

Fort Collins City Council Agenda

Regular Meeting

6:00 p.m., Tuesday, May 6, 2025

City Council Chambers at City Hall, 300 Laporte Avenue, Fort Collins, CO 80521

Zoom Webinar link: <https://zoom.us/j/98241416497>

NOTICE:

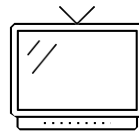
Regular meetings of the City Council are held on the 1st and 3rd Tuesdays of each month in the City Council Chambers. Meetings are conducted in a hybrid format, with a Zoom webinar in addition to the in person meeting in Council Chambers.

City Council members may participate in this meeting via electronic means pursuant to their adopted policies and protocol.

How to view this Meeting:



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Meetings are televised live on Channels 14 & 881 on cable television.



Meetings are available through the Zoom platform, electronically or by phone.



Meetings are livestreamed on the City's website, fcgov.com/fctv

Upon request, the City of Fort Collins will provide language access services for individuals who have limited English proficiency, or auxiliary aids and services for individuals with disabilities, to access City services, programs and activities. Contact 970.221.6515 (V/TDD: Dial 711 for Relay Colorado) for assistance. Please provide advance notice. Requests for interpretation at a meeting should be made by noon the day before.

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There are in person and remote options for members of the public who would like to participate in Council meetings:

Comment in real time:

During the public comment portion of the meeting and discussion items:



In person attendees can address the Council in the Chambers.
The public can join the Zoom webinar and comment from the remote meeting, joining online or via phone.



All speakers are required to sign up to speak using the online sign up system available at www.fcgov.com/agendas.
Staff is also available outside of Chambers prior to meetings to assist with the sign up process for in person attendees.

Full instructions for online participation are available at fcgov.com/councilcomments.

Join the online meeting using the link in this agenda to log in on an internet-enabled smartphone, laptop or computer with a speaker and microphone. Using earphones with a microphone will greatly improve audio experience.

To be recognized to speak during public participation portions of the meeting, click the 'Raise Hand' button.

Participate via phone using this call in number and meeting ID:

Call in number: 720 928 9299

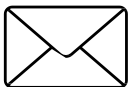
Meeting ID: 982 4141 6497

During public participation opportunities in the meeting, press *9 to indicate a desire to speak.

Submit written comments:



Email comments about any item on the agenda
to cityleaders@fcgov.com



Written comments can be mailed or dropped off at the City Manager's Office
at City Hall, at 300 Laporte Ave, Fort Collins, CO 80521

Documents to Share during public participation: Persons wishing to display presentation materials using the City's display equipment under the Public Participation portion of a meeting or during discussion of any Council item must provide any such materials to the City Clerk in a form or format readily usable on the City's display technology no later than two (2) hours prior to the beginning of the meeting at which the materials are to be presented.

NOTE: All presentation materials for appeals, addition of permitted use applications or protests related to election matters must be provided to the City Clerk no later than noon on the day of the meeting at which the item will be considered. See Council Rules of Conduct in Meetings for details.



City Council Regular Meeting Agenda

May 6, 2025 at 6:00 PM

Jeni Arndt, Mayor
Emily Francis, District 6, Mayor Pro Tem
Susan Gutowsky, District 1
Julie Pignataro, District 2
Tricia Canonico, District 3
Melanie Potyondy, District 4
Kelly Ohlson, District 5

City Council Chambers
300 Laporte Avenue, Fort Collins
& via Zoom at
<https://zoom.us/j/98241416497>
Cablecast on FCTV
Channel 14 on Connexion
Channel 14 and 881 on Xfinity

Carrie Daggett
City Attorney

Kelly DiMartino
City Manager

Delynn Coldiron
City Clerk

PROCLAMATIONS & PRESENTATIONS 5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

- [PP 1.](#) Declaring the Week of May 11-17, 2025 as National Police Week.
- [PP 2.](#) Declaring the Week of May 12-17, 2025 as Armed Forces Week.
- [PP 3.](#) Declaring the Week of May 4-10, 2025 as Small Business Week.
- [PP 4.](#) Declaring the Month of May 2025 as Wildfire Awareness Month.

REGULAR MEETING 6:00 PM

B) CALL MEETING TO ORDER

C) PLEDGE OF ALLEGIANCE

D) ROLL CALL

E) CITY MANAGER'S AGENDA REVIEW

- City Manager Review of Agenda
- Consent Calendar Review, including removal of items from Consent Calendar for individual discussion.

F) COMMUNITY REPORTS - None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

*Individuals may comment regarding any topics of concern, whether or not included on this agenda. Comments regarding land use projects for which a development application has been filed should be submitted in the development review process** and not to Council.*

- *Those who wish to speak are required to sign up using the online sign-up system available at www.fcgov.com/council-meeting-participation-signup/*
- *Each speaker will be allowed to speak one time during public comment. If a speaker comments on a particular agenda item during general public comment, that speaker will not also be entitled to speak during discussion on the same agenda item.*
- *All speakers will be called to speak by the presiding officer from the list of those signed up. After everyone signed up is called on, the presiding officer may ask others wishing to speak to identify themselves by raising their hand (in person or using the Raise Hand option on Zoom), and if in person then will be asked to move to one of the two lines of speakers (or to a seat nearby, for those who are not able to stand while waiting).*
- *The presiding officer will determine and announce the length of time allowed for each speaker.*
- *Each speaker will be asked to state their name and general address for the record, and, if their comments relate to a particular agenda item, to identify the agenda item number. Any written comments or materials intended for the Council should be provided to the City Clerk.*
- *A timer will beep one time and turn yellow to indicate that 30 seconds of speaking time remain and will beep again and turn red when a speaker's time has ended.*

*[**For questions about the development review process or the status of any particular development, consult the City's Development Review Center page at <https://www.fcgov.com/developmentreview>, or contact the Development Review Center at 970.221.6760.]*

H) PUBLIC COMMENT FOLLOW-UP

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

CONSENT CALENDAR

The Consent Calendar is intended to allow Council to spend its time and energy on the important items on a lengthy agenda. Staff recommends approval of the Consent Calendar. Agenda items pulled from the Consent Calendar by either Council or the City Manager will be considered separately under their own Section, titled "Consideration of Items Removed from Consent Calendar for Individual Discussion." Items remaining on the Consent Calendar will be approved by Council with one vote. The Consent Calendar consists of:

- *Ordinances on First Reading that are routine;*
- *Ordinances on Second Reading that are routine;*
- *Those of no perceived controversy;*
- *Routine administrative actions.*

1. Consideration and Approval of the Minutes of the April 15, 2025 Regular meeting.

The purpose of this item is to approve the minutes of the April 15, 2025 Regular meeting.

2. Second Reading of Ordinance No. 070, 2025, Modifying Ordinance No. 023, 2025 with Regard to Fund Identification for College Avenue-Trilby Road Capital Improvements.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, modifies a previous appropriation to expense the Stormwater Utility's share of the capital project in the Storm Drainage Fund, as opposed to transferring stormwater funds to the Capital Project Fund as detailed in Ordinance No. 023, 2025.

3. Second Reading of Ordinance No. 071, 2025, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates \$424,224, of which \$296,957 is proposed for Convention and Visitors Bureau, \$106,056 is proposed for Cultural Development and Programming Activities (Fort Fund), and \$21,211 is proposed for Tourism Programming (Fort Fund) all from unanticipated 2024 Lodging Tax revenue collections.

Lodging taxes are annually collected by the City for Cultural Development and Tourism programming activities. Anticipated revenue is projected through each Budgeting for Outcomes (BFO) cycle and then adjusted annually as needed based on final actual collections. For 2024, total Lodging tax revenues collected came in \$424,224 above projected collections.

4. Second Reading of Ordinance No. 072, 2025, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities not included in the 2025 Adopted City Budget.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates \$6,066,078 in prior year reserves in the Natural Areas Fund and \$112,957 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

5. Second Reading of Ordinance No. 073, 2025, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Oak Street Stormwater Project and Related Art in Public Places.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates an additional \$1,515,000 appropriation from the Stormwater Utility Reserve Fund to supplement the existing appropriated budget, including \$15,000 for Art in Public Places. The Oak Street Stormwater Project is currently under construction and progressing as planned. The additional appropriation will fund remaining project support services as well as a minor contingency for unanticipated costs to complete the project.

An Art in Public Places contribution, per Code, has been added to the total project supplemental appropriation amount.

6. First Reading of Ordinance No. 074, 2025, Appropriating Unanticipated Philanthropic Revenue, Appropriating Prior Year Reserves and Authorizing Transfer of Appropriations for Various Gifts Received Through City Give.

The purpose of this item is to request an appropriation of \$42,325 in philanthropic revenue received through City Give. These miscellaneous gifts to various City departments support a

variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

7. First Reading of Ordinance No. 075, 2025, Making a Supplemental Appropriation of Colorado Department of Transportation Colorado Highway Safety Office Click It or Ticket Grant Funds for the Fort Collins Police Services Traffic Enforcement Unit.

The purpose of this item is to appropriate \$20,000 of unplanned revenue from the Colorado Department of Transportation (CDOT) for Police Services to conduct the Click It Or Ticket program.

8. Items Relating to the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

A. Resolution 2025-049 Authorizing the Execution of an Intergovernmental Grant Agreement Between the City of Fort Collins and the Colorado Department of Public Safety for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

B. First Reading of Ordinance No. 076, 2025, Making a Supplemental Appropriation of Federal Emergency Management Administration's Building Resilient Infrastructure and Communities Program Grant Funds and Authorizing Transfers for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

The purpose of these items is to enable the City to receive and expend federal funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project (Project). The Colorado Division of Homeland Security and Emergency Management, through the Colorado Department of Public Safety (CDPS), awarded the City of Fort Collins \$398,431 of unanticipated revenue to develop the Project. This award is part of the Federal Emergency Management Administration's (FEMA's) Building Resilient Infrastructure and Communities (BRIC) 2023 program, with the \$398,431 awarded to the City being federal funds. The City has a required cost share of \$245,641 that will be met through City staff time. City staff time will be used through the life of the grant funded Project, from 2025 through October 23, 2027. Based on City staff time being part of annual ongoing fund budgets, the City will utilize budgets as appropriated by City Council each annual fiscal year associated with such City staff time to meet the required cost share requirement of this grant.

Grant funds will enable the City in developing plans to support developers who seek to utilize nature-based solutions and natural habitat design standards in their neighborhood developments in Fort Collins. The purpose of this item is to support development of the Project by:

- Appropriating \$398,431 of unanticipated revenue awarded through FEMA's BRIC program;
- Utilizing matching funds in the amount of \$85,378 from existing 2025 appropriations in the Community Development and Neighborhood Services operating budget in the General fund into this grant Project for staff time;
- Utilizing matching funds in the amount of \$11,841 from existing 2025 appropriations in the Stormwater Engineering operating budget in the Stormwater fund into this grant Project for staff time.
- Utilizing matching funds in the amount of \$5,957 from existing 2025 appropriations in the Communications and Public Involvement operating budget in the General Fund into this grant Project for staff time.

This item authorizes the Mayor to accept the grant funds and to commit the City to comply with the terms and conditions of the intergovernmental grant agreement.

9. First Reading of Ordinance No. 077, 2025, Replacing Ordinance No. 040, 2025, and Approving the Intergovernmental Agreement Between the City of Fort Collins and the Fort Collins, Colorado, Downtown Development Authority Governing the Use of a Line of Credit for the Financing of Downtown Development Authority Projects and Programs and Delegating to the Downtown Development Authority Thereunder the Power to Incur Debt in Relation Thereto as Authorized by State Law.

The purpose of this item is to approve an ordinance to authorize the Mayor to sign an intergovernmental agreement between the City and Downtown Development Authority (DDA) that will govern the processes for administering a line of credit for financing DDA projects and programs for a six-year term from 2025 through 2030 and a maximum pre-draw limit of \$5 million. **This item was previously approved by Ordinance No. 040, 2025; however, the Exhibits A, B, and C-1 to C-5 attached to and part of the intergovernmental agreement were not included in the meeting packet on March 18, 2025, for the second reading of the Ordinance. The only changes on this item for its approval and replacement of Ordinance No. 040, 2025, other than updating the dates, are the inclusion of the intergovernmental agreement attachments.**

The current Line of Credit (LOC) established in 2012 and renewed in 2018 by the City on behalf of the DDA expired at the end of 2024. The City and DDA began taking steps in early 2024 to renew this debt instrument with First National Bank of Omaha (FNBO) for another six-year term, as it will be needed by the DDA to execute its projects and programs beginning in budget year 2025 and continuing through 2030. The renewal of the bank authorized Line of Credit is needed by the DDA to satisfy compliance with C.R.S. § 31- 25-807(3)(a)(II).

On November 6, 2024, the Council Finance Committee reviewed the purpose and approach for bringing forth a third IGA to accommodate the DDA's authorization to use a Line of Credit and satisfy compliance with C.R.S. § 31- 25-807(3)(a)(II). The Council Finance Committee was supportive of advancement of the IGA to Council.

On February 13, 2025, the DDA Board adopted Resolution 2025-02 authorizing the DDA's approval of the IGA and the line of credit promissory note from First National Bank of Omaha. The IGA is now advanced to Council and pursuant to the DDA Act requires adoption by ordinance.

10. Resolution 2025-050 Authorizing the Mayor to Execute a License Agreement with BNSF Railway Company for Railroad Crossing Signal Equipment within the Public Right-of-Way for North Timberline Road.

The purpose of this item is to authorize the execution of a License Agreement (the "License Agreement") for Railroad Signal Equipment covering 600 square feet (the "License Area") located within the boundaries of North Timberline Road at the intersection of Timberline and Vine for BNSF Railway Company to install and operate railroad crossing signal equipment, controls, and related infrastructure.

11. Resolution 2025-051 Supporting the City's Renewal as a Certified Bird City.

The purpose of this item is to renew Fort Collins' designation as a Bird City. Renewal requires a Council resolution, a public celebration of World Migratory Bird Day, and a submission of an updated application documenting the City's actions to support bird populations.

12. Resolution 2025-052 Concerning the Fort Collins Urban Renewal Authority and its Tax Increment Revenue Refunding and Improvement Bonds (North College Tax Increment Urban Renewal Area), Series 2025; Declaring the City Council’s Present Intent to Appropriate Funds to Replenish the Reserve Fund Securing Such Bonds, if Necessary; and Authorizing a Cooperation Agreement and Other Actions Taken in Connection Therewith.

The purpose of this item is for the Council to consider a Replenishment Resolution, which both provides a “Moral Obligation Pledge” to the Fort Collins Urban Renewal Authority (the “Authority”) and approves a Cooperation Agreement between the City and Authority in connection with the revenue bond issuance approved by the URA Board at its April 24, 2025, meeting.

The Authority will be issuing additional bonds against the North College projected tax increment revenues. The bond proceeds will be used to fund the acquisition of blighted properties, support blight remediation through redevelopment of the same properties, and invest in additional public infrastructure. All proceeds will be expended by direction and with the approval of the Authority board. As part of this bond issuance, the Authority is seeking a “Moral Obligation Pledge” from the City of Fort Collins (the “City”). The pledge would result in improved bond ratings and reduced debt service costs to the Authority.

13. Items Relating to Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project (Grant Award and Services Agreement).

A. Resolution 2025-053 Authorizing the City Manager to Accept Grant Funds for Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project.

B. Resolution 2025-054 Authorizing the City Manager to Enter into an Agreement with the Colorado State Forest Service for Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project.

The purpose of these items is for Council to authorize the City Manager to: 1) accept grant funds awarded in a grant award letter from the State of Colorado, Department of Natural Resources, through Colorado Department of Natural Resource’s Colorado Strategic Wildfire Action Program (“COSWAP”) (“Grant Award Letter”) and; 2) enter into an agreement with the Colorado State Forest Service (“CSFS”) to perform certain forest health and pre-fire mitigation work (“Services Agreement”).

14. Resolution 2025-055 Supporting the Grant Application for Funding for Front Range Passenger Rail Project Planning.

The purpose of this item is to obtain support for the City in applying for funding under the Colorado Department of Local Affairs Energy and Mineral Impact Assistance Fund program.

15. Resolution 2025-056 Making an Appointment to the Board of Directors of Housing Catalyst.

The purpose of this item is to fill one vacancy on the Board of Directors of Housing Catalyst that has existed since December 31, 2024.

END OF CONSENT CALENDAR

J) ADOPTION OF CONSENT CALENDAR

K) CONSENT CALENDAR FOLLOW-UP *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

L) STAFF REPORTS - None.

M) COUNCILMEMBER REPORTS

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION - None Planned.

P) RESUMED PUBLIC COMMENT (if applicable)

Q) OTHER BUSINESS

OB 1. Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

OB 2. Consideration of a motion to go into Executive Session:

"I move that City Council go into executive session:

1. to consider matters pertaining to issues of competition in providing telecommunication facilities and services, including matters subject to negotiation, strategic plan, price, sales and marketing, development phasing and any other related matters allowed under Colorado Law, as permitted under Article Twelve, Section 7(d) of the City Charter and Section 2-31(a)(5) of the City Code; and

2. to discuss with the City's attorneys and appropriate management staff specific legal questions related to the Comcast franchise and the manner in which the Comcast franchise may be affected by existing or proposed provisions of federal, state or local law, as permitted under Article Two, Section 11(2) of the City Charter, Section 2-31(a)(2) of the City Code and Colorado Revised Statutes Section 24-6-402(4)(b)."

R) ADJOURNMENT

Every regular Council meeting will end no later than midnight, except that: (1) any item of business commenced before midnight may be concluded before the meeting is adjourned and (2) the Council may, at any time prior to adjournment, by majority vote, extend a meeting beyond midnight for the purpose of considering additional items of business. Any matter that has been commenced and is still pending at the conclusion of the Council meeting, and all matters for consideration at the meeting that have not yet been considered by the Council, will be deemed continued to the next regular Council meeting, unless Council determines otherwise.

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File Attachments for Item:

PP 1. Declaring the Week of May 11-17, 2025 as National Police Week.



