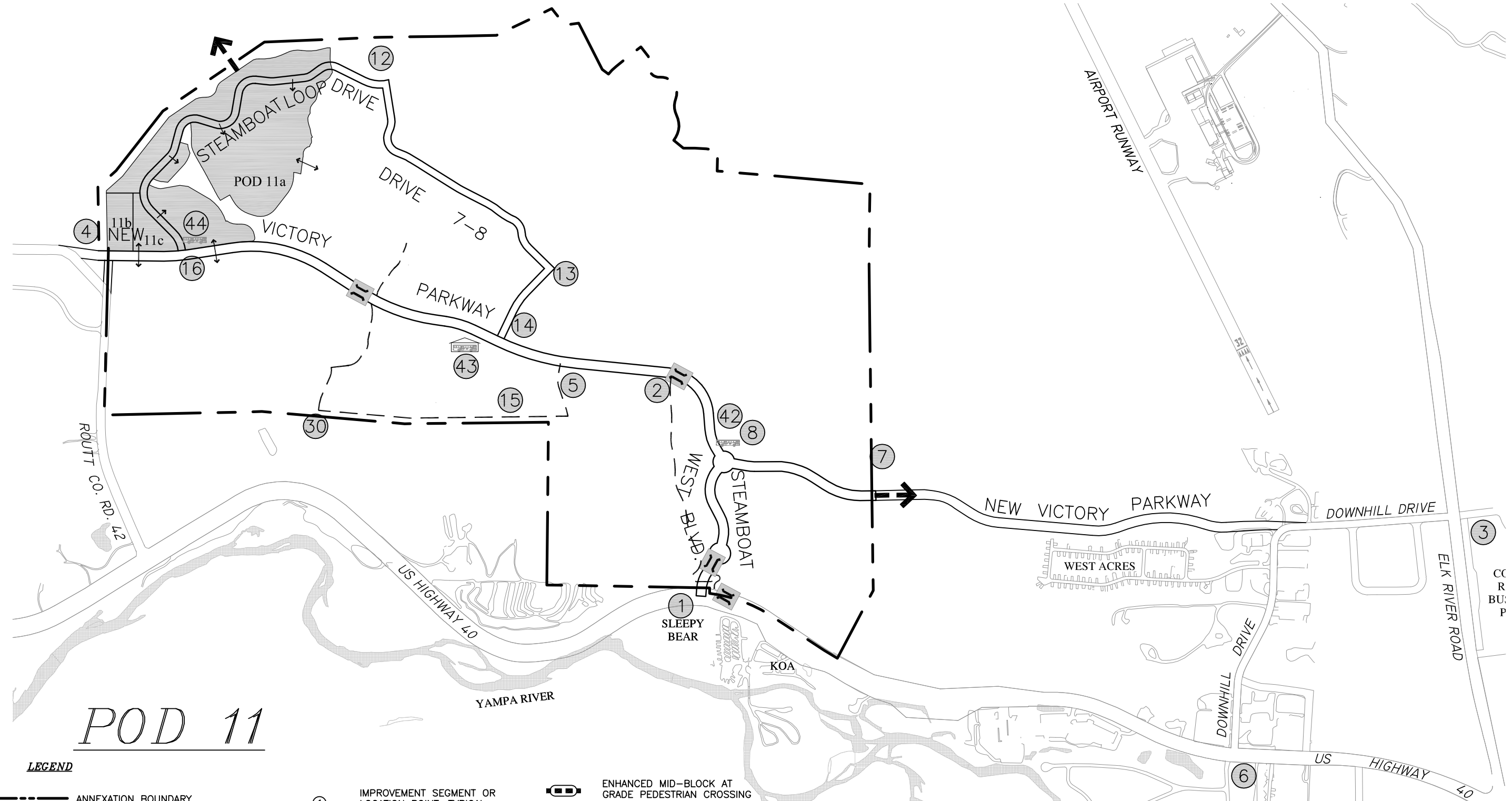
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No.	Item	Date

Date: 8/18/09	<b>STEAMBOAT 700</b> ROADS, TRAILS, AND TRANSIT STOPS PHASING PLAN <b>Civil Design Consultants, Inc.</b> Engineers and Planners First Financial Center, 2145 Resort Drive, Suite 100 Steamboat Springs, CO 80487 Tel (970) 879-3022 • Fax (970) 879-3028
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SHEET NO. 12 OF 13 PROJECT NO. 4151.001A	

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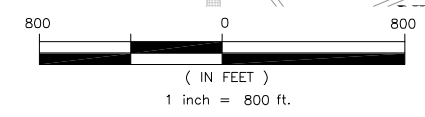
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## LEGEND

- ANNEXATION BOUNDARY
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 ROADS, TRAILS, AND TRANSIT STOPS  
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SHEET NO. 13 OF 13 PROJECT NO. 4151.001A

**EXHIBIT “G”  
Community Housing Plan Lots**

The Community Housing Plan Lots shall be established, platted, conveyed, owned and occupied in accordance with the provisions hereof.