PROCLAMATION

WHEREAS, the Congress and President of the United States have designated May 15 as National Peace Officers Memorial Day and the calendar week in which May 15 falls as National Police Week. Established by a joint resolution of Congress in 1962, National Police Week pays special recognition to those law enforcement officers who have lost their lives in the line of duty for the safety and protection of others; and

WHEREAS, the members of the law enforcement agency of the City of Fort Collins play an essential role in safeguarding the rights and freedoms of our community members; and

WHEREAS, it is important that all residents know and understand the duties, responsibilities, hazards, and sacrifices of their police department, and that members of our law enforcement agency recognize their duty to serve the people by safeguarding life and property, by protecting them against violence and disorder, and protecting the innocent against deception and the weak against oppression or intimidation; and

WHEREAS, Fort Collins Police Services has grown to be a progressive and professional law enforcement agency which unceasingly provides a vital public service; and

WHEREAS, the residents of Fort Collins are urged to join in commemorating law enforcement officers, past and present, who by their faithful and loyal devotion to their communities have established for themselves the enduring reputation of preserving the rights and security of all community members.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim May 11-17, 2025 as

NATIONAL POLICE WEEK

and further call upon all residents of the City of Fort Collins to observe May 15, 2025, as National Peace Officers Memorial Day to honor those peace officers who, through their courageous deeds, have lost their lives or have become disabled in the performance of duty.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of May 2025.

Mayor

ATTEST:

City Clerk

File Attachments for Item:

PP 2. Declaring the Week of May 12-17, 2025 as Armed Forces Week.



PROCLAMATION

WHEREAS, the military community has long existed within the staff of the City of Fort Collins, Poudre Library District, and the Poudre Fire Authority. The military community spans groups of membership and includes active duty, reservist, veterans, and their families; and

WHEREAS, the City of Fort Collins has formed a new Employee Resource Group to support the Military Community in these organizations. Employee Resource Groups are formed to offer City employees a place to connect, find resources, and provide support; and

WHEREAS, the Employee Resource Group will support and advocate for City of Fort Collins and allied agency veterans, active duty, reservists, and military families; and

WHEREAS, the Military Community Employee Resource Group will honor military service members and their families' sacrifice, dedication and commitment by identifying challenges and advancing opportunities through awareness, support, training, career enrichment, and providing recommendations to City leadership; and

WHEREAS, Armed Forces Week is a time to honor the men and women who serve in the military, and to remember their service and sacrifice. Armed Forces Week takes place the week leading up to Armed Forces Day, the third Saturday of May each year; and

WHEREAS, the Employee Resource Group supports those active duty, reservists, veterans, and their families and would like to recognize their service during Armed Forces Week.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim May 12-17, 2025 as

ARMED FORCES WEEK

in recognition of the military staff members of the City of Fort Collins and allied agencies and their dedication to service of our greater community.

IN WITNESS, WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of May 2025.

Mayor

ATTEST:

City Clerk

File Attachments for Item:

PP 3. Declaring the Week of May 4-10, 2025 as Small Business Week.



PROCLAMATION

WHEREAS, National Small Business Week, a celebration championed by the U.S. Small Business Administration, honors the pivotal role small businesses play in shaping vibrant communities and fueling economic growth; and

WHEREAS, in Fort Collins, 96% of businesses are small businesses with 50 employees or less; and

WHEREAS, small businesses are supported by organizations such as the Better Business Bureau, CSU Institute for Entrepreneurship, Downtown Creative District, Downtown Development Authority, Fort Collins Area Chamber of Commerce, Founded in FoCo, Innosphere Ventures, Larimer Small Business Development Center, Larimer County Economic & Workforce Development, NoCo Latino Chamber, NoCo Biz Connect, North Fort Collins Business Association, Poudre River Library District, Visit Fort Collins, sector partnerships; and

WHEREAS, our small businesses feed us, style us, and caffeinate us, they create jobs and keep money in our community, they define the culture, the character, and the charm of Fort Collins, they entertain us, they are risk-takers, and they are the soul of our city; and

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim the week of May 4-10, 2025, as

NATIONAL SMALL BUSINESS WEEK

in Fort Collins in honor of the grit, the grace, and the glow small businesses give to our city.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of May 2025.

Mayor

ATTEST:

City Clerk

File Attachments for Item:

PP 4. Declaring the Month of May 2025 as Wildfire Awareness Month.



PROCLAMATION

WHEREAS, wildfires increasingly threaten homes and communities as the climate changes and more people move close to and into the wildland areas of Colorado; and

WHEREAS, most wildfires are human caused including the Cameron Peak Fire, Alexander Mountain Fire, and several smaller fires in recent weeks; and

WHEREAS, this unprecedented growth of the wildland-urban interface has elevated the need for wildfire prevention and preparedness at both the community and individual homeowner levels; and

WHEREAS, long-term climate trends and the build-up of forest fuels have further increased the risk of wildfire. These factors, coupled with the expansion of the wildland-urban interface, are challenging efforts to protect people, property, and natural resources; and

WHEREAS, wildfires are a natural part of an ecosystem that reduces hazardous fuels, improves habitats, promotes growth of some species, and returns nutrients to the soil. Therefore, coordinated education concerning how, where, and why wildfire burns, as well as collaborative efforts to increase survivability of homes and property is paramount; and

WHEREAS, the local, state, and federal wildfire agencies of Colorado, in partnership with fire prevention, land management, and wildfire adaptation organizations in the state, are working together to increase awareness of wildfires so we can all Live Wildfire Ready; and

WHEREAS, simple yard maintenance, fire resistant materials, and covering openings such as vents with mesh screens, can greatly improve the probability of property surviving a wildfire.

NOW, THEREFORE, I, Jeni Arndt, Mayor of the City of Fort Collins, do hereby proclaim May as

WILDFIRE AWARENESS MONTH

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the City of Fort Collins this 6th day of May 2025.

Mayor

ATTEST:

City Clerk

File Attachments for Item:

1. Consideration and Approval of the Minutes of the April 15, 2025 Regular meeting.

The purpose of this item is to approve the minutes of the April 15, 2025 Regular meeting.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Delynn Coldiron, City Clerk

SUBJECT

Consideration and Approval of the Minutes of the April 15, 2025 Regular meeting.

EXECUTIVE SUMMARY

The purpose of this item is to approve the minutes of the April 15, 2025 Regular meeting.

STAFF RECOMMENDATION

Staff recommends approval of the minutes.

ATTACHMENTS

1. Draft Minutes, April 15, 2025

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

PROCLAMATIONS AND PRESENTATIONS

5:00 PM

A) PROCLAMATIONS AND PRESENTATIONS

PP 1. **Declaring the Day of April 15, 2025 as Healing Warriors Day.**

PP 2. **Declaring the Day of April 25, 2025 as Arbor Day.**

PP 3. **Declaring the Week of April 21-27, 2025 as National Volunteer Week.**

PP 4. **Declaring the Month of April, 2025 as National Donate Life Month.**

PP 5. **Declaring the Month of April, 2025 as Child Abuse Awareness and Prevention Month.**

Mayor Pro Tem Emily Francis presented the above proclamations at 5:00 p.m.

REGULAR MEETING

6:00 PM

B) CALL MEETING TO ORDER

Mayor Pro Tem Emily Francis called the regular meeting to order at 6:00 p.m. in the City Council Chambers at 300 Laporte Avenue, Fort Collins, Colorado, with hybrid participation available via the City's Zoom platform.

C) PLEDGE OF ALLEGIANCE

Mayor Pro Tem Emily Francis led the Pledge of Allegiance to the American Flag.

D) ROLL CALL

PRESENT

Mayor Pro Tem Emily Francis
Councilmember Julie Pignataro
Councilmember Melanie Potyondy
Councilmember Kelly Ohlson

ABSENT

Mayor Jeni Arndt
Councilmember Susan Gutowsky
Councilmember Tricia Canonico

STAFF PRESENT

City Manager Kelly DiMartino
 City Attorney Carrie Daggett
 City Clerk Delynn Coldiron

E) CITY MANAGER'S AGENDA REVIEW

City Manager Kelly DiMartino provided an overview of the agenda, including:

- No changes to the published agenda.
- Items 1-14 on the Consent Calendar are recommended for adoption.
- Discussion Item would typically be on the Consent Calendar; however, due to the scope of the project, it is planned for discussion.
- Possible Executive Session to discuss potential real estate acquisitions for recreation facilities.

F) COMMUNITY REPORTS

None.

G) PUBLIC COMMENT ON ANY TOPICS OR ITEMS OR COMMUNITY EVENTS
(Including requests for removal of items from Consent Calendar for individual discussion.)

Adam Hirschhorn discussed collapse noting 60-70% of honeybees have died. Related to Caroline, he mentioned that 66% of unemployed don't return to work in six months which he stated was systemic erasure. He mentioned compassionate pragmatism and added that when you discard workers you are not pragmatic, you are failing.

Kevin Cross, Fort Collins Sustainability Group, requested Council direct staff to develop a large methane user fee proposal for Council consideration later this year. He discussed specifics of how the fee would be charged and how the revenue would be handled. He stated this type of fee, along with building performance standards, would aid in forwarding the Our Climate Future goals.

Debbie Peters spoke in support of including a warm water therapy pool in the new southeast community center project. She spoke about the benefits of warm water therapy for a variety of conditions.

Ed Behan, Larimer Alliance for Health, Safety, and the Environment, spoke in support of developing a large methane user fee. He stated the fee fits with Council's goals related to reducing greenhouse gas emissions and referred to data that has been collected related to this. Behan provided information on the benefits of such a fee and urged Council to explore this type of program further.

Barbara Krupnik-Goldman discussed climate-related weather extremes which will increase with further disastrous impacts. She supported the implementation of a large methane user fee to help the City further its climate goals.

Phoebe McWilliams stated there have been no studies performed that speak to the use of electric trash trucks versus regular trash trucks. She opposed the trash contractor opt-out fee and questioned why that item was not placed on a ballot per TABOR. She stated the notices being sent out to people not paying the fee are not educational but are harassing and resulting in credit issues. She urged Council to end the hauler contract.

Mark Korb spoke about the conversion of the Remington Street parking lot to affordable housing and stated he does not feel it has been fully vetted. He stated the elimination of those parking spaces will

have detrimental impacts on downtown businesses and tax revenue. He stated there has been no transparency around this proposal.

David Lingle, DDA Board of Directors Chair, requested Council reaffirm the City's commitment to maintaining downtown public parking when pursuing new affordable housing developments. He discussed the MOU between Housing Catalyst and the City which requires replacement of the existing 160 public parking spaces when the Remington lot is either sold or leased.

Hollie McElwee discussed the redevelopment of the Remington Street parking lot and requested Council to consider engaging business stakeholders and looking for other locations for the affordable housing project. She mentioned a nearby parcel of property that is available and could be used for this project and urged Council not to compromise the parking lot as it would cause irreparable harm to the downtown businesses. She commented on the economic vitality of the downtown area and stated losing this parking would destroy it.

Carey Hewitt discussed the original development of the Remington Street parking lot and stated 90% of downtown visitors use automobiles. He stated people are the lifeblood of an economically sustainable downtown and the elimination of the parking lot would have detrimental impacts on downtown businesses.

Jess Eisland commented on illegally modified car and truck mufflers and associated noise pollution. He stated the issue is inescapable and expressed concern about the lack of enforcement.

Kate Conley commented on the importance of affordable housing and suggested a portion of the CCIP tax renewal should be dedicated to it as the top-ranking infrastructure issue in Fort Collins. She stated Fort Collins is in a housing crisis and data shows it is getting worse; therefore, new strategies are necessary.

Gayla Maxwell Martinez noted she lives on land in Fort Collins that was previously owned by indigenous peoples. She spoke in support of a large methane user fee stating it is fair and would benefit the community.

Eddie Arthur discussed car muffler noise which has been getting worse for the past 25 years. He stated the noise scares people and animals, stifles conversations, and interrupts thought. He noted the noise has no redeeming value and suggested signage and enforcement should be focused on the downtown area. He also suggested noise cameras could be utilized and noted noise tickets can hold up in court.

Ian Schneider discussed car noise and suggested there is a connection between reckless driving and noise pollution. He requested additional enforcement of noise ordinance violations.

Roxanne Griffin discussed eliminating single-use plastic water bottles and supported Councilmember Ohlson's comments following the zero-waste infrastructure presentation at last week's work session. She suggested updating the City's sustainable and purchasing guidelines to address single-use plastics.

Maureen McCarthy stated her passion, past and present, is around solid waste issues and discussed efforts to educate community members about the issues being created by single-use plastics. She commended Councilmember Ohlson's comments regarding the desire to get things done more quickly in this space. She commented on the impacts of single-use plastics on human health.

Nancy York spoke in support of a large methane user fee and stated immediate action needs to be taken to aid in achieving climate goals. She commented on the benefits of incentive programs.

Jamie Blanchard-Poling spoke in support of composting and provided information about her company, Compost Queen, which is the only licensed business in Northern Colorado that can collect and process residential and commercial food waste. She stated she has three licensed facilities in Fort Collins and now has the capacity to compost about 1,500 tons of organic waste per year, though she is operating at only 50% capacity. She questioned some of the responses provided by staff at the recent Council work session.

Rorey King, One Voice for Housing, provided information about the organization and its efforts to provide stable, affordable housing. She urged the elevation of housing to a higher priority related to the CCIP tax and allocation of \$25 million towards this effort. She stated housing is the number one issue consistently listed in various community surveys. She stated now is the time to make housing more of a priority.

Barbara Wilkins stated people do not like to be forced into things and stated previous agreements should be respected. She stated there is currently an aluminum shortage and that the City needs to look for solutions, other than making things harder for people.

Rich Stave noted he agrees with what has been stated about noise pollution and noted the hauler contract allows business and commercial entities to contract with their own haulers, which unfairly targets residents who wish to opt out. Additionally, he stated the program appears to unfairly use the threat of legal actions without a process for fair representation. He expressed concern about the Charter amendments, particularly the change related to the mill levy.

Christopher Conway urged Council to increase funding for affordable housing and commented on the need for housing for teachers, nurses and others who cannot afford to live here. He urged Council to prioritize funding for housing, rental assistance and similar efforts.

Christina Swope, Democratic Socialists of America (DSA) Fort Collins Chapter, spoke in support of implementing a large methane user fee and eliminating single-use plastics.

Jim Hewitt addressed the Remington Parking lot proposal and loss of parking stating it will be detrimental to downtown businesses and associated tax revenue. He suggested the affordable housing project could be located elsewhere, and if it is located on the Remington lot, he urged Council to replace the parking spaces that would be lost.

Nicholas Sahwin spoke in support of the Connexion Workers' Coalition as well as their role as Labor Chair for DSA Fort Collins chapter. He also expressed support for more affordable housing and implementation of a large methane user fee.

Kimberly Conner, Palestine Liaison for the DSA Fort Collins chapter, stated she would be serving on the Human Services and Housing Funding Board later this year but was not speaking on their behalf. She urged Council to support a ceasefire resolution and arms embargo. She noted today is Tax Day and stated all taxpaying Americans are guilty for supplying weapons that are actively tied to this genocide. She stated that every person who refuses to speak is complicit in our country's crimes and it is our obligation to stop them.

Public comment concluded at 7:00 p.m.

H) PUBLIC COMMENT FOLLOW-UP

Councilmember Ohlson asked about the current timetable on the Remington Street parking lot and Housing Catalyst project. City Manager DiMartino clarified there is not an active development project in the works right now, though there is conversation about an affordable housing project on the property. She noted that while it has been discussed that Housing Catalyst will not be responsible for replacing the parking, there remains conversation about a parallel path for other replacement parking options. She stated the earliest this topic would go before the Council Finance Committee is June.

Councilmember Ohlson asked about the timing of the noise pollution work session. City Manager DiMartino replied it is April 22nd.

Councilmember Ohlson stated he would like to request Council support for considering a large methane user fee at a future meeting when all Councilmembers are present. He also noted there will be further discussion on increasing the CCIP tax renewal funding for affordable housing.

Councilmember Potyondy commented on the community's strong commitment to the health of the environment and encouraged community members to continue speaking to Council about their areas of expertise and experiences.

Councilmember Pignataro thanked Ms. Peters for bringing forth the idea of a warm water therapy pool and asked about the timeline for the design portion of the southeast community center. Dean Klinger, Community Services Director, replied the design team is currently in the site planning and programming phase and noted there has been demand for a number of features that were not proposed in the budget. The warm water therapy pool mentioned is included on that list; however, there may be a possibility to add that feature as design continues.

Councilmember Pignataro asked about the status of a plastics policy within the City organization. City Manager DiMartino replied staff is working on an administrative policy which would impact how the City organization functions and would provide an opportunity to lead by example.

Councilmember Pignataro requested follow-up regarding Ms. Blanchard-Poling's comments about composting and conflicting information being provided.

Councilmember Ohlson concurred and suggested bi-annual or annual inspections of businesses ensuring compliance with existing solid waste, recycling, and composting ordinances.

I) COUNCILMEMBER REMOVAL OF ITEMS FROM CONSENT CALENDAR FOR DISCUSSION

None.

J) CONSENT CALENDAR**1. Consideration and Approval of the Minutes of the April 1, 2025 Regular meeting.**

The purpose of this item is to approve the minutes of the April 1, 2025 Regular meeting.

Approved

2. **Second Reading of Ordinance No. 054, 2025, Making a Supplemental Appropriation of Funds Received from the Colorado Department of Local Affairs Gray and Black-Market Marijuana Enforcement Grant Program for the Fort Collins Police Services Marijuana Enforcement Program.**

This Ordinance, unanimously adopted on First Reading on April 1, 2025, supports Fort Collins Police Services' Marijuana Enforcement Program in investigating gray and black-market marijuana cases by appropriating \$39,500 of unanticipated grant revenue from the Colorado Department of Local Affairs (DOLA), Gray and Black-Market Marijuana Enforcement.

Adopted on Second Reading

3. **Second Reading of Ordinance No. 055, 2025, Appropriating Prior Year Reserves Received Through City Give for the Payment Assistance Fund as Designated by the Donors.**

This Ordinance, unanimously adopted on First Reading on April 1, 2025, requests an appropriation of \$443,600 in philanthropic revenue received through City Give. These gifts to the Utilities Payment Program account (the "Payment Assistance Fund") established in Section 26-722 of the Code, align with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading

4. **Second Reading of Ordinance No. 056, 2025, Appropriating Philanthropic Revenue Received Through City Give for the Pottery Studio, Recreation, Community Services as Designated by the Donor.**

This Ordinance, unanimously adopted on First Reading on April 1, 2025, requests an appropriation of \$550,924.99 in philanthropic revenue received through City Give. These estate gifts to the Pottery Studio align with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

Adopted on Second Reading

5. **Second Reading of Ordinance No. 057, 2025, Making a Supplemental Appropriation of Grant Funds from the Colorado Department of Local Affairs for the Fort Collins Police Services' Office of Human Services.**

This Ordinance, unanimously adopted on First Reading on April 1, 2025, appropriates \$100,000 in unanticipated revenue awarded to the City from the Colorado Department of Local Affairs (DOLA) FY2024-2025 Peace Officers Behavioral Health Support and Community Partnerships Grant Program in support of Police Services Office of Human Services.

The funds will be used to hire a contractual Police Mental Health Counselor to support police employees and their family members with addressing behavioral health issues that arise. A range of services will be provided, including counseling for officers and family members for job-related trauma, and training and education programs on preventing and treating job-related trauma.

There is no requirement that the City sign an agreement for the award. Rather upon the City submitting the first request for reimbursement, the City agrees to all terms and conditions of the award.

Adopted on Second Reading

6. Second Reading of Ordinance No. 058, 2025, Authorizing Transfers of Appropriations from Broadband Operating Funds to Capital Project Accounts.

This Ordinance, unanimously adopted on First Reading on April 1, 2025, transfers monies that were previously appropriated by City Council as 2025 Broadband operating fund expenses to Broadband capital projects. The previously authorized operating expenditures are not expected to be spent in 2025 because:

- *Connexion video product sales have slowed and related appropriated costs will not be fully expended in 2025.*
- *Marketing budget, after review, has sufficient underspend expected in 2025.*
- *Other operating efficiencies exist resulting in additional expected underspend in 2025.*

Staff recommends transfer of the total unencumbered and unspent budget appropriations to Broadband capital projects for the purpose of funding additional installations resulting from increased customer sign-ups.

Adopted on Second Reading

7. Second Reading of Ordinance No. 059, 2025, Making Supplemental Appropriations from Grant Revenue and Authorizing Transfers of Appropriations for the Willow Street Improvements – Linden Street to Lincoln Avenue Project and Related Art in Public Places.

This Ordinance, unanimously adopted on First Reading on April 1, 2025, enables the City to receive and expend Downtown Development Authority (DDA) grant funds for the Willow Street Improvements – Linden Street to Lincoln Avenue project (Project). The funds will be used for design and right-of-way acquisition for improvements along Willow Street between Linden Street and Lincoln Avenue. If approved, the item will: 1) transfer \$70,000 from existing funds for the Willow Street Improvements project west of Linden Street to the Project; 2) appropriate \$180,000 of DDA grant funds to the Project; 3) appropriate \$1,800 of Transportation Services Fund reserves to the Project; and 4) appropriate \$1,800 (1%) of the DDA grant funds to the Art in Public Places (APP) program.

Adopted on Second Reading

8. Items Relating to Code Updates for Water Utility Fees.

A. Second Reading of Ordinance No. 060, 2025, Amending Chapter 26 of the Code of the City of Fort Collins Regarding Fees When a Single Water Service for a Duplex is Split Between the Two Dwelling Units.

B. Second Reading of Ordinance No. 061, 2025, Amending Chapter 26-148 of the Code of the City of Fort Collins to Revise the Water Supply Requirement for Residential Lots.

These Ordinances, unanimously adopted on First Reading on April 1, 2025, ensure that new or expanded water service connections contribute to system capacity costs.

Both Ordinances Adopted on Second Reading**9. Second Reading of Ordinance No. 062, 2025, Amending Sections 12-29 and 12-30 of the Code of the City of Fort Collins to Update the Residential Waste Collection Program.**

This Ordinance, unanimously adopted on First Reading on April 1, 2025, updates the City Code to modify the Contracted Residential Waste Collection Program and include additional variance and exclusion options that were not originally anticipated.

Adopted on Second Reading**10. Items Relating to City Charter Amendments.**

A. Second Reading of Ordinance No. 063, 2025, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Charter Amendment Amending Articles II, IX, and X of the City Charter to Correct Errors and Conform to Amendments Adopted in November 2024.

B. Second Reading of Ordinance No. 064, 2025, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Charter Amendment Amending Articles II, IV and XIII of the City Charter Related to Alignment with Amended or Further Developed Laws and Removing Inconsistencies.

C. Second Reading of Ordinance No. 065, 2025, Submitting to a Vote of the Registered Electors of the City of Fort Collins A Proposed Charter Amendment Amending Articles II and IV of the City Charter to Modernize Certain Provisions.

D. Second Reading of Ordinance No. 066, 2025, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Charter Amendment Amending Article IV of the City Charter Related to Conflicts of Interest.

E. Second Reading of Ordinance No. 067, 2025, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Charter Amendment Amending the City Charter to Modernize and Update It by Reformatting and Updating Language Usage for Ease of Reading and Clarity and Eliminating Inapplicable and Invalid Provisions.

F. (No action needed - postponed indefinitely on First Reading) *First Reading of Ordinance No. 068, 2025, Submitting to a Vote of the Registered Electors of the City of Fort Collins a Proposed Charter Amendment Amending Sections 1 and 18 of Article II of the City Charter Related to Vacancies and Application of Term Limits to Partial Terms.*

The purpose of these items is to set ballot language regarding proposed amendments resulting from the Charter Update Project and submit them to the voters at the November 4, 2025, election.

The ordinances do not include amendment numbers. The Council will establish the order of the amendments to be presented on the ballot by motion at a later Council meeting and the ordinances will be presented to the Larimer County Clerk and Recorder in the desired order.

In follow up to comments received on First Reading, the Charter was reviewed to look for any additional gender-related wording and none was found.

All Ordinances Adopted on Second Reading

11. **Second Reading of Ordinance No. 069, 2025, Appropriating Prior Year Reserves in the General Fund to Cover the Anticipated Costs of the 2025 Regular Municipal Election and to Fund Additional Campaign Oversight.**

This Ordinance, unanimously adopted on First Reading on April 1, 2025, authorizes an additional appropriation to cover the anticipated costs of the election based on an estimate provided by Larimer County and will approve funding for campaign oversight based on a recommendation from the City's Election Code Committee.

Adopted on Second Reading

12. **First Reading of Ordinance No. 070, 2025, Modifying Ordinance No. 023, 2025 with Regard to Fund Identification for College Avenue-Trilby Road Capital Improvements.**

The purpose of this item is to modify a previous appropriation to expense the Stormwater Utility's share of the capital project in the Storm Drainage Fund, as opposed to transferring stormwater funds to the Capital Project Fund as detailed in Ordinance No. 023, 2025.

Adopted on First Reading

13. **First Reading of Ordinance No. 071, 2025, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services.**

The purpose of this item is to appropriate \$424,224, of which \$296,957 is proposed for Convention and Visitors Bureau, \$106,056 is proposed for Cultural Development and Programming Activities (Fort Fund), and \$21,211 is proposed for Tourism Programming (Fort Fund) all from unanticipated 2024 Lodging Tax revenue collections.

Lodging taxes are annually collected by the City for Cultural Development and Tourism programming activities. Anticipated revenue is projected through each Budgeting for Outcomes (BFO) cycle and then adjusted annually as needed based on final actual collections. For 2024, total Lodging tax revenues collected came in \$424,224 above projected collections.

Adopted on First Reading

14. **First Reading of Ordinance No. 072, 2025, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities not included in the 2025 Adopted City Budget.**

The purpose of this item is to appropriate \$6,066,078 in prior year reserves in the Natural Areas Fund and \$112,957 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

Adopted on First Reading

END OF CONSENT CALENDAR

Councilmember Pignataro moved, seconded by Councilmember Potyondy, to approve the recommended actions on items 1-14 on the Consent Calendar.

The motion carried 4-0.

- K) CONSENT CALENDAR FOLLOW-UP** *(This is an opportunity for Councilmembers to comment on items adopted or approved on the Consent Calendar.)*

Councilmember Potyondy commended staff on the development of exemptions related to the consolidated trash contract.

L) STAFF REPORTS

None.

M) COUNCILMEMBER REPORTS

Councilmember Julie Pignataro

- Attended the Powwow at Northside Atzlan Center

Councilmember Melanie Potyondy

- Attended the Powwow at Northside Atzlan Center
- Hosting a listening session at the Earth Day event on Saturday

Clerk's Note: Mayor Pro Tem Francis called for a break at 7:00 p.m., noting the meeting would resume at 7:18 p.m.

N) CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT CALENDAR FOR INDIVIDUAL DISCUSSION

None.

O) CONSIDERATION OF ITEMS PLANNED FOR DISCUSSION**15. First Reading of Ordinance No. 073, 2025, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Oak Street Stormwater Project and Related Art in Public Places.****STAFF PRESENTATION**

Nicole Poncelet-Johnson, One Water Executive Director, stated this item is intended to provide an update and finalize the supplemental appropriation for the Oak Street Stormwater Project.

Heather McDowell, Special Projects Manager, provided a brief history of the project noting it is needed due to urban flooding issues in downtown Fort Collins. She noted the project is part of a larger vision for the downtown area that will eventually solve stormwater flooding and eliminate the floodplain in the downtown area. She outlined the work done on the project to date and stated current contract expenditures are about \$14.3 million, which equates to approximately 40% project completion. She showed photos of project construction and completed components.

McDowell outlined the additional funding request for the project of a \$1.5 million appropriation from the stormwater reserve fund to supplement the project balance. She noted the contingency fund is relatively low for a project of this size given that most of the riskiest work has already been completed.

PUBLIC COMMENT

None.

COUNCIL DISCUSSION

Councilmember Pignataro asked what would occur if there is a large rain event during construction of this project. McDowell replied that was heavily discussed with the contractor, and the components of the project that are installed will convey water and there is an emergency response plan in place with the contractor. She also noted that all equipment and materials are removed from the floodway zone at the end of each day.

Councilmember Ohlson stated he would support the appropriation and requested additional input regarding the project cost which McDowell clarified.

Councilmember Potyondy thanked staff for the update and commended the work on the project.

Mayor Pro Tem Francis also commended the work on the project.

Councilmember Pignataro moved, seconded by Councilmember Ohlson, to adopt Ordinance No. 073, 2025, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Oak Street Stormwater Project and Related Art in Public Places, on First Reading.

The motion carried 4-0.

P) RESUMED PUBLIC COMMENT

Q) OTHER BUSINESS

- OB 1. **Possible consideration of the initiation of new ordinances and/or resolutions by Councilmembers.**

(Three or more individual Councilmembers may direct the City Manager and City Attorney to initiate and move forward with development and preparation of resolutions and ordinances not originating from the Council's Policy Agenda or initiated by staff.)

- OB 2. **Consideration of a Motion to go into an Executive Session to discuss potential acquisition of real property for recreation facilities:**

Councilmember Pignataro moved, seconded by Councilmember Potyondy, that Council go into executive session to discuss with appropriate City staff potential acquisition of real property for recreation facilities under consideration, as permitted under:

- ***City Charter Article Roman Numeral Two, Section 11(3),***
- ***City Code Section 2-31(a)(3), and***
- ***Colorado Revised Statutes Section 24-6-402(4)(a).***

The motion carried 4-0.

R) ADJOURNMENT

There being no further business before the Council, the meeting was adjourned at 8:52 p.m.

Mayor Pro Tem

ATTEST:

City Clerk

File Attachments for Item:

2. Second Reading of Ordinance No. 070, 2025, Modifying Ordinance No. 023, 2025 with Regard to Fund Identification for College Avenue-Trilby Road Capital Improvements.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, modifies a previous appropriation to expense the Stormwater Utility's share of the capital project in the Storm Drainage Fund, as opposed to transferring stormwater funds to the Capital Project Fund as detailed in Ordinance No. 023, 2025.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Monica Martinez, FP&A Sr. Manager, PDT
Joe Wimmer, Director, Utilities Finance

SUBJECT

Second Reading of Ordinance No. 070, 2025, Modifying Ordinance No. 023, 2025 with Regard to Fund Identification for College Avenue-Trilby Road Capital Improvements.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 15, 2025, modifies a previous appropriation to expense the Stormwater Utility's share of the capital project in the Storm Drainage Fund, as opposed to transferring stormwater funds to the Capital Project Fund as detailed in Ordinance No. 023, 2025.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

FIRST READING BACKGROUND / DISCUSSION

Ordinance No. 023, 2025, appropriated \$1,294,934 of Stormwater Fund reserves to be transferred to the Capital Projects Fund for expenditure on stormwater infrastructure as part of the College-Trilby Intersection Improvement Project.

Consistent with past and best practice, the Stormwater Utility improvements should be expended from the Stormwater Fund to account for capital assets owned and maintained by the enterprise. This modification of the appropriation will change the recognition of the asset's cost to the proper fund for financial purposes.

This Ordinance does not appropriate additional funds to the capital project.

CITY FINANCIAL IMPACTS

There are no financial impacts to the project through this appropriation modification.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 070, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MODIFYING ORDINANCE NO. 023, 2025, WITH REGARD
TO FUND IDENTIFICATION FOR COLLEGE AVENUE-
TRILBY ROAD CAPITAL IMPROVEMENTS

A. Ordinance No. 023, 2025, appropriated \$1,294,934 of Stormwater Fund reserves transferred to the Capital Projects Fund for expenditure on stormwater infrastructure as a part of the College Avenue-Trilby Road Intersection Improvements Project. This Ordinance modifies this previous appropriation to expense the Stormwater Utility's share of the capital project in the Storm Drainage Fund.

B. Consistent with past and best practice, Stormwater Utility improvements should be expended from the Stormwater Fund to account for capital assets owned and maintained by the enterprise. A modification of the appropriation will change the recognition of the asset's cost to the proper fund for financial purposes. This Ordinance does not appropriate additional funds to the capital project.

C. This appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purpose of contributing to resolving urban flooding and stormwater quality issues in downtown Fort Collins.

D. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

E. The City Manager has recommended the transfer of \$1,294,934 from the Capital Projects Fund to the Stormwater Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

F. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made but continue until the completion of the capital project.

G. The City Council wishes to designate the appropriation herein College and Trilby Intersection Improvement Project as an appropriation that shall not lapse until the completion of the project.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The unexpended and unencumbered appropriated amount of ONE MILLION TWO HUNDRED NINETY-FOUR THOUSAND NINE HUNDRED THIRTY-FOUR DOLLARS (\$1,294,934) is authorized for transfer from the Capital Projects Fund to the Stormwater Fund and appropriated therein to be expended for College and Trilby Intersection Improvement Project.

Section 2. The appropriation herein for College and Trilby Intersection Improvement Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the project.

Introduced, considered favorably on first reading on April 15, 2025, and approved on second reading for final passage on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 16, 2025

Approving Attorney: Stefanie Boster

File Attachments for Item:

3. Second Reading of Ordinance No. 071, 2025, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates \$424,224, of which \$296,957 is proposed for Convention and Visitors Bureau, \$106,056 is proposed for Cultural Development and Programming Activities (Fort Fund), and \$21,211 is proposed for Tourism Programming (Fort Fund) all from unanticipated 2024 Lodging Tax revenue collections.

Lodging taxes are annually collected by the City for Cultural Development and Tourism programming activities. Anticipated revenue is projected through each Budgeting for Outcomes (BFO) cycle and then adjusted annually as needed based on final actual collections. For 2024, total Lodging tax revenues collected came in \$424,224 above projected collections.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Amanda King, Communications/Public Involvement Director
Eileen May, Community Services Director
Chris Martinez, IES Financial Planning and Analysis Manager

SUBJECT

Second Reading of Ordinance No. 071, 2025, Appropriating Prior Year Reserves in the General Fund for Cultural Development and Programming Activities, Tourism Programming, and Convention and Visitor Program Services.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates \$424,224, of which \$296,957 is proposed for Convention and Visitors Bureau, \$106,056 is proposed for Cultural Development and Programming Activities (Fort Fund), and \$21,211 is proposed for Tourism Programming (Fort Fund) all from unanticipated 2024 Lodging Tax revenue collections.

Lodging taxes are annually collected by the City for Cultural Development and Tourism programming activities. Anticipated revenue is projected through each Budgeting for Outcomes (BFO) cycle and then adjusted annually as needed based on final actual collections. For 2024, total Lodging tax revenues collected came in \$424,224 above projected collections.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

FIRST READING BACKGROUND / DISCUSSION

Section 25-244 of the City Code requires that 75% of the total lodging tax receipts be used for the promotion of convention and visitor activities in the City and 25% of receipts be used for cultural development and programming activities in the City. Actual revenue collected is appropriated based on this allocation formula and any excess revenue and budget savings are reserved for these activities in the General Fund.

Pursuant to a contract with the Fort Collins Convention and Visitors Bureau (FCCVB), the City has paid a portion of lodging tax receipts to the FCCVB since 2011 for delivery of convention and visitors programming services in furtherance of the Code requirement. The amount due for convention and visitors programming is appropriated based on prior year receipts and paid annually to FCCVB after the close of the prior tax year.

When actual lodging tax receipts exceed the anticipated amount appropriated for cultural development and programming activities, the City also appropriates additional funds and adjusts the amount allocated for

those activities in the year following the year in which the tax is collected. Appropriated lodging tax revenues remaining unspent at the end of the tax year lapse into the General Fund and may be appropriated the following year for the same purposes as they were originally appropriated.

The actual tax revenue collected during the 2024 tax year, as determined March 2025, was \$424,224 more than the Lodging tax revenue anticipated and appropriated for expenditure in 2025. Accordingly, upward adjustments to the 2025 appropriations under Section 25-244 of the Code are required. These appropriation adjustments are described below.

CITY FINANCIAL IMPACTS

2025 LODGING TAX CLARIFICATION

Section 25-44 of the City Code:

Lodging Tax

Unanticipated Lodging Tax

Total of Unanticipated Lodging Tax
Appropriations Available for 2025

75%		25%	
Promote Convention & Visitor Activities		Promote Cultural Development & Programming	
503200	503202	503201	
Convention & Visitors Bureau 70%	Fort Fund (Tourism Programming) 5%	Fort Fund (Cultural Development & Programming) 25%	Total
\$ 296,957	\$ 21,211	\$ 106,056	\$ 424,224
\$ 296,957	\$ 21,211	\$ 106,056	\$ 424,224

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 071, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE GENERAL
FUND FOR CULTURAL DEVELOPMENT AND PROGRAMMING
ACTIVITIES, TOURISM PROGRAMMING, AND CONVENTION
AND VISITOR PROGRAM SERVICES

A. Section 25-244 of the City Code requires Lodging Tax revenue to be allocated as follows: 75% for the promotion of convention and visitor activities and 25% for cultural development and programming activities.

B. Lodging Tax revenue was estimated at \$2,000,000 for 2024 and appropriated; however, actual Lodging Tax receipts were greater than projected.

C. At the end of 2024, a total of \$2,424,224 in Lodging Tax revenues had been collected and the unspent portions lapsed into the General Fund Reserves for Lodging Tax programs and activities.

D. Unanticipated Lodging Tax revenue in the amount of \$424,224 held in the General Fund Reserves is to be appropriated for each of the Lodging Tax programs and activities as follows:

Cultural Development and Programming	\$106,056
Tourism Programming	\$21,211
Fort Collins Convention and Visitors Bureau	\$296,957

E. These additional funds will help support a future Fort Fund grant process, subject to Council approval of those expenditures.