1. Definitions.

- (a) “CHP Eligible Building Types” shall mean Duplex, Rowhouse, Townhouse, Triplex/Fourplex, 5-8 Unit Buildings and 9+ Unit Buildings as such terms are used and defined in the CDC.
- (b) “CHP Eligible Lots” shall mean lots on which CHP Eligible Building Types may be constructed.
- (c) “CHP Lots” shall mean CHP Eligible Lots conveyed to the City or to an entity or individual designated by the City for the purpose of compliance with the provisions of the CHP.
- (d) “CHP Units” shall mean Units constructed on CHP Lots.
- (e) “CHP Deed Restriction” shall mean a recorded document establishing an affordable housing deed restriction applicable to each CHP Unit for a period of at least 30 years, enforceable by the City, which at a minimum (i) prohibits the initial sale of the Unit and subsequent resale to purchasers with household incomes exceeding 120% AMI and which also limits the resale price of such Unit under a City approved deed restriction, and (ii) prohibits rental of such Unit to persons with household incomes exceeding 120% AMI or lease terms of less than 12 months unless otherwise approved by the City Program Administrator.
- (f) “Residential Lots” shall mean Single Family Lots as such term is used and defined in the CDC, CHP Eligible Lots, lots allocated for Mixed Use Building types under the CDC and other platted parcels within the property designated in a recorded instrument for Single Family Lots or Residential or Mixed Use Building Types.
- (g) “CHP Percentage” means a percentage calculated under the CDC by dividing the probable maximum number of CHP Units that may be constructed on the CHP Lots by the probable maximum number of Units that may be constructed on the Residential Lots multiplied by 100.
- (h) “CDC” shall mean the City of Steamboat Springs Community Development Code including those sections addressing Traditional Neighborhood Design.

- (j) “Project Encumbrances” shall mean the lien of general real property taxes from the year of closing, patent reservations, rights-of-way of ditches, ponds, springs, restrictions, reservations, agreement, covenants, easements of record or apparent, standard survey exceptions, declaration of covenants for any homeowners association applicable to Property, and related homeowners association documents, including requirements for architectural control and approval requirements and the payment of fees and assessments of the applicable homeowners associations.

2. Platting and Conveyance Restrictions.

- (a) Any Final Plat application for the initial development of buildable lots for any land in pods 2, 3, 4, 5, 7, 8, 9, 10, or 11 within the Steamboat 700 development shall be accompanied by a list of potential CHP Lots available for selection by the City. The list shall include a minimum of 50% of the lots for each CHP Eligible Building Types included on that particular plat. If there are 3 or less of a particular CHP Eligible Building Type included on a particular plat then all of the lots of that CHP Eligible Building Type shall be included on the list. The City shall select CHP Lots from the list subject to the limitations set forth in the remainder of this subsection 2; such selection shall be in the form of a letter to the Final Plat applicant within 21 days of receipt of a complete Final Plat application. Except as set forth in paragraph 2(i), no final plat shall be recorded unless at the time of recording, the selected CHP lots are conveyed to the City or its designee consistent with subsection 2 (d).
- (b) Notwithstanding the limitation set forth in paragraph 2(a) above, the cumulative area of the CHP Lots conveyed to the City shall not exceed 12.5 acres.
- (c) The City is obligated to select CHP Lots such that the obligation to provide up to 12.5 acres of CHP Lots can be fulfilled without exceeding the Maximum CHP Lot Acreage as follows:

<b>POD</b>	<b>MAXIMUM CHP LOT ACREAGE</b>
2	3.0 acres
3	2.0 acres
4	2.0 acres
5	1.0 acres
7	1.0 acres
8	1.0 acres
9	2.0 acres
10	4.0 acres
11	2.0 acres



- (d) The CHP Lots shall be conveyed to the City, or its designee, by special warranty deed without charge, free of liens and encumbrances, except the Project Encumbrances.
- (e) A CHP Deed Restriction shall be recorded against all CHP Lots immediately following acquisition by the City or its designee and the CHP Deed Restriction shall remain in place unless released with the consent of Developer and City Council pursuant to paragraph 2(h) below.
- (f) No CHP Lots shall be sold by the City free of a CHP Deed Restriction for a period of five (5) years following the date of acquisition of the CHP Lot by the City. If the City desires to sell a CHP Lot free of a CHP Deed Restriction more than five (5) years after the acquisition of the CHP Lot by the City, the City shall first offer to sell the CHP Lot back to the Developer on price and terms agreed to by the parties. If the parties are unable to reach agreement, the Developer shall have a 30 day right of first refusal to purchase such CHP Lot on the same terms and conditions as any bona fide, written and binding, third party purchase offer received by the City for such CHP Lot. If Developer does not exercise its right to reacquire the CHP Lot pursuant to the right of first refusal, the City shall be required to make payment to the Developer of a portion of the revenues it receives from any sale of the CHP Lot free of the CHP Deed Restriction (gross sales price less any cost incurred in marketing and selling the CHP Lot) in accordance with the following formula:
  - If sold in the 6<sup>th</sup> year 50% of net revenues
  - If sold in the 7<sup>th</sup> year, 40% of net revenues
  - If sold in the 8<sup>th</sup> year, 30% of net revenues
  - If sold in the 9<sup>th</sup> year, 20% of net revenues
  - If sold in the 10<sup>th</sup> year, 10% of net revenues
- (g) At all times, the average household income level set forth in the CHP Deed Restriction applicable to all the CHP Units both occupied and with development approvals shall not exceed 80% AMI.
- (j) Upon request, the City shall issue an instrument in recordable form confirming that the Residential lots for which such confirmation is requested are in compliance with the CHP and that no further CHP Lots are required to be conveyed to the City with respect to such Residential lots.
- (k) The obligation to convey CHP Lots to the City shall be suspended during any period that CHP Lots previously conveyed to the City remain vacant and undeveloped in a manner that is not in conformance with any requirements to develop lots that are applied uniformly to an entire final plat.
- (l) Annually, no later than June 1 of each year, the City shall notify Developer in writing if the City desires to purchase additional lots within the Property designate

upcoming calendar year for the purpose of providing affordable housing over and above the lots required to be conveyed to the City as CHP Lots. Within 60 following the date of receipt of such notice, Developer shall advise the City what lots are available and the price and terms upon which the Developer is willing to sell such lots to the City or its designee for the development of affordable housing.