F. This appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose of promoting visitor activity and cultural development and programming activities.

G. Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

H. The City Manager has recommended the appropriation described herein and determined that the funds to be appropriated are available and previously unappropriated from the General Fund and that this appropriation will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year.

I. The City wishes to appropriate funds allocated for Cultural Development and Programming and Tourism Programming.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from prior year reserves in the General Fund the sum of ONE HUNDRED SIX THOUSAND FIFTY-SIX DOLLARS (\$106,056) to be expended in the General Fund for Cultural Development and Programming activities.

Section 2. There is hereby appropriated from prior year reserves in the General Fund the sum of TWENTY-ONE THOUSAND TWO HUNDRED ELEVEN DOLLARS (\$21,211) to be expended in the General Fund for Tourism Programming.

Section 3. There is hereby appropriated from prior year reserves in the General Fund the sum of TWO HUNDRED NINETY-SIX THOUSAND NINE HUNDRED FIFTY-SEVEN DOLLARS (\$296,957) to be expended in the General Fund for the Convention and Visitors Bureau.

Introduced, considered favorably on first reading on April 15, 2025, and approved on second reading for final passage on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 16, 2025
 Approving Attorney: Ted Hewitt

File Attachments for Item:

4. Second Reading of Ordinance No. 072, 2025, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities not included in the 2025 Adopted City Budget.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates \$6,066,078 in prior year reserves in the Natural Areas Fund and \$112,957 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Katie Donahue, Director, Natural Areas Department
Barb Brock, Financial Analyst II, Natural Areas Department

SUBJECT

Second Reading of Ordinance No. 072, 2025, Appropriating Prior Year Reserves in the Natural Areas Fund and the Sales and Use Tax Fund for the Purpose of Land Conservation, Visitor Amenities, Restoration and Other Related Natural Areas Stewardship Activities not included in the 2025 Adopted City Budget.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates \$6,066,078 in prior year reserves in the Natural Areas Fund and \$112,957 in prior year reserves in the Sales and Use Tax fund to be transferred to the Natural Areas Fund. These appropriations are for land conservation, visitor amenities and restoration of wildlife habitat, as well as other Natural Areas Department stewardship activities to benefit the residents of Fort Collins.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

FIRST READING BACKGROUND / DISCUSSION

Funding for the Natural Areas Department (NAD) for purposes other than capital projects lapses each year if not spent. Unspent prior year funds and unanticipated revenues need to be appropriated into the following year's budget before they can be used. The purpose of this item is to appropriate \$6,066,078 in unspent funds and unanticipated revenues in the Natural Areas Fund to fund land conservation, restoration of wildlife habitat, trails and visitor amenities, special projects and other NAD needs to benefit the residents of Fort Collins.

In addition, the sales and use tax revenue received in 2024 was higher than projected and existing appropriations were not adequate to make the full transfer from the Sales and Use Tax Fund to the Natural Areas Fund for the one quarter cent Natural Areas tax in the amount of \$112,957.

Of the total appropriation, \$5,100,000 will be used for land conservation. Staff anticipates up to \$8,000,000 in conservation opportunities could move forward in 2025, and an additional \$20,000,000 in properties identified as high priorities for conservation. With several land conservation opportunities in negotiation or under contract there is a reasonable likelihood that most of the \$5,100,000 in reappropriation plus the \$4,300,000 allocated through the Budgeting For Outcomes process will be spent in 2025.

The funds for NAD come from the following designated sources of revenue: the City - Open Space Yes: 74 Cent sales tax; the Larimer County - Help Preserve Open Space ¼ cent sales tax; and miscellaneous anticipated and unanticipated revenues. All these funds are restricted to the purposes of the NAD, including unanticipated revenues, which consist generally of income from sales tax revenues, sale of easements and leases, and grants. The prior year reserve funds being appropriated in this Ordinance are more specifically described as:

\$5,736,035	Unspent 2024 Budgeted Funds – appropriated for same purpose.
\$ 330,043	Unanticipated Revenues & Unspent Funds – appropriated for new purposes.
<u>\$ 112,957</u>	Transfer from Sales and Use Tax Fund
\$6,179,035	Total Appropriation from 2024 Prior Year Reserves

The anticipated use of these funds is as follows:

- **Land Conservation (LC)** - \$5,100,000, in unspent land conservation funds for land conservation efforts per the Natural Areas Master Plan.
- **Ecological Stewardship (ES)** - \$439,636: \$39,636 to carryover the unspent donation from the West Vine Neighborhood for the restoration of Kestrel Fields, \$50,000 to carryover for deconstruction of structures on recent acquisitions, \$350,000 for grassland health initiatives including monitoring, wildlife management, and habitat improvement related infrastructure development needs.
- **Planning and Special Projects (PSP)** - \$136,399: \$50,000 in carryover for the Strategic Framework wrap up. \$80,000 for Arapaho Bend restoration planning, \$6,399 in undistributed Enhancement Grant funds from 2024 will be distributed as part of support for Nature in the City community-led habitat projects.
- **Trails and Visitor Amenities (TVA)** - \$240,000: \$60,000 for new cameras and 3 years of data at key natural areas for use in parking lot management and crime abatement, \$170,000 for replacement of the 2009 small dump truck and the 2003 skid steer and \$10,000 for a trailer to haul existing heavy equipment.
- **Facility Operations (FO)** - \$63,000: An addition of a 2025 F-150 Lightning (EV) for use in the Natural Areas fleet, to increase the department's 4-wheel drive capacity in response to overall growth in staffing and pool vehicle utilization.
- **Department Management (DM)**- \$200,000: Asset Management Software, we are working with other departments across Community Services and the City to get a new asset management software to track lifecycle and plan for capital replacement of key assets.

CITY FINANCIAL IMPACTS

The Appropriation Ordinance increases 2025 appropriations in the City's Natural Areas Fund by \$6,179,035. The requested total appropriation of \$6,179,035 in the Natural Areas Fund represents 2024 appropriations that were unspent and unencumbered at year-end in addition to 2024 unanticipated revenues and new appropriations from the Natural Areas Fund Balance. This ordinance also increases the total appropriations in the Sales and Use Tax Fund by \$112,957 to be transferred to the Natural Areas Fund. All these funds are restricted to the purposes of the Natural Areas Department.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Land Conservation and Stewardship Board (LCSB) met on March 12, 2025. Member Sears made a motion that the LCSB recommends approval of the proposed 2025 appropriation of prior year Natural Areas reserves. Member Gooden seconded the motion, the motion was approved unanimously.

PUBLIC OUTREACH

Natural Areas Funds will be spent in alignment with the Natural Areas Master Plan, which was extensively reviewed by the public prior to its adoption in October 2014.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 072, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES IN THE NATURAL
AREAS FUND AND THE SALES AND USE TAX FUND FOR THE
PURPOSE OF LAND CONSERVATION, VISITOR AMENITIES,
RESTORATION AND OTHER RELATED NATURAL AREAS
STEWARDSHIP ACTIVITIES NOT INCLUDED IN THE 2025
ADOPTED CITY BUDGET

A. The City is committed to preserving natural areas and providing educational, interpretive and appropriate recreational opportunities to the public.

B. Natural Areas programming implements open land conservation priorities identified in the City's Comprehensive Plan by purchasing conservation easement interests in key natural areas, community separators, or other open lands; providing stewardship for lands purchased; public engagement and educational programs; and developing trails and interpretive features and other amenities for public use.

C. The Natural Areas Department is funded primarily through the collection of City Open Space – Yes! sales and use tax revenue, as well as revenues from the Larimer County Help Preserve Open Space sales and use tax, investment earnings, and other miscellaneous revenues deposited in the Natural Areas Fund.

D. This appropriation benefits public health, safety and welfare of the citizens of Fort Collins and serves the public purpose to conserve land, restore and enhance wildlife habitat, improve visitor infrastructure, support community-led habitat projects, and advance ecological monitoring and stewardship in a manner that serves current and future generations of Fort Collins residents.

E. Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year such funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

F. Article V, Section 11 of the City Charter requires all appropriations unexpended or unencumbered at the end of the fiscal year lapse to the applicable general or special revenue fund, except appropriations for capital projects and federal or state grants do not lapse until completion of the capital project or expiration of the respective grant.

G. The City Manager has recommended the appropriations described herein and determined that these appropriations are available and previously unappropriated from the Natural Areas Fund and the Sales and Use Tax Fund, as applicable, and that these appropriations will not cause the total amount appropriated in the Natural Areas Fund and the Sales and Use Tax Fund, as applicable, to exceed the current estimate of

actual and anticipated revenues and all other funds to be received in these funds during this fiscal year.

H. The City Manager has recommended the appropriation from prior year reserves in the Natural Areas Fund of a total of \$6,179,035, comprised of unspent and unencumbered appropriations from 2024 to be used for acquisition, construction, enhancement and maintenance of trail systems, wildlife habitat and other natural areas to benefit the residents of the City.

I. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

J. The City Manager has recommended the transfer of \$112,957 from the Sales and Use Tax Fund to the Natural Areas Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from prior year reserves in the Natural Areas Fund the sum of SIX MILLION SIXTY-SIX THOUSAND SEVENTY-EIGHT DOLLARS (\$6,066,078) to be expended in the Natural Areas Fund for acquisition, construction, enhancement and maintenance of trail systems, wildlife habitat and other natural areas to benefit the residents of the City.

Section 2. There is hereby appropriated from prior year reserves in the Sales and Use Tax Fund for transfer to the Natural Areas Fund the sum of ONE HUNDRED TWELVE THOUSAND NINE HUNDRED FIFTY-SEVEN DOLLARS (\$112,957) and appropriated therein to be expended in the Natural Areas Fund for acquisition, construction, enhancement and maintenance of trail systems, wildlife habitat and other natural areas to benefit the residents of the City.

Introduced, considered favorably on first reading on April 15, 2025, and approved on second reading for final passage on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 16, 2025
Approving Attorney: April Silva

File Attachments for Item:

5. Second Reading of Ordinance No. 073, 2025, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Oak Street Stormwater Project and Related Art in Public Places.

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates an additional \$1,515,000 appropriation from the Stormwater Utility Reserve Fund to supplement the existing appropriated budget, including \$15,000 for Art in Public Places. The Oak Street Stormwater Project is currently under construction and progressing as planned. The additional appropriation will fund remaining project support services as well as a minor contingency for unanticipated costs to complete the project.

An Art in Public Places contribution, per Code, has been added to the total project supplemental appropriation amount.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Matt Fater, Director, Civil Engineering
Heather McDowell, Special Projects Manager
Joe Wimmer, Director, Utilities Finance

SUBJECT

Second Reading of Ordinance No. 073, 2025, Appropriating Prior Year Reserves and Authorizing Transfers of Appropriations for the Oak Street Stormwater Project and Related Art in Public Places.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on April 15, 2025, appropriates an additional \$1,515,000 appropriation from the Stormwater Utility Reserve Fund to supplement the existing appropriated budget, including \$15,000 for Art in Public Places. The Oak Street Stormwater Project is currently under construction and progressing as planned. The additional appropriation will fund remaining project support services as well as a minor contingency for unanticipated costs to complete the project.

An Art in Public Places contribution, per Code, has been added to the total project supplemental appropriation amount.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

FIRST READING BACKGROUND / DISCUSSION

The Oak Street Stormwater Improvement Project is a priority stormwater project for the City because it will contribute to resolving urban flooding and stormwater quality issues in downtown Fort Collins. The project will provide stormwater infrastructure including a combination of grey and green infrastructure to reduce flooding impacts along the Oak Street corridor and adjacent blocks. Large diameter storm pipes ranging in size from 48" to 78" will extend from the previously constructed Oak Street Outfall, starting at Mason Street and extending to Jackson Street near City Park. There will be approximately 8,500 linear feet of new stormwater mains along Oak Street and cross streets that extend north to Mountain Avenue and/or south to Olive Street. Green infrastructure includes water quality ponds, or "rain gardens" in three locations along the Oak Street corridor to filter street runoff. Additional information on the project and associated public outreach can be found here: [Oak Street Stormwater Improvements Project](#).

The project started construction in July of 2024 with an anticipated completion of August 2026. To date, approximately 40% of the work is completed which includes 772 linear feet of tunnelling and 2,050 linear feet of mainline storm sewer.

To date, the total appropriated budget for this project is \$42,882,815. Previous city annual budgets appropriated \$2,920,000 and there was an off-cycle appropriation in 2023 for \$39,962,815. The off-cycle appropriation was for the municipal bond proceeds issued by the Stormwater Utility enterprise in the Fall of 2023. The total project budget includes engineering, project and construction management, permitting, and construction services with construction contract accounting for the most significant portion. In addition to these elements of the project budget, typically a contingency of 5-10% would be included in the final budget. However, this level of contingency was not included in the 2023 appropriation due to the timing of the bidding and bonding processes. Instead, the project started construction with a contingency of less than 1%.

The construction contract portion of the project has been progressing as planned with minimal unanticipated expenses. However, the project expenses related to professional services, project management, and other support services have exceeded original estimates. These are future expenses for the project as the project moves into the second year of construction. There are also some minor potential expenses associated with pending issues related to construction such as concrete and asphalt replacement and utility relocations that will likely be realized before the end of the project. In addition to these known and pending expenses, a minor contingency (1.5%) is requested to cover unanticipated expenses for the remaining portion of the project. The Budget Summary (below) summarizes the existing appropriations and anticipated expenses as well as the requested appropriation to complete the project.

Staff requests a \$1,515,000 supplemental appropriation from Stormwater Fund reserves based on the budget analysis summarized in the Budget Summary, with \$1.5M for the capital project and \$15,000 for Art in Public Places, per code. This level of contingency is relatively small for a project of this magnitude. A typical construction contingency would be 5-10%. However, staff believes this is sufficient to complete the project based on the progress to date and a risk assessment of the remaining work.

Budget Summary

	Appropriations	Encum. & Expend.	Balance
Current Appropriation Status	\$ 42,882,815	\$ 41,548,387	\$ 1,317,666
Future Expenses (Known)		\$ 2,132,077	\$ (814,411)
Pending Issues (Potential)		\$ 119,994	\$ (934,404)
Appropriation Request w/ 1.5% Contingency	\$ 1,500,000		\$ 565,596
Total Project Appropriation	\$ 44,382,815		

CITY FINANCIAL IMPACTS

This ordinance will appropriate \$1,500,000 for Stormwater Fund non-lapsing expenses, plus \$15,000 for Art in Public Places, for a total appropriation of \$1,515,000. Storm Drainage Fund reserves are available for this capital project appropriation and are projected to end the year above the City's fund reserve target.

Art in Public Places: Stormwater has a total cap for an Art in Public Places contribution of \$100,350 based off 0.5% of total budgeted revenue for 2025. \$24,000 was appropriated during 2025-2026 Budgeting for Outcomes (BFO) process. This project will allocate an additional \$15,000 for fiscal year 2025. The contribution will be as follows: \$11,700 will remain in the Stormwater fund for Art in Public Places artwork

and \$3,300 will be transferred to the Cultural Services and Facilities fund for operations and maintenance respectively.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Council Finance Committee supported the additional appropriation at the March 6, 2025, meeting.

Also, the Water Commission unanimously recommended approval of the appropriation at the March 20, 2025, meeting.

PUBLIC OUTREACH

The public outreach for the project has been extensive including a bi-weekly newsletter and website updates.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration

ORDINANCE NO. 073, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING PRIOR YEAR RESERVES AND AUTHORIZING
TRANSFERS OF APPROPRIATIONS FOR THE OAK STREET STORMWATER
PROJECT AND RELATED ART IN PUBLIC PLACES

A. The City owns and operates a Stormwater Utility for the purposes set forth in City Code Section 26-492, including for economic, social, and environmental benefits identified in that section.

B. The Stormwater Utility is constructing the Oak Street Stormwater Project to contribute to the resolution of urban flooding and stormwater quality issues in downtown Fort Collins. The project started construction in July of 2024 with an anticipated completion of August 2026.

C. The total appropriated budget, to date, for this project is \$42,882,815. \$2,920,000 was previously appropriated, and there was an off-cycle appropriation in 2023 for \$39,962,815. These previous appropriations did not include any contingencies. Stormwater Utility have identified a need to appropriate an additional \$1,500,000 to complete the project, which includes a 1.5% contingency.

D. This appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purposes of contributing to resolving urban flooding and stormwater quality issues in downtown Fort Collins.

E. Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

F. The City Manager has recommended the appropriation described herein and determined that the funds to be appropriated are available and previously unappropriated from the Stormwater Fund and that this appropriation will not cause the total amount appropriated in the Stormwater Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year.

G. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

H. The City Manager has recommended the transfer of \$3,300 from the Stormwater Fund to the Cultural Services and Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

I. This Project involves construction estimated to cost more than \$250,000 and, as such, City Code Section 23-304 requires one percent of these appropriations to be transferred to the Cultural Services and Facilities Fund for a contribution to the Art in Public Places program ("APP Program").

J. The total project cost of \$1,500,000 has been used to calculate the contribution to the APP program.

K. The amount to be contributed in this Ordinance will be \$15,000. The contribution will be: \$11,700 will remain in the Stormwater fund for APP and \$3,300 will be transferred to the Cultural Services and Facilities fund for operations and maintenance.

L. Contributions to the APP Program by each City utility for art projects is kept and spent in such utility's own fund, the utility contributes its share of the APP Program's costs for maintenance, administration, repair and display to the Cultural Services and Facilities Fund as provide in City Code Section 23-303(c).

M. In accordance with Article V, Section 10 of the City Charter, the appropriation for the Project from the Stormwater Fund and the transfer of a portion of those unexpended and unencumbered appropriated funds to the APP Program as provided in City Code Section 23-304(c) will be used for Stormwater purposes and improvements in connection with the Project that provide a betterment to the Utility provide a specific utility purpose that is beneficial to the Utility's ratepayers.

N. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a capital project, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made but continue until the completion of the capital project.

O. The City Council wishes to designate the appropriation herein for Oak Street Stormwater Project as an appropriation that shall not lapse until the completion of the project.

In light of the foregoing Recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from prior year reserves in the Stormwater Fund the sum of ONE MILLION FIVE HUNDRED FIFTEEN THOUSAND DOLLARS (\$1,515,000) for the Oak Street Stormwater Project and appropriated as follows:

• Oak Street Stormwater Project	\$1,500,000
• Art in Public Places (Artwork)	\$11,700
• Art in Public Places (transfer to Cultural Services Fund for APP Operations)	\$3,000
• Art in Public Places (transfer to Cultural Services Fund for APP Maintenance)	\$300
TOTAL	\$1,515,000

Section 2. The unexpended and unencumbered appropriated amount of THREE THOUSAND DOLLARS (\$3,000) in the Stormwater Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the operation costs of the APP Program.

Section 3. The unexpended and unencumbered appropriated amount of THREE HUNDRED DOLLARS (\$300) in the Stormwater Fund is hereby authorized for transfer to the Cultural Services and Facilities Fund and appropriated and expended therein for the maintenance costs of the APP Program.

Section 4. The appropriation herein for Oak Street Stormwater Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the completion of the project.

Introduced, considered favorably on first reading on April 15, 2025, and approved on second reading for final passage on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 16, 2025

Approving Attorney: Eric Potyondy

File Attachments for Item:

6. First Reading of Ordinance No. 074, 2025, Appropriating Unanticipated Philanthropic Revenue, Appropriating Prior Year Reserves and Authorizing Transfer of Appropriations for Various Gifts Received Through City Give.

The purpose of this item is to request an appropriation of \$42,325 in philanthropic revenue received through City Give. These miscellaneous gifts to various City departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Nina Bodenhamer, City Give Director

SUBJECT

First Reading of Ordinance No. 074, 2025, Appropriating Unanticipated Philanthropic Revenue, Appropriating Prior Year Reserves and Authorizing Transfer of Appropriations for Various Gifts Received Through City Give.

EXECUTIVE SUMMARY

The purpose of this item is to request an appropriation of \$42,325 in philanthropic revenue received through City Give. These miscellaneous gifts to various City departments support a variety of programs and services and are aligned with both the City's strategic priorities and the respective donors' designation.

In 2019, City Give, a formalized enterprise-wide initiative was launched to create a transparent, non-partisan governance structure for the acceptance and appropriations of charitable gifts.

STAFF RECOMMENDATION

Staff recommends the adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The City has long been the beneficiary of local generosity and has a valuable role in our community's philanthropic landscape. Generosity is demonstrated in both large and modest gifts, each appreciated for its investment in the mission and the range of services the City strives to deliver.

The City received several individual philanthropic donations in 2025 totaling \$24,300 to support various departments, and these funds are currently unappropriated. This item also requests the reappropriation of \$15,000 in philanthropic revenue for the 9-11 Memorial received through City Give in 2024 and an administrative transfer request of \$3,025 to correct the Fund noted on Ordinance No. 018, 2025, for the gifts to the Payment Assistance Fund and demarcate them as non-lapsing. Both Section 2.5 of the City's Financial Management Policy 2 – Revenue, as approved by City Council, and the Administrative Philanthropic Governance Policy 6.04, adopted by the City Manager, (together the "City Give Policies"), provide the bases and processes for the responsible and efficient management of charitable donations to the City.

Gifts totaling \$24,300 have been received for various programs and services.

Fund	Project	Amount	Lapsing/Non-lapsing
General	Police Leaders Summit	\$5,000	Lapsing

General	Veterans Plaza Entry sign	\$8,000	Lapsing
General	Pollinators	\$2,000	Lapsing
Recreation	Adaptive Recreation	\$300	Lapsing
Recreation	Pool tables	\$750	Lapsing
Recreation	Rainbow swim	\$5,225	Lapsing
Light & Power	Payment Assistance Fund	\$25	Non-lapsing
FC Moves	Open Streets	\$3,000	Lapsing

The respective donors have directed the City to use these generous donations for designated purposes within and to benefit City service areas and programs.

CITY FINANCIAL IMPACTS

Upon adoption, this Ordinance will: 1) appropriate in the current fiscal year into the General Fund, Recreation Fund, Light and Power Fund, and the Transportation Fund new philanthropic revenue received through City Give in the amount of \$24,300 and authorize expenditures against those revenues for the purposes and in the amounts as directed by donors and indicated above to support various City departments; 2) appropriate revenue in the amount of \$15,000 from philanthropic revenue held in prior year reserves in the General Fund and authorize expenditures against those revenues for purposes of the 9-11 Memorial as directed by donors; and 3) transfer \$3,025 in donated revenue (which was incorrectly appropriated into the General Fund on Ordinance No. 018, 2025) to the Light & Power Fund and authorize expenditures against those revenues for the purposes of the Payment Assistance program

The donations shall be expended from the designated fund solely for the donors' directed intent. The funds have been received and accepted per City Give Policies.

The City Manager has also determined that these appropriations are available and previously unappropriated from their designated City Fund and will not cause the total amount appropriated in those Funds to exceed the current estimate of actual and anticipated revenues.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance No. 074, 2025

ORDINANCE NO. 074, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROPRIATING UNANTICIPATED PHILANTHROPIC
REVENUE, APPROPRIATING PRIOR YEAR RESERVES AND
AUTHORIZING TRANSFER OF APPROPRIATIONS OF VARIOUS
GIFTS RECEIVED THROUGH CITY GIVE

A. The City has received generous donations in 2024 and 2025 through its City Give program, both large and modest, as philanthropic gifts to the public and the City programs and activities to serve the community.

B. This appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purpose of supporting programs or capital expenses throughout the city, including, but not limited to, public safety, parks and recreation, utility payment assistance, and the 9-11 Memorial.

C. Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year.

D. Article V, Section 9 of the City Charter permits the City Council, upon the recommendation of the City Manager, to make supplemental appropriations by ordinance at any time during the fiscal year from such revenues and funds for expenditure as may be available from reserves accumulated in prior years, notwithstanding that such reserves were not previously appropriated.

E. The City Manager has recommended the appropriations described in Section 1 of this Ordinance and determined that the amount of each of these appropriations is available and previously unappropriated from the respective funds named in Section 1 will not cause the total amount appropriated in each such fund to exceed the current estimate of actual and anticipated revenues to be received in those funds during this fiscal year.

F. The City Manager has recommended the appropriation described in Section 2 of this Ordinance and determined that the amount of the appropriation is available and previously unappropriated from reserves accumulated in prior years.

G. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in

which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

H. The City Manager has recommended the transfer of \$3,025 from the General Fund to the Light & Power Fund and determined that the purpose for which the transferred funds are to be expended remains unchanged.

I. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds, a federal, state or private grant or donation, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the donation or the City's expenditure of all funds received from such donation.

J. The City Council wishes to designate the appropriation herein for the donations to the Payment Assistance Fund as appropriations that shall not lapse until the earlier of the expiration of the donation or the City's expenditure of all funds received from such donation.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from the following funds these amounts of philanthropic revenue received in 2025 to be expended as designated by the donors in support of the various City programs and services as described in the Agenda Item Summary.

General Fund	\$ 15,000
Recreation Fund	\$ 6,275
Light and Power Fund, donation to the Payment Assistance Fund	\$ 25
Transportation Services Fund	\$ 3,000

Section 2. There is hereby appropriated from the following funds these amounts of philanthropic revenue held in prior year reserves to be expended as designated by the donors in support of the various City programs and services as described in the Agenda Item Summary.

General Fund	\$ 15,000
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Section 3. The unexpended and unencumbered appropriated amount of THREE THOUSAND TWENTY-FIVE DOLLARS (\$3,025) is authorized for transfer from the General Fund to the Light & Power Fund and appropriated therein to be expended for the Payment Assistance Fund.

Section 4. The appropriation herein for the donations to the Payment Assistance Fund are hereby designated, as authorized in Article V, Section 11 of the City Charter, as appropriations that shall not lapse at the end of this fiscal year but until the earlier of the expiration of the donation or the City's expenditure of all funds received from such donation.

Introduced, considered favorably on first reading on May 6, 2025, and approved on second reading for final passage on May 20, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 30, 2025

Approving Attorney: Dianne Criswell

File Attachments for Item:

7. First Reading of Ordinance No. 075, 2025, Making a Supplemental Appropriation of Colorado Department of Transportation Colorado Highway Safety Office Click It or Ticket Grant Funds for the Fort Collins Police Services Traffic Enforcement Unit.

The purpose of this item is to appropriate \$20,000 of unplanned revenue from the Colorado Department of Transportation (CDOT) for Police Services to conduct the Click It Or Ticket program.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Brandon Barnes, Police Special Operations, Corporal
David Lindsay, Police Special Operations, Sergeant
Joanne Cech, Fiscal Recovery Manager

SUBJECT

First Reading of Ordinance No. 075, 2025, Making a Supplemental Appropriation of Colorado Department of Transportation Colorado Highway Safety Office Click It or Ticket Grant Funds for the Fort Collins Police Services Traffic Enforcement Unit.

EXECUTIVE SUMMARY

The purpose of this item is to appropriate \$20,000 of unplanned revenue from the Colorado Department of Transportation (CDOT) for Police Services to conduct the Click It Or Ticket program.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

The Fort Collins Police Services (FCPS) Traffic Enforcement Unit was awarded a Click It or Ticket (CIOT) federal grant through the Colorado Department of Transportation Highway Safety Office (HSO) on March 26, 2025. The Click It or Ticket grant program (the Program) provides enforcement focused on driver and passenger restraint system use. The Program runs three enforcement cycles during the following timeframes in 2025: April 7 – April 13; May 12 – June 1; and July 21 – August 1. During these three enforcement cycles officers are deployed to conduct traffic enforcement and specifically to enforce driver and passenger restraint use. The enforcement of driver and passenger restraint system use aligns with the City of Fort Collins Vision Zero goal to reduce and/or eliminate serious injury and fatal crashes. Driver and passenger restraint systems have proven to save lives by keeping the restrained passengers inside the vehicle in the event of a serious collision. According to CDOT, "Since Click It or Ticket was introduced in Colorado in 2002, statewide seat belt use has increased from 72% to 88%." The Program covers the period from April 1, 2025, through September 30, 2025. The Police Department will utilize the grant funds to cover personnel costs for implementing this program.

CITY FINANCIAL IMPACTS

The item appropriates \$20,000 in program costs for the FCPS Traffic Enforcement Unit and other agency personnel to deploy at their respective salary overtime rates during the three enforcement waves of Click It or Ticket.

An executed grant agreement is not required for this award. The state has issued the Fort Collins Police Department a \$20,000 purchase order, and the award begins when Police Services requests reimbursement against that purchase order.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance No. 075, 2025
2. 2025 Click It or Ticket Award Letter

ORDINANCE NO. 075, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING A SUPPLEMENTAL APPROPRIATION OF COLORADO
DEPARTMENT OF TRANSPORTATION COLORADO HIGHWAY
SAFETY OFFICE CLICK IT OR TICKET GRANT FUNDS FOR
THE FORT COLLINS POLICE SERVICES TRAFFIC
ENFORCEMENT UNIT

A. On March 26, 2025, Fort Collins Police Services ("FCPS") Traffic Enforcement Unit was awarded a grant through the Colorado Department of Transportation (HSO) Click It or Ticket program, which is a grant program that provides high visibility enforcement focusing on enforcement of driver and passenger restraint system use.

B. The Program runs three enforcement cycles starting in April, May, and July of 2025. During these three enforcement cycles officers are deployed to conduct traffic enforcement and specifically to enforce driver and passenger restraint use. The enforcement of driver and passenger restraint system use aligns with the City of Fort Collins Vision Zero goal to reduce and/or eliminate serious injury and fatal crashes.

C. The item appropriates \$20,000 in unanticipated funds received through this grant to help cover program costs for the FCPS Traffic Enforcement Unit and other agency personnel to deploy at their respective salary overtime rates during the three enforcement periods of Click It or Ticket.

D. Driver and passenger restraint systems have proven to save lives by keeping the restrained passengers inside the vehicle in the event of a serious collision. According to CDOT, "Since Click It or Ticket was introduced in Colorado in 2002, statewide seat belt use has increased from 72% to 88%." The Program covers the period from April 1, 2025, through August 1, 2025.

E. The Police Department will utilize the grant funds to cover personnel costs for implementing this program.

F. This appropriation benefits the public health, safety, and welfare of the residents of Fort Collins and serves the public purpose of saving lives through education and enforcement measures.

G. Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year.

H. The City Manager has recommended the appropriation described herein and determined that the funds to be appropriated are available and previously unappropriated from the General Fund and that this appropriation will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year.

I. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal, state or private grant or donation, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant.

J. The City Council wishes to designate the appropriation herein for the Colorado Department of Transportation, Colorado Highway Safety Office Click It or Ticket Grant as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of TWENTY THOUSAND DOLLARS (\$20,000) to be expended in the General Fund for the Fort Collins Police Services Traffic Enforcement Unit.

Section 2. The appropriation herein for the Colorado Department of Transportation, Colorado Highway Safety Office Click It or Ticket Grant is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading on May 6, 2025, and approved on second reading for final passage on May 20, 2025.

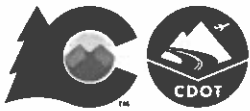
Mayor

ATTEST:

City Clerk

Effective Date: May 30, 2025

Approving Attorney: Dawn Downs



COLORADO
Department of Transportation

Office of Transportation
 Safety & Risk Management
 2829 W. Howard Place
 Denver, CO 80204-2305

March 26, 2025

To: Fort Collins Police Department

From: Brittany Janes, Colorado Highway Safety Office,

Re: Fiscal Year 2025 Click it or Ticket Award

The Colorado Highway Safety Office (HSO) would like to thank you for your dedication in improving traffic safety in your community. We are pleased to inform you that your Click It or Ticket federal grant application is approved for the amount indicated on the attached Purchase Order document. You may proceed with enforcement activity planning as it coincides with the Click It or Ticket enforcement periods for Fiscal Year 2025. Your award packet includes: a copy of your purchase order, your claim workbook which includes the enforcement campaign calendar, Officer Activity Report template and this award letter. If you need copies of any of these documents, please inform your Law Enforcement Liaison.

Be advised the following changes to Click it or Ticket grants have been implemented to ensure compliance with National Highway Traffic Safety Administration (NHTSA) rules and regulations.

- **Officer Activity Reports:** these are optional. These are provided to you as a tool to collect overtime activity reports, use them if you wish.
- **\$50/ hour flat rate:** Effective fiscal year 2022, we no longer offer the \$50/ hour flat rate option on the Click It or Ticket grant. This direction comes from NHTSA (The Click It or Ticket funding source). Starting with Fiscal Year '22, all reimbursements must match the actual personnel salary overtime rate.
Note: This ruling does not apply to the state-funded High Visibility Enforcement or LEAF grants
- **Salary verification:** LELs will conduct Program Monitoring Visits annually with majority of our Click it or Ticket grantees. At your next Program Monitoring Visit, we will be requesting copies of payroll records to verify overtime pay rate, regular pay rate being claimed in the grant. This is in line with federal grant management practices.

Please contact me at 303-757-9069 or Brittany.Janes@state.co.us or your Law Enforcement Liaison: Lee Birk Lee.Birk@state.co.us if you need further clarification.

Thank you for your commitment toward traffic safety.

Sincerely,

Brittany Janes
 Click It or Ticket Program Manager
 Colorado Highway Safety office

(Notice to Proceed and federal award information on next page)



NOTICE TO PROCEED

Agency Name: Fort Collins Police Department
Agency's UEI #: VEJ3BS5GK5G1
Grantee's Address: PO Box 580, Fort Collins, CO 80522

Status Sam.Gov: Active **Expiration Date:** 7/1/2025
Agency Project Manager: Brandon Barnes
Project Description: Local Law Enforcement Agencies Click it or Ticket
WBS #: 2025nhtsa402.0504
Federal Award Identification # (FAIN) FY24: 69A37524300004020CO0
Federal Funding Estimated Amount: \$6,321,663
Federal Award Identification # (FAIN) FY24: 69A3752430SUP4020CO0
Federal Funding Estimated Amount: \$337,553

Federal Award Identification # (FAIN) FY25: 69A37525300004020CO0
Federal Funding Estimated Amount: \$2855162.82
Federal Award Identification # (FAIN) FY25: 69A3752530SUP4020CO0
Federal Funding Estimated Amount: \$336982.23

Award Date: March 5, 2025

Assistance Listing (CFDA)# and Name: 20.600 Section 402 - State and Community Highway Safety
Federal Awarding Agency: US Department of Transportation (National Highway Traffic Safety Administration (NHTSA)/Federal Regional Contact: Gina Espinosa-Salcedo)

Your Agency's approved Budget Amount: \$20,000.00
Indirect Cost Rate: N/A
Match or cost sharing amount: N/A
Research and Development Award: No
Period of Performance start and end dates: 04/7/25 - 9/30/25



Colorado Dept of Transportation
2829 W. Howard Place
Denver CO 80204

DATE: 03/13/2025



Purchase Order
State of Colorado

Item 7.

Buyer: Richard Clark
Phone Number: 303-512-4182
Agency Contact: Damaris Escobar
Phone Number: 303-757-9421

IMPORTANT
The PO# and Line#
must appear on all
invoices, packing
slips, cartons and
correspondence

PO# 411041308
Award#:
BID#:



Page# 1 of 1

Vendor Master#: 2000023
Phone: 970-221-6770
Vendor Contact:

V
E CITY OF FORT COLLINS
N PO BOX 580
D FORT COLLINS CO 80522
O
R

Invoice

TO: CDOT OFFICE OF TRANSP. SAFETY
2829 W. Howard Place
DENVER CO 80204

Payment will be made by this agency

Ship

TO: Colorado Dept of Transportation
2829 W Howard Pl
Denver CO 80204

Delivery/Installation Date: 09/30/2025
PO Expiration Date: 09/30/2025

INSTRUCTIONS TO VENDOR

1. If for any reason, delivery of this order is delayed beyond the delivery/installation date shown, please notify the agency contact named at the top left (Right of cancellation is reserved in instances in which timely delivery is not made). 2. All chemicals, equipment and materials must conform to the standards required by OSHA. 3. NOTE: Additional terms and conditions on reverse side or at address shown in Special Instructions.

SPECIAL INSTRUCTIONS

*Office of Transportation Safety 2025 Click It or Ticket Small Dollar Grant Program City of Fort Collins Effective 04/01/2025 through 09/30/2025

LINE	PRODUCT NUMBER PRODUCT CATEGORY DESCRIPTION	UOM PLANT	QUANTITY	UNIT COST	TOTAL ITEM COST
00001	92585 Fort Collins PD FFY25 Click It or Ticket	AU 7001	20,000.00	1.00	20,000.00

I agree to comply with the statements made and contained under the title Certification and Assurances in the Office of Transportation Safety approved application. No expenditures against this project will be paid prior to April 2024 or the PO effective date, whichever is later.

The Small Dollar Grant Award Terms and Conditions supersede CDOT's Standard Terms and Conditions and can be found on our website:
<https://www.codot.gov/business/procurement-and-contract-services> or directly at:
https://drive.google.com/file/d/1yuG_ONneXUAPiMPuOqDq_WGZJlOPqf6Y/view

DOCUMENT TOTAL: 20,000.00

THIS PO IS ISSUED IN ACCORDANCE WITH STATE AND FEDERAL REGULATIONS
<https://oecc.colorado.gov/spcc/central-contracts-unit/purchase-order-terms-conditions>
DP-01 (R-02/06)

FOR THE STATE OF COLORADO

Authorized Signature

Date

Signature not required if PO transmitted electronically.

File Attachments for Item:

8. Items Relating to the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

A. Resolution 2025-049 Authorizing the Execution of an Intergovernmental Grant Agreement Between the City of Fort Collins and the Colorado Department of Public Safety for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

B. First Reading of Ordinance No. 076, 2025, Making a Supplemental Appropriation of Federal Emergency Management Administration's Building Resilient Infrastructure and Communities Program Grant Funds and Authorizing Transfers for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

The purpose of these items is to enable the City to receive and expend federal funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project (Project). The Colorado Division of Homeland Security and Emergency Management, through the Colorado Department of Public Safety (CDPS), awarded the City of Fort Collins \$398,431 of unanticipated revenue to develop the Project. This award is part of the Federal Emergency Management Administration's (FEMA's) Building Resilient Infrastructure and Communities (BRIC) 2023 program, with the \$398,431 awarded to the City being federal funds. The City has a required cost share of \$245,641 that will be met through City staff time. City staff time will be used through the life of the grant funded Project, from 2025 through October 23, 2027. Based on City staff time being part of annual ongoing fund budgets, the City will utilize budgets as appropriated by City Council each annual fiscal year associated with such City staff time to meet the required cost share requirement of this grant.

Grant funds will enable the City in developing plans to support developers who seek to utilize nature-based solutions and natural habitat design standards in their neighborhood developments in Fort Collins. The purpose of this item is to support development of the Project by:

Appropriating \$398,431 of unanticipated revenue awarded through FEMA's BRIC program;

Utilizing matching funds in the amount of \$85,378 from existing 2025 appropriations in the Community Development and Neighborhood Services operating budget in the General fund into this grant Project for staff time;

Utilizing matching funds in the amount of \$11,841 from existing 2025 appropriations in the Stormwater Engineering operating budget in the Stormwater fund into this grant Project for staff time.

Utilizing matching funds in the amount of \$5,957 from existing 2025 appropriations in the Communications and Public Involvement operating budget in the General Fund into this grant Project for staff time.

This item authorizes the Mayor to accept the grant funds and to commit the City to comply with the terms and conditions of the intergovernmental grant agreement.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Kirk Longstein, Senior Environmental Planner, Community Development and Neighborhood Services
Joanne Cech, Recovery Manager, Grants Administration

SUBJECT

Items Relating to the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

EXECUTIVE SUMMARY

A. Resolution 2025-049 Authorizing the Execution of an Intergovernmental Grant Agreement Between the City of Fort Collins and the Colorado Department of Public Safety for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

B. First Reading of Ordinance No. 076, 2025, Making a Supplemental Appropriation of Federal Emergency Management Administration's Building Resilient Infrastructure and Communities Program Grant Funds and Authorizing Transfers for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

The purpose of these items is to enable the City to receive and expend federal funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project (Project). The Colorado Division of Homeland Security and Emergency Management, through the Colorado Department of Public Safety (CDPS), awarded the City of Fort Collins \$398,431 of unanticipated revenue to develop the Project. This award is part of the Federal Emergency Management Administration's (FEMA's) Building Resilient Infrastructure and Communities (BRIC) 2023 program, with the \$398,431 awarded to the City being federal funds. The City has a required cost share of \$245,641 that will be met through City staff time. City staff time will be used through the life of the grant funded Project, from 2025 through October 23, 2027. Based on City staff time being part of annual ongoing fund budgets, the City will utilize budgets as appropriated by City Council each annual fiscal year associated with such City staff time to meet the required cost share requirement of this grant.

Grant funds will enable the City in developing plans to support developers who seek to utilize nature-based solutions and natural habitat design standards in their neighborhood developments in Fort Collins. The purpose of this item is to support development of the Project by:

- Appropriating \$398,431 of unanticipated revenue awarded through FEMA's BRIC program;
- Utilizing matching funds in the amount of \$85,378 from existing 2025 appropriations in the Community Development and Neighborhood Services operating budget in the General fund into this grant Project for staff time;
- Utilizing matching funds in the amount of \$11,841 from existing 2025 appropriations in the Stormwater Engineering operating budget in the Stormwater fund into this grant Project for staff time.

- Utilizing matching funds in the amount of \$5,957 from existing 2025 appropriations in the Communications and Public Involvement operating budget in the General Fund into this grant Project for staff time.

This item authorizes the Mayor to accept the grant funds and to commit the City to comply with the terms and conditions of the intergovernmental grant agreement.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution and the Ordinance on First Reading.

BACKGROUND / DISCUSSION

This Project seeks to find a predictable solution for developers who wish to overlay natural habitat protection zoning standards, nature based landscape designs and naturalized stormwater facilities. The purpose of this Project is to create a comprehensive master plan that integrates Nature-Based Solutions (NbS) to enhance stormwater management at the neighborhood level and protect ecologically significant features identified by the Land Use Code and buffered from development.

The intent of the Project is to find an engineering and landscape design solution that enhances neighborhoods in Fort Collins with a harmonious blend of nature, fostering a sense of place, environmental stewardship, and community well-being. Through the integration of nature-based solutions and natural habitat design standards, staff envision increased community benefit from future development scenarios. Specifically, through:

- Alignment of stormwater management design criteria and natural habitat buffer zones (NHBZs) established by Citywide policy, codes and standards.
- Added value from Utilities infrastructure and enhanced public benefit from developer requirements.
- NbS and NHBZs providing improved water quality, improved stormwater runoff, and recharging groundwater resources.

Council has specifically approved policies, work plan items, Land Use Code updates, stormwater criteria, and priorities that this Department of Homeland Security FEMA BRIC award and the Project are in furtherance of. The Project aligns with the following Council outcome areas and priorities:

- Economic Health:** Reliable infrastructure for electricity, water, wastewater and flood protection is critical to ensure community resiliency amidst a changing climate;
- Environmental Health:** Sustain the health of the Cache la Poudre River and regional watersheds while delivering a resilient, economically responsible and high-quality water supply for all Fort Collins residents; and
- Council Priority:** Protect Community Water Systems in an Integrated Way to Ensure Resilient Water Resources and Healthy Watersheds.

On Friday, April 4, 2025, CDPS received information from FEMA that this BRIC grant is already awarded/obligated by FEMA. The FEMA guidance confirms that some communities are still working toward full execution of the state/sub-recipient grant agreement, which does not impact already awarded federal funds.

CITY FINANCIAL IMPACTS

This item appropriates \$398,431 to support the costs for the *Nature Based Solutions Plan and Stormwater Park Concept Plan Project*, from:

- \$398,431 from unanticipated revenue from the Colorado Department of Public Safety through Department of Homeland Security, FEMA;

Additionally, required cost share in the amount of \$85,378, \$11,841 and \$5,957 have already been appropriated in the 2025 General Fund and 2025 Stormwater Fund, respectively. These funds will be transferred from the 2025 Community Development and Neighborhood Services Department operating budget within the General Fund, the Utilities Stormwater Department operating budget in the Stormwater Fund, and the Communications and Public Involvement operating budget within the General Fund to the grant funded Project (for staff time). This serves to support proper tracking of personnel time in meeting the City's required cost share.

City staff time will be used in subsequent year 2026. The City will request Council in 2026 to transfer the value of City staff time in 2026 from the operating (lapsing) budget of both the General Fund, and the Stormwater Fund, to the non-lapsing grant Project.

The award under FEMA's BRIC program is a reimbursement type award, meaning General Fund expenses will be reimbursed up to \$398,431.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

The Project team is planning to establish a variety of avenues for community members to share requests, inquiries, concerns and input. This flow of information is most effective when it works both ways and the team is planning to foster this connection at each step.

The approach to public engagement is informed by the methods and best practices created by the International Association for Public Participation (IAP2)—their principles also helped to develop the Project's milestones. Project team staff are trained through IAP2, and we constantly research and connect with other communities to learn about new ideas. We work closely with CSU's Center for Public Deliberation, professional trade organizations, non-governmental organizations and community partners to help us better connect with impacted stakeholders. The team is excited to start its public engagement with a presentation to the Land Conservation and Stewardship Board, along with affordable housing providers. Prior to presenting a final deliverable, the Project team will ensure any future recommendations align with a balanced community perspective.

ATTACHMENTS

1. Resolution 2025-049
2. Exhibit A to the Resolution
3. Ordinance No. 076, 2025
4. Presentation

RESOLUTION 2025-049
 OF THE COUNCIL OF THE CITY OF FORT COLLINS
 AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL
 GRANT AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
 THE COLORADO DEPARTMENT OF PUBLIC SAFETY FOR THE
 NATURE-BASED SOLUTIONS PLAN AND STORMWATER PARK
 CONCEPT PLAN PROJECT

A. The purpose of this item is to enable the City to receive and expend federal funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project (the "Project").

B. The Project seeks to find a predictable solution for developers who wish to overlay natural habitat protection zoning standards, nature based landscape designs and naturalized stormwater facilities in their neighborhood developments in Fort Collins. The purpose of this Project is to create a comprehensive master plan that integrates Nature-Based Solutions ("NbS") to enhance stormwater management at the neighborhood level and protect ecologically significant features identified by the Fort Collins Land Use Code and buffered from development.

C. The intent of the Project is to find an engineering and landscape design solution that enhances neighborhoods in Fort Collins with a harmonious blend of nature, fostering a sense of place, environmental stewardship, and community well-being. Through the integration of nature-based solutions and natural habitat design standards, staff envision increased community benefit from future development scenarios through:

- Alignment of stormwater management design criteria and natural habitat buffer zones ("NHBZs") established by Citywide policy, codes and standards;
- Added value from Utilities infrastructure and enhanced public benefit from developer requirements; and
- NbS and NHBZs provide improved water quality, stormwater runoff, and recharge groundwater resources.

D. The Colorado Division of Homeland Security and Emergency Management, through the Colorado Department of Public Safety ("CDPS"), awarded the City of Fort Collins \$398,431 of unanticipated revenue to develop the Project and has proposed an intergovernmental grant agreement with the City.

E. This award is part of the Federal Emergency Management Administration's ("FEMA's") Building Resilient Infrastructure and Communities ("BRIC") 2023 program. The \$398,431 award is federal funds. The City has a required cost share of \$245,641 that will be met through City staff time. City staff time will be used through the life of the grant funded Project, from 2025 through October 23, 2027. Based on City staff time being part of annual ongoing fund budgets, the City will use budgets as appropriated by City Council each annual fiscal year associated with such City staff time to meet the required cost share requirement of this grant.

F. The grant funds are anticipated to be appropriated via Ordinance No. 076, 2025, and used for the Project.

G. Colorado Revised Statutes Section 29-1-203 provides that governments may cooperate or contract with one another to provide certain services or facilities when the cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve.

H. City Charter Article II, Section 16 empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies.

I. Municipal Code Section 1-22 requires the City Council to approve intergovernmental agreements that require the City to make a direct, monetary payment over \$50,000, and funds anticipated to be appropriated pursuant to this grant agreement amount to awarded funds of \$398,431 and staff time from 2025 through October 23, 2027, totaling \$245,641. City staff recommend that the City Council appropriate funds in these amounts by ordinance.

J. The City Council finds and determines that the Project and the CDPS BRIC grant funding are in the best interests of the City, that they advance the public's health, safety, and welfare by facilitating design and improvement of the City's natural habitats and landscapes and stormwater infrastructure, and that the Mayor be authorized to execute the intergovernmental grant agreement between the City and the CDPS in support thereof.

K. City Council has specifically approved policies, work plan items, Land Use Code updates, stormwater criteria, and priorities that this FEMA BRIC award and the Project are in furtherance of. The Project aligns with the following Council outcome areas and priorities:

- Economic Health: Reliable infrastructure for electricity, water, wastewater and flood protection is critical to ensure community resiliency amidst a changing climate;
- Environmental Health: Sustain the health of the Cache la Poudre River and regional watersheds while delivering a resilient, economically responsible and high-quality water supply for all Fort Collins residents; and
- Council Priority: Protect Community Water Systems in an Integrated Way to Ensure Resilient Water Resources and Healthy Watersheds.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council authorizes the Mayor to execute, on behalf of the City, the intergovernmental grant agreement with the Colorado Division of Homeland

Security and Emergency Management, through the Colorado Department of Public Safety, in substantially the form attached hereto as Exhibit A, with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Section 2. The City Council hereby authorizes the City Manager to approve and execute future amendments to the intergovernmental grant agreement with the Colorado Division of Homeland Security and Emergency Management, through the Colorado Department of Public Safety relating to the Project that the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to facilitate completion of the Project, so long as such amendments do not increase the cost of the Project, substantially modify the purposes of the intergovernmental agreement, increase the allocation or amount of funding for the Project funded by the City, or otherwise increase the obligations and responsibilities of the City as set forth in the intergovernmental agreement.

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Heather N. Jarvis



Office of Grants Management
8000 South Chester Street, Suite 575
Centennial, CO 80112

Jeni Arndt
Mayor
City of Fort Collins, City Hall
300 LaPorte Avenue, PO Box 580
Fort Collins, CO 80522

December 23, 2024

23BRIC25-FTCO

We are pleased to inform you that the Colorado Department of Public Safety, Division of Homeland Security and Emergency Management (DHSEM) has received approval for the City of Fort Collins' application for funding pursuant to the Building Resilient Infrastructure and Communities (BRIC) 2025 Program ("Program") in the amount of \$644,072.00 (\$398,431.00 Federal Funding, \$245,641.00 Local Match). This letter authorizes you to proceed with the approved application projects ("Project") in accordance with the terms of this Grant Award Letter.

Attached to this letter are the terms and conditions of your Grant. Please review these terms and conditions as they are requirements of this Grant to which you, the Grantee, agree by accepting the Grant Funds.

If you have questions regarding this Grant, please contact: Matt West at either Matthew.West@state.co.us or (303) 913-2948.

Sincerely,

Mark Thompson
State Hazard Mitigation Officer
Colorado Department of Public Safety
Division of Homeland Security and Emergency Management

CC: Matthew West, Mitigation Planning Supervisor
Grant File



COLORADO

Department of Public Safety

700 Kipling Street, Lakewood, CO 80215 | www.colorado.gov/publicsafety

Jared Polis, Governor | Stan Hilkey, Executive Director

State of Colorado Intergovernmental Grant Agreement
Cover Page

State Agency

Department of Public Safety, Division of
Homeland Security and Emergency Management

Grantee

City of Fort Collins

Grantee UEI

VEJ3BS5GK5G1

Agreement Number

23BRIC25-FTCO

Grant Issuance Date

October 24, 2024

Grant Expiration Date

May 31, 2027

Grant Amount

\$398,431.00

Local Match Amount

\$245,641.00

Federal Award Information

Federal Award ID # (FAIN)

EMD-2023-BR-002

Federal Award Date

October 24, 2024

Federal Awarding Agency

DHS / FEMA

Assistance Listing (CFDA)

97.047

Building Resilient Infrastructure and Communities (BRIC)

Identification if the Award is for R&D:

No

Grant Authority

- A. Federal Authority to enter into this Grant exists in Section 203(i) of the Stafford Act, as amended (Pub. L. No. 93-288) (42 U.S.C. § 5133) and Infrastructure Investment and Jobs Act (Pub. L. No. 117-58) (2021);
- B. State Authority: to enter this Grant exists in CRS §24-1-128.6.

Grant Purpose

To help the City of Fort Collins develop a Nature-Based Solutions Plan and Stormwater Park Concept Plan.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Agreement:

- A. Exhibit A, Statement of Work.
- B. Exhibit B, Sample Option Letter.
- C. Exhibit C, Budget.
- D. Exhibit D, Federal Provisions.
- E. Exhibit E, PII Certification.
- F. Exhibit F, HIPAA BAA.

In the event of a conflict of inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- A. Exhibit F, HIPAA BAA.
- B. Exhibit D, Federal Provisions.
- C. Colorado Special Provisions in §17 of the main body of this Agreement.
- D. The provisions of the other sections of the main body of this Agreement.
- E. Exhibit A, Statement of Work.
- F. Exhibit E, PII Certification.
- G. Exhibit B, Sample Option Letter.
- H. Exhibit C, Budget.

Principal Representatives

For the State:

Matthew West, Mitigation Planning Supervisor
Department of Public Safety, Division of
Homeland Security & Emergency Management
9195 East Mineral Avenue, Suite 200
Centennial, CO 80112
matthew.west@state.co.us

For Grantee:

Kirk Longstein, Senior Environmental Planner
City of Fort Collins, Community Development
and Neighborhood Services
281 North College Avenue
Fort Collins, CO 80524
klongstein@fcgov.com

Signature Page

The Signatories Listed Below Authorize this Grant

Grantee
City of Fort Collins
Jeni Arndt, Mayor

STATE OF COLORADO
Jared S. Polis, Governor
Colorado Department of Public Safety,
Division of Homeland Security and Emergency
Management Stan Hilkey, Executive Director

By: Jeni Arndt, Mayor
Date: _____

By: Kevin R. Klein, Director , DHSEM,
or DHSEM Director Delegate
Date: _____

Approved as to Form

In accordance with §24-30-202, C.R.S., this
Agreement is not valid until signed and dated
below by the State Controller or an authorized
delegate.

By: City of Fort Collins Attorney's Office
Representative
Date: _____

Attested

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD
Colorado Department of Public Safety

By: Delynn Coldiron, City Clerk
Date: _____

Colorado Department of Public Safety,
or CDPS Controller Delegate
Date: _____

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1. Grant

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the "State") hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the "Grantee") an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. Term**A. Initial Grant Term and Extension**

The Parties' respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration Date. If the Work will be performed in multiple phases, the period of performance start and end date of each phase is detailed under the Project Schedule in Exhibit A.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to

Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

C. Grantee's Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. Definitions

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. **"Breach of Agreement"** means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Grantee is debarred or suspended under §24-109-105, C.R.S. at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. **"Budget"** means the budget for the Work described in Exhibit C.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- F. **"CJI"** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau

of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.

- G. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1, *et seq.*, C.R.S.
- H. **"Cost Sharing"** means a portion of project costs not paid under this Subaward. This includes match which refers to required levels of cost share that must be provided (2 CFR 200.306).
- I. **"Exhibits"** exhibits and attachments included with this Grant as shown on the first page of this Grant.
- J. **"Extension Term"** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter.
- K. **"Federal Award"** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Regulations by a Federal Awarding Agency to the Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- L. **"Federal Awarding Agency"** means a Federal agency providing a Federal Award to a Recipient. The Federal Emergency Management Agency (FEMA) is the Federal Awarding Agency for the Federal Award which is the subject of this Grant.
- M. **"Goods"** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- N. **"Grant Award Letter"** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- O. **"Grant Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- P. **"Grant Expiration Date"** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- Q. **"Grant Issuance Date"** means the Grant Issuance Date shown on the first page of this Grant Award Letter.

- R. **"Incident"** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- S. **"Initial Term"** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- T. **"Party"** means the State or Grantee, and "Parties" means both the State and Grantee.
- U. **"PCI"** means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- V. **"PII"** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. "PII" shall also mean "personal identifying information" as set forth at § 24-74-102, et. seq., C.R.S.
- W. **"PHI"** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- X. **"Recipient"** means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Federal Award.
- Y. **"Services"** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.

- Z. **"State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Grantee which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Grantee without restrictions at the time of its disclosure to Grantee; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Grantee to the State; (iv) is disclosed to Grantee, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- AA. **"State Fiscal Rules"** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- BB. **"State Fiscal Year"** means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- CC. **"State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- DD. **"Sub-Award"** means this grant by the State (a Recipient) to Grantee (a Subrecipient) funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- EE. **"Subcontractor"** means third-parties, if any, engaged by Grantee to aid in performance of the Work. "Subcontractor" also includes sub-grantees.
- FF. **"Subrecipient"** means an entity that receives a Sub-Award from a pass-through entity to carry out part of a Federal award., The term subrecipient does not a beneficiary or participant. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Grant, Grantee is a Subrecipient.
- GG. **"Tax Information"** means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax

Information includes, but is not limited to all information defined as Federal tax information in Internal Revenue Service Publication 1075.

- HH. **"Uniform Guidance"** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to the Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
- II. **"Work"** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- JJ. **"Work Product"** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. **Statement of Work**

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. **Payments to Grantee**

A. **Maximum Amount**

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount for each State Fiscal Year shown on the first page of this Grant Award Letter. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense

incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the "Local Match Amount"). Grantee's obligation to pay all or part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purpose of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. Reimbursement of Grantee Costs

Upon prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the Federal share of properly documented allowable costs related to the Work after the State's review and

approval thereof, subject to the provisions of this Grant. The State shall only reimburse allowable costs if those costs are: (i) reasonable and necessary to accomplish the Work and for the Goods and Services provided; and (ii) equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within 1 year and 90 days after the Grant Expiration Date due to Grantee's failure to submit required documentation, then Grantee may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. Reporting - Notification

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in §5.E, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. Grantee Records

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out

of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. If Grantee enters into a subcontract or subgrant with an entity that would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, et seq., then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. Confidential Information-State Records

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as

otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State

Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 et seq., C.R.S. In addition, as set forth in § 24-74-102, et. seq., C.R.S., Grantee, including, but not limited to, Grantee's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Grantee is given direct access to any State databases containing PII, Grantee shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit E on an annual basis Grantee's duty and obligation to certify as set forth in Exhibit E shall continue as long as Grantee has direct access to any State databases containing PII. If Grantee uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Grantee shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. Conflicts of Interest

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

10. Insurance

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. Breach of Agreement

In the event of a breach of agreement, the aggrieved party shall give written notice of breach of agreement to the other party. If the notified party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the party may exercise any of the remedies as described in §12 for that party. Notwithstanding any provision of this agreement to the contrary, the state, in its discretion, need not provide notice or a cure period and may immediately terminate this agreement in whole or in part or institute any other remedy in this agreement in order to protect the public interest of the state; or if grantee is debarred or suspended under §24-109-105, C.R.S., the state, in its discretion, need not provide notice or cure period and may terminate this agreement in whole or in part or institute any other remedy in this agreement as of the date that the debarment or suspension takes effect.

12. Remedies

A. State's Remedies

In addition to any remedies available under any exhibit to this grant agreement, if grantee is in breach under any provision of this agreement and fails to cure such breach, the state, following the notice and cure period set forth in §11, shall have all of the remedies listed in this section in addition to all other remedies set forth in this agreement or at law. The state may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

I. Termination for Breach

In the event of grantee's uncured breach, the state may terminate this entire agreement or any part of this agreement. Additionally, if grantee fails to comply with any terms of the federal award, then the state may, in its discretion or at the direction of a federal awarding agency, terminate this entire agreement or any part of this agreement. Grantee shall continue performance of this agreement to the extent not terminated, if any.

The State may also terminate this grant agreement at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

a. Obligation and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Grantee shall assign to the State all of Grantee's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee but in which the State has an interest. At the State's request, Grantee shall return materials owned by the State in Grantee's possession at the time of any termination. Grantee shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Grantee for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.B.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee shall remain liable to the State for any damages sustained by the State in connection with any breach by Grantee, and the State may withhold payment to Grantee for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due Grantee as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

II. Remedies Not Involving Termination

a. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Grantee to an adjustment in price or cost or an adjustment in the performance schedule. Grantee shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Grantee after the suspension of performance.

b. Withhold Payment

Withhold payment to Grantee until Grantee corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Grantee's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of grantee's employees, agents, or subcontractors from the work whom the state deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this agreement is deemed by the state to be contrary to the public interest or the state's best interest.

e. Intellectual Property

If any work infringes, or if the state in its sole discretion determines that any work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, grantee shall, as approved by the state (i) secure that right to use such work for the state and grantee; (ii) replace the work with non-infringing work or modify the work so that it becomes non-infringing; or, (iii) remove any infringing work and refund the amount paid for such work to the state

f. Collection of Unallowable Costs (2 CFR 200.410)

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-through entity that made the allowability determination. See §§ 200.300 through 200.309, and § 200.346.

B. Grantee's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Grantee, following the notice and cure period in §11 and the dispute resolution process in §13 shall have all remedies available at law and equity.

13. Dispute Resolution

Except as herein specifically provided otherwise or as required or permitted by federal regulations related to any Federal Award that provided any of the Grant Funds, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

14. Notices and Representatives

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

15. Rights in Work Product and Other Information

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

16. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

17. General Provisions

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections,

exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Accessibility

- i. Grantee shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Grantee shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Grantee's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Grantee's Work Product and software is in compliance with §§24-85-101, et seq., C.R.S., and the Accessibility Standards for Individuals with a Disability as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

L. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit D at all times during the term of this Grant.

18. Colorado Special Provisions (Colorado Fiscal Rule 3-3)**A. Statutory Approval. §24-30-202(1) C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. Fund Availability. §24-30-202(5.5) C.R.S.

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. Governmental Immunity.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the Parties' risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. Independent Contractor.

Grantee shall perform its duties hereunder as an independent contractor and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. Compliance with Law.

Grantee shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Choice of Law, Jurisdiction, and Venue.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Prohibited Terms.

Any term included in this Contract that requires the State to indemnify or hold Grantee harmless; requires the State to agree to binding arbitration; limits Grantee's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. Software Piracy Prohibition.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Contract and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. Employee Financial Interest/Conflict of Interest. §§24-18-201 and 24-50-507 C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Grantee has no interest and shall not acquire any interest, direct or indirect, that would

conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

Exhibit A, Statement of Work

1. General Description of the Project(s).

1.1 Project Description. Grantee will hire a contractor to help develop a Nature-Based Solutions Master Plan and a Stormwater Park Concept Plan.

1.2 Project Expenses. Project expenses include the costs to hire the contractor to complete the project as described in §1.1 of this Exhibit A. All eligible expenses are listed in the budget table in Exhibit C.

1.3 Non-Federal Match: This non-federal match section does apply to this Grant. If applicable the match may include in-kind match. If it applies, this Grant requires a non-federal match contribution of **38%** of the total Grant budget. Documentation of expenditures for the non-federal match contribution is required with each drawdown request.

2. Principal Representatives:

For the State:

Matthew West, Mitigation Planning Supervisor
Department of Public Safety, Division of Homeland
Security & Emergency Management
9195 East Mineral Avenue, Suite 200
Centennial, CO 80112
Matthew.West@state.co.us

For Grantee:

Kirk Longstein, Senior Environmental Planner
City of Fort Collins, Community Development
and Neighborhood Services
281 North College Avenue
Fort Collins, CO 80524
klongstein@fcgov.com

3. Administrative Requirements:

3.1 The Grantee must request approval in advance for any change to this Grant Agreement, using the forms and procedures established by the Department of Public Safety's Division of Homeland Security and Emergency Management (DHSEM).

3.2 Required Documentation: Grantees shall retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed below:

3.2.1 Equipment or tangible goods. When requesting reimbursement for equipment items with a purchase price of or exceeding \$10,000, and a useful life of more than one year, the Grantee shall provide a unique identifying number for the equipment, with a copy of the Grantee's invoice and proof of payment. The unique identifying number can be the manufacturer's serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment shall also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that equipment items with per unit cost of \$10,000 or more are prominently marked in a manner similar to the following:

Purchased with funds provided by the U.S. Department of Homeland Security.

3.2.2 Services. Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided and the nature of the services.

3.3 Non-Supplanting Requirement: Grantees receiving federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

3.4 Procurement: A Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantees should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:

3.4.1 Any sole source transaction shall be approved in advance by the DHSEM.

3.4.2 Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee shall be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection shall be submitted in writing to, and be approved by the authorized Grantee official.

3.4.3 Grantee shall verify Contractor(s) is/are not debarred from participation in state and federal programs by reviewing contractor debarment information on <http://www.sam.gov>.

3.4.4 When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subgrantees shall use the following phrase in the request listing:

"This project was supported by grant #23BRIC25-FTCO, issued by the Colorado Division of Homeland Security and Emergency Management."

3.4.5 Grantee shall ensure that no rights or duties exercised under this grant, or equipment purchased with Grant Funds having a purchase value of \$10,000 or more, are assigned without the prior written consent of the DHSEM.

3.5 Additional Administrative Requirements:

3.5.1 All of the instructions, guidance, limitations, terms and conditions, scope of work, and other conditions set forth in the Notice of Funding Opportunity (NOFO) and the Notice of Award (NOA) for this federal award are incorporated by reference. See also [DHS Standard Terms and Conditions](#).

3.5.2 Grantees of FEMA financial assistance for programs that are subject to the [Build America, Buy America Act \(BABAA\)](#) must include a Buy America preference contract provision as noted in 2 C.F.R. § 184.4 and a self-certification as required by the FEMA Buy America Preference in FEMA Financial Assistance Programs for Infrastructure (FEMA Interim Policy #207-22-0001). This requirement applies to all subawards, contracts, and purchase orders for work performed or products supplied under the FEMA award subject to BABAA.

3.5.3 Grantee shall ensure all purchases are listed or referenced in **§1 or §3** of this Exhibit A. Equipment purchases, if any, shall be for items listed in the [Approved Equipment List \(A.E.L\)](#) during the grant period. Additionally, any funds used to support emergency communications activities should comply with the [FY SAFECOM Guidance on Emergency Communication Grants](#).

3.5.4 Environmental Planning and Historic Preservation (EHP) Review: DHS/FEMA funded activities that may require an EHP review are subject to the FEMA

Environmental Planning and Historic Preservation (EHP) review process. This review does not address all federal, state, and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state, and local laws.

DHS/FEMA is required to consider the potential impacts to natural and cultural resources of all projects funded by DHS/FEMA grant funds, through its EHP Review process, as mandated by the National Environmental Policy Act; National Historic Preservation Act of 1966, as amended; National Flood Insurance Program regulations; and, any other applicable laws and Executive Orders. Click this [link](#) to access the FEMA EHP screening form and instructions.

In order to initiate EHP review of the project(s) requires completion of all relevant sections of the [EHP form](#) and submit it to DHSEM, along with all other pertinent project information. The EHP review process must be completed and approved by DHS/FEMA before funds are released to carry out the proposed project; otherwise, DHS/FEMA and DHSEM may not be able to fund the project due to noncompliance with EHP laws, executive order, regulations, and policies.

If ground disturbing activities occur during construction, Grantee will monitor ground disturbance, and if any potential archeological resources are discovered, Grantee will immediately cease work in that area and notify DHSEM, which will immediately notify DHS/FEMA for further action.

3.5.5 All applicant agencies that own resources that could deploy must be on a [Colorado Resource Rate Form in WebEOC](#).

3.5.6 Regardless of exercise type or scope, After Action Reports/Improvement Plans are due to the State Training and Exercise Program Manager within 45 days of the exercise. All funding related to exercises must be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP), and must be National Incident Management System (NIMS) compliant.

4. Reporting Requirements:

4.1 Quarterly Progress Reports. The project(s) approved in this Grant are to be completed on or before the termination date stated on the agreement's Grant Award Letter of this grant agreement. Grantee shall submit quarterly progress reports for each project identified in this agreement using the format provided by the Department of Public Safety's Division of Homeland Security and Emergency Management (DHSEM) throughout the life of the grant.

Grantee shall submit narrative and financial reports describing project progress and accomplishments, and/or any delays in meeting project objectives and expenditures, to date as described in §4 of this Exhibit A.

Reports shall be submitted in accordance with the schedule table below. The order of the reporting period quarters below is irrelevant to the grant. Reports for the respective period are due on or before the due dates listed below if the grant is open during the “report period” time, and for every quarter that the grant remains open.

Report Period	Due Date
January, February, March	due April 15 th
April, May, June	due July 15 th
July, August, September	due October 15 th
October, November, December	due January 15 th

4.2 Final Reports: Grantee shall submit final progress reports that provide final financial reconciliation and final cumulative grant/project accomplishments within 45 days of the end of the project/grant period of performance. The final report may not include unliquidated obligations and must indicate the exact balance of unobligated funds. The final reports may substitute for the quarterly reports for the final quarter of the grant period.

If all projects are completed before the end of the grant period, the final report may be submitted at any time during the period of performance. Further reports are not due after the DHSEM has received, and sent notice of acceptance, of the final grant report.

5. Payment:

5.1 Payment Schedule: Grantee shall submit requests for reimbursement using the DHSEM’s provided form, submission preference, and quarterly at minimum. One original or electronically signed/submitted copy of the reimbursement request is due on the same dates as the required progress reports outlined in §4.1 of this Exhibit A.

All requests shall be for eligible actual expenses incurred by Grantee, and as described in detail in the budget table(s) of Exhibit B. Requests shall be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution as outlined in §3.2 of this Exhibit A.

If any progress reports are delinquent at the time of a payment request, the DHSEM may withhold such reimbursement until the required reports have been submitted.

5.2 Payment Amount: If non-federal match is required, such match shall be documented with every payment request. Excess match documented and submitted with one reimbursement request shall be applied to subsequent requests as necessary to maximize the allowable reimbursement.

5.3 Payment Returns. Any grant funds from this award not expended by the Agreement Expiration Date, or deemed ineligible under the grant program, must be returned to the State within 10 days of the Agreement Expiration Date, or notification from the DHSEM of ineligibility. Such grant funds returned to the State must be via check repayment issued to 'Colorado Department of Public Safety' with a memo line stating 'refund for [encumbrance number*]' and remit to:

**Colorado Department of Public Safety
Attn: EDO Accountant
700 Kipling Street, Suite 4000
Lakewood, CO 80215**

*Encumbrance number for this award is found at the bottom of each page of the SOW

6. Testing and Acceptance Criteria:

The DHSEM shall evaluate Project(s) through the review of Grantee submitted financial and progress reports, and may also conduct on-site monitoring to determine whether the Grantee is meeting/has met the performance goals, administrative standards, financial management, and other requirements of this grant. The DHSEM will notify Grantee in advance of such on-site monitoring.

Exhibit B, Sample Option Letter

State of Colorado Agreement Modification

Option Letter

State Agency

Insert Department's or IHE's Full Legal Name

Grantee

Insert Agreement's Full Legal Name

Original Agreement Number

Insert Encumbrance Number

Option Letter Number

Insert the Option Number (e.g. "1" for the first option)

Agreement Performance Beginning Date

Month Day, Year

Current Agreement Expiration Date

Month Day, Year

Current Agreement Maximum Amount

\$0.00

Current Agreement Match Amount

\$0.00

1. Options:

- A. Option to extend for an Extension Term
- B. Option to modify Agreement rates
- C. Option to initiate next phase of the Agreement

2. Required Provisions:

- A. For use with Option 1(A)

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

- B. For use with Option 1(B)

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to modify the Agreement rates specified in Exhibit/Section Number/Letter. The Agreement rates attached to this Option Letter replace the rates in the Original Agreement as of the Option Effective Date of this Option Letter.

- C. For use with Option 1(C)

In accordance with Section(s) Number of the Original Agreement referenced above, the State hereby exercises its option to initiate Phase indicate which Phase: 2, 3, 4, etc., which shall begin on Insert start date and end on Insert ending date at the cost/price specified in Section Number.

- D. For use with all Options that modify the Agreement Maximum Amount

The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

3. Option Effective Date:

The effective date of this Option Letter is upon approval of the State Controller.

State of Colorado

Jared S. Polis, Governor

Department of Public Safety, Division of Homeland
Security and Emergency Management
Stan Hilkey, Executive Director

In accordance with §24-30-202, C.R.S., this Option
is not valid until signed and dated above by the
State Controller or an authorized delegate

State Controller**Robert Jaros, CPA, MBA, JD**

By: Kevin R. Klein, Director, DHSEM,
or DHSEM Director Delegate

Date: _____

By: Robert Jaros, CPA, MBA, JD
or State Controller Delegate

Option Effective Date: _____.

Exhibit C, Budget

Budget:

The following budget table contains amounts for the categories and/or project activities for this grant award.

<i>Project Activity/Line Item</i>	<i>Federal Share</i>	<i>Local Share</i>	<i>Total Project</i>
Contractual (Surveying and Engineering)	\$ 370,000.00	\$ 0.00	\$ 370,000.00
Personnel (City Staff)	\$ 0.00	\$ 245,641.00	\$ 245,641.00
Rental Costs and Contingency	\$ 9,458.00	\$ 0.00	\$ 9,458.00
<i>Project Activity Subtotal</i>	<i>\$ 379,458.00</i>	<i>\$ 245,641.00</i>	<i>\$ 625,099.00</i>
Management & Admin	\$ 18,973.00	\$ 0.00	\$ 18,973.00
Total Budget	\$ 398,431.00	\$ 245,641.00	\$ 644,072.00
Total Award Amount	\$ 398,431.00		

Exhibit D, Federal Provisions

1. Applicability of Provisions.

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.

These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. Definitions.

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below. For a full list of definitions (as of October 1, 2024) under the Uniform Guidance, see 2 CFR 200.1.
- 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
- 2.1.2. "Entity" means:
- 2.1.2.1. a Non-Federal Entity;
- 2.1.2.2. a non-profit organization or for-profit organization.
- 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
- 2.1.4. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1
- 2.1.5. "Grant" means the Grant to which these Federal Provisions are attached.
- 2.1.6. "Grantee" means the party or parties identified as such in the Grant to which these Federal Provisions are attached. Grantee also means Subrecipient.
- 2.1.7. "Non-Federal Entity" means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.

- 2.1.8. "Nonprofit Organization" organization that:
- 2.1.8.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.8.2. Is not organized primarily for profit; and
 - 2.1.8.3. Uses net proceeds to maintain, improve, or expand the organization's operations; and
 - 2.1.8.4. Is not an IHE.
- 2.1.9. "OMB" means the Executive Office of the President, Office of Management and Budget.
- 2.1.10. "Pass-through Entity" means a recipient or subrecipient that provides a Subaward to a Subrecipient (including lower tier subrecipients) to carry out part of a Federal program. The authority of the pass-through entity under this part flows through the Subaward agreements between the pass-through entity and subrecipient.
- 2.1.11. "Recipient" means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.12. "Subaward" means an award provided by a pass-through entity to a Subrecipient to contribute to the goals and objectives of the project by carrying out part of a Federal award received by the pass-through entity. The term does not include payments to a contractor, beneficiary or participant.
- 2.1.13. "Subrecipient" means an entity that receives a subaward from a pass-through entity to carry out part of a Federal award. The term subrecipient does not include a beneficiary or participant. A subrecipient may also be a recipient of other Federal awards directly from a Federal agency. Subrecipient also means Grantee.
- 2.1.14. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.

- 2.1.15. "Total Compensation" means the cash and noncash dollar value an Executive earns during the entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).
- 2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. "Unique Entity ID (UEI)" is the universal identifier for federal financial assistance applicants, as well as recipients and their direct subrecipients (first tier subrecipients).
- 2.1.18. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

3. Compliance.

- 3.1. Subrecipient shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all applicable provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. System for Award Management (SAM) and UNIQUE ENTITY ID (UEI) Requirements.

- 4.1. SAM. Subrecipient must obtain a UEI but are not required to fully register in SAM.gov. Subrecipient shall maintain the currency of its information in SAM until the Subrecipient submits the final financial report required under the Award or receives final payment, whichever is later. Subrecipient shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
- 4.2. Unique Entity ID. Subrecipient shall provide its Unique Entity ID to its Recipient, and shall update Subrecipient's information at [SAM.gov](https://sam.gov) at least annually after the initial registration, and more frequently if required by changes in Subrecipient's information.

5. Total Compensation.

5.1. Subrecipient shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and

5.1.2. In the preceding fiscal year, Subrecipient received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. Reporting.

6.1. Pursuant to the Transparency Act, Subrecipient shall report data elements to SAM and to the Recipient as required in this Exhibit. No direct payment shall be made to Subrecipient for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Subrecipient's obligations under this Grant.

7. Effective Date and Dollar Threshold for Reporting.

7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial

Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements.

- 7.2. The procurement standards in §9 below are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. Subrecipient Reporting Requirements.

- 8.1. Subrecipient shall report as set forth below.

8.1.1. To SAM. A Subrecipient shall report the following data elements in SAM for each Federal Award Identification Number (FAIN) assigned by a Federal agency to a Recipient no later than the end of the month following the month in which the Subaward was made:

- 8.1.1.1. Subrecipient Unique Entity ID;
- 8.1.1.2. Subrecipient Unique Entity ID if more than one electronic funds transfer (EFT) account;
- 8.1.1.3. Subrecipient parent's organization Unique Entity ID;
- 8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if the criteria in §4 above met.

8.1.2. To Recipient. A Subrecipient shall report to its Recipient, upon the effective date of the Grant, the following data elements:

- 8.1.2.1. Subrecipient's Unique Entity ID as registered in SAM.
- 8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. Procurement Standards.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 9.4. Never contract with the enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never contract with the enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 during the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 9.5. Prohibition on certain telecommunications and video surveillance equipment or services (2 CFR 200.216). Subrecipient is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

10. Access to Records.

- 10.1. A Subrecipient shall permit Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Modification to period of performance), 2 CFR 200.337 (Access to Records) and Subpart F-Audit Requirements of the Uniform Guidance.
- 10.2. A Subrecipient must collect, transmit, and store information related to this Subaward in open and machine-readable formats (2 CFR 200.336).

11. Single Audit Requirements.

- 11.1. If a Subrecipient expends \$1,000,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.
- 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
- 11.1.2. Exemption. If a Subrecipient expends less than \$1,000,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. Grant Provisions for Subrecipient Contracts.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Recipient, Subrecipients shall include all of the following applicable provisions.
- 12.1.1. For agreements with Subrecipients – Include the terms in the Grant Federal Provisions Exhibit (this exhibit).
- 12.1.2. For contracts with Subcontractors – Include the terms in the Contract Federal Provisions Exhibit.

13. Certifications.

- 13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.415. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. Exemptions.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Subrecipient with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. Event of Default and Termination.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
 - 15.2.3. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Pass-through Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
 - 15.2.4. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

16. Additional Federal Requirements

16.1. Whistle Blower Protections

An employee of a subrecipient must not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body described in paragraph (a)(2) of 41 U.S.C. 4712 information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation

related to a Federal contract (including the competition for or negotiation of a contract) or grant. The subrecipient must inform their employees in writing of employee whistleblower rights and protections under 41 U.S.C. 4712. See statutory requirements for whistleblower protections at 10 U.S.C. 4701, 41 U.S.C. 4712, 41 U.S.C. 4304, and 10 U.S.C. 4310.

Exhibit E, PII Certification

State of Colorado

Third Party Individual Certification for Access TO PII through a Database or Automated Network

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: _____

Printed Name: _____

Date: _____

Exhibit E, PII Certification**State of Colorado****Third Party Entity/Organization Certification for Access TO PII through a Database or Automated Network**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Exhibit F, HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement ("Agreement") between the State and Contractor is agreed to in connection with, and as an exhibit to, the Contract. For purposes of this Agreement, the State is referred to as "Covered Entity" and the Contractor is referred to as "Business Associate". Unless the context clearly requires a distinction between the Contract and this Agreement, all references to "Contract" shall include this Agreement.

1. Purpose

Covered Entity wishes to disclose information to Business Associate, which may include Protected Health Information ("PHI"). The Parties intend to protect the privacy and security of the disclosed PHI in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191 (1996) as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") enacted under the American Recovery and Reinvestment Act of 2009 ("ARRA") Pub. L. No. 111-5 (2009), implementing regulations promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Parts 160, 162 and 164 (the "HIPAA Rules") and other applicable laws, as amended. Prior to the disclosure of PHI, Covered Entity is required to enter into an agreement with Business Associate containing specific requirements as set forth in, but not limited to, Title 45, Sections 160.103, 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and all other applicable laws and regulations, all as may be amended.

2. Definitions

The following terms used in this Agreement shall have the same meanings as in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

The following terms used in this Agreement shall have the meanings set forth below:

- a. Business Associate. "Business Associate" shall have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and shall refer to Contractor.
- b. Covered Entity. "Covered Entity" shall have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and shall refer to the State.

- c. Information Technology and Information Security. "Information Technology" and "Information Security" shall have the same meanings as the terms "information technology" and "information security", respectively, in §24-37.5-102, C.R.S.

Capitalized terms used herein and not otherwise defined herein or in the HIPAA Rules shall have the meanings ascribed to them in the Contract.

3. Obligations and Activities of Business Associate

- a. Permitted Uses and Disclosures.
- b. Business Associate shall use and disclose PHI only to accomplish Business Associate's obligations under the Contract.
 - i. To the extent Business Associate carries out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with any and all requirements of Subpart E that apply to Covered Entity in the performance of such obligation.
 - ii. Business Associate may disclose PHI to carry out the legal responsibilities of Business Associate, provided, that the disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that:
 - A. the information will remain confidential and will be used or disclosed only as Required by Law or for the purpose for which Business Associate originally disclosed the information to that person, and;
 - B. the person notifies Business Associate of any Breach involving PHI of which it is aware.
 - iii. Business Associate may provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Business Associate may de-identify any or all PHI created or received by Business Associate under this Agreement, provided the de-identification conforms to the requirements of the HIPAA Rules.
- c. Minimum Necessary. Business Associate, its Subcontractors and agents, shall access, use, and disclose only the minimum amount of PHI necessary to accomplish the objectives of the Contract, in accordance with the Minimum Necessary Requirements of the HIPAA Rules including, but not limited to, 45 C.F.R. 164.502(b) and 164.514(d).

- d. Impermissible Uses and Disclosures.
 - i. Business Associate shall not disclose the PHI of Covered Entity to another covered entity without the written authorization of Covered Entity.
 - ii. Business Associate shall not share, use, disclose or make available any Covered Entity PHI in any form via any medium with or to any person or entity beyond the boundaries or jurisdiction of the United States without express written authorization from Covered Entity.
- e. Business Associate's Subcontractors.
 - i. Business Associate shall, in accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any Subcontractors who create, receive, maintain, or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to safeguarding PHI.
 - ii. Business Associate shall provide to Covered Entity, on Covered Entity's request, a list of Subcontractors who have entered into any such agreement with Business Associate.
 - iii. Business Associate shall provide to Covered Entity, on Covered Entity's request, copies of any such agreements Business Associate has entered into with Subcontractors.
- f. Access to System. If Business Associate needs access to a Covered Entity Information Technology system to comply with its obligations under the Contract or this Agreement, Business Associate shall request, review, and comply with any and all policies applicable to Covered Entity regarding such system including, but not limited to, any policies promulgated by the Office of Information Technology and available at <http://oit.state.co.us/about/policies>.
- g. Access to PHI. Business Associate shall, within ten days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.524.
- h. Amendment of PHI.
 - i. Business Associate shall within ten days of receiving a written request from Covered Entity make any amendment to PHI in a Designated Record Set as directed by or

- agreed to by Covered Entity pursuant to 45 C.F.R. 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. 164.526.
- ii. Business Associate shall promptly forward to Covered Entity any request for amendment of PHI that Business Associate receives directly from an Individual.
 - i. Accounting Rights. Business Associate shall, within ten days of receiving a written request from Covered Entity, maintain and make available to Covered Entity the information necessary for Covered Entity to satisfy its obligations to provide an accounting of Disclosure under 45 C.F.R. 164.528.
 - j. Restrictions and Confidential Communications.
 - i. Business Associate shall restrict the Use or Disclosure of an Individual's PHI within ten days of notice from Covered Entity of:
 - A. a restriction on Use or Disclosure of PHI pursuant to 45 C.F.R. 164.522; or
 - B. a request for confidential communication of PHI pursuant to 45 C.F.R. 164.522.
 - ii. Business Associate shall not respond directly to an Individual's requests to restrict the Use or Disclosure of PHI or to send all communication of PHI to an alternate address.
 - iii. Business Associate shall refer such requests to Covered Entity so that Covered Entity can coordinate and prepare a timely response to the requesting Individual and provide direction to Business Associate.
 - k. Governmental Access to Records. Business Associate shall make its facilities, internal practices, books, records, and other sources of information, including PHI, available to the Secretary for purposes of determining compliance with the HIPAA Rules in accordance with 45 C.F.R. 160.310.
 - l. Audit, Inspection and Enforcement.
 - i. Business Associate shall obtain and update at least annually a written assessment performed by an independent third party reasonably acceptable to Covered Entity, which evaluates the Information Security of the applications, infrastructure, and processes that interact with the Covered Entity data Business Associate receives, manipulates, stores and distributes. Upon request by Covered Entity, Business Associate shall provide to Covered Entity the executive summary of the assessment.

- ii. Business Associate, upon the request of Covered Entity, shall fully cooperate with Covered Entity's efforts to audit Business Associate's compliance with applicable HIPAA Rules. If, through audit or inspection, Covered Entity determines that Business Associate's conduct would result in violation of the HIPAA Rules or is in violation of the Contract or this Agreement, Business Associate shall promptly remedy any such violation and shall certify completion of its remedy in writing to Covered Entity.
- m. Appropriate Safeguards.
 - i. Business Associate shall use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided in this Agreement.
 - ii. Business Associate shall safeguard the PHI from tampering and unauthorized disclosures.
 - iii. Business Associate shall maintain the confidentiality of passwords and other data required for accessing this information.
 - iv. Business Associate shall extend protection beyond the initial information obtained from Covered Entity to any databases or collections of PHI containing information derived from the PHI. The provisions of this section shall be in force unless PHI is de-identified in conformance to the requirements of the HIPAA Rules.
- n. Safeguard During Transmission.
 - i. Business Associate shall use reasonable and appropriate safeguards including, without limitation, Information Security measures to ensure that all transmissions of PHI are authorized and to prevent use or disclosure of PHI other than as provided for by this Agreement.
 - ii. Business Associate shall not transmit PHI over the internet or any other insecure or open communication channel unless the PHI is encrypted or otherwise safeguarded with a FIPS-compliant encryption algorithm.
- o. Reporting of Improper Use or Disclosure and Notification of Breach.
 - i. Business Associate shall, as soon as reasonably possible, but immediately after discovery of a Breach, notify Covered Entity of any use or disclosure of PHI not provided for by this Agreement, including a Breach of Unsecured Protected Health

Information as such notice is required by 45 C.F.R. 164.410 or a breach for which notice is required under §24-73-103, C.R.S.

- ii. Such notice shall include the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach.
 - iii. Business Associate shall, as soon as reasonably possible, but immediately after discovery of any Security Incident that does not constitute a Breach, notify Covered Entity of such incident.
 - iv. Business Associate shall have the burden of demonstrating that all notifications were made as required, including evidence demonstrating the necessity of any delay.
- p. Business Associate's Insurance and Notification Costs.
- i. Business Associate shall bear all costs of a Breach response including, without limitation, notifications, and shall maintain insurance to cover:
 - A. loss of PHI data;
 - B. Breach notification requirements specified in HIPAA Rules and in §24-73-103, C.R.S.; and
 - C. claims based upon alleged violations of privacy rights through improper use or disclosure of PHI.
 - ii. All such policies shall meet or exceed the minimum insurance requirements of the Contract or otherwise as may be approved by Covered Entity (e.g., occurrence basis, combined single dollar limits, annual aggregate dollar limits, additional insured status, and notice of cancellation).
 - iii. Business Associate shall provide Covered Entity a point of contact who possesses relevant Information Security knowledge and is accessible 24 hours per day, 7 days per week to assist with incident handling.
 - iv. Business Associate, to the extent practicable, shall mitigate any harmful effect known to Business Associate of a Use or Disclosure of PHI by Business Associate in violation of this Agreement.
- q. Subcontractors and Breaches.

- i. Business Associate shall enter into a written agreement with each of its Subcontractors and agents, who create, receive, maintain, or transmit PHI on behalf of Business Associate. The agreements shall require such Subcontractors and agents to report to Business Associate any use or disclosure of PHI not provided for by this Agreement, including Security Incidents and Breaches of Unsecured Protected Health Information, on the first day such Subcontractor or agent knows or should have known of the Breach as required by 45 C.F.R. 164.410.
- ii. Business Associate shall notify Covered Entity of any such report and shall provide copies of any such agreements to Covered Entity on request.
- r. Data Ownership.
 - i. Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
 - ii. Upon request by Covered Entity, Business Associate immediately shall provide Covered Entity with any keys to decrypt information that the Business Association has encrypted and maintains in encrypted form, or shall provide such information in unencrypted usable form.
- s. Retention of PHI. Except upon termination of this Agreement as provided in Section 5 below, Business Associate and its Subcontractors or agents shall retain all PHI throughout the term of this Agreement, and shall continue to maintain the accounting of disclosures required under Section 1.i above, for a period of six years.

4. Obligations of Covered Entity

- c. Safeguards During Transmission. Covered Entity shall be responsible for using appropriate safeguards including encryption of PHI, to maintain and ensure the confidentiality, integrity, and security of PHI transmitted pursuant to this Agreement, in accordance with the standards and requirements of the HIPAA Rules.

d. Notice of Changes.

- i. Covered Entity maintains a copy of its Notice of Privacy Practices on its website. Covered Entity shall provide Business Associate with any changes in, or revocation of, permission to use or disclose PHI, to the extent that it may affect Business Associate's permitted or required uses or disclosures.
- ii. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that it may affect Business Associate's permitted use or disclosure of PHI.

5. Termination

e. Breach.

- i. In addition to any Contract provision regarding remedies for breach, Covered Entity shall have the right, in the event of a breach by Business Associate of any provision of this Agreement, to terminate immediately the Contract, or this Agreement, or both.
- ii. Subject to any directions from Covered Entity, upon termination of the Contract, this Agreement, or both, Business Associate shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Business Associate in which Covered Entity has an interest.

b. Effect of Termination.

- i. Upon termination of this Agreement for any reason, Business Associate, at the option of Covered Entity, shall return or destroy all PHI that Business Associate, its agents, or its Subcontractors maintain in any form, and shall not retain any copies of such PHI.
- ii. If Covered Entity directs Business Associate to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- iii. If Business Associate believes that returning or destroying the PHI is not feasible, Business Associate shall promptly provide Covered Entity with notice of the conditions making return or destruction infeasible. Business Associate shall continue to extend the protections of Section 3 of this Agreement to such PHI, and shall limit

further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

6. Injunctive Relief

Covered Entity and Business Associate agree that irreparable damage would occur in the event Business Associate or any of its Subcontractors or agents use or disclosure of PHI in violation of this Agreement, the HIPAA Rules or any applicable law. Covered Entity and Business Associate further agree that money damages would not provide an adequate remedy for such Breach. Accordingly, Covered Entity and Business Associate agree that Covered Entity shall be entitled to injunctive relief, specific performance, and other equitable relief to prevent or restrain any Breach or threatened Breach of and to enforce specifically the terms and provisions of this Agreement.

6. Limitation of Liability

Any provision in the Contract limiting Contractor's liability shall not apply to Business Associate's liability under this Agreement, which shall not be limited.

7. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made and actions taken by Business Associate regarding the safeguarding of PHI.

8. Certification

Covered Entity has a legal obligation under HIPAA Rules to certify as to Business Associate's Information Security practices. Covered Entity or its authorized agent or contractor shall have the right to examine Business Associate's facilities, systems, procedures, and records, at Covered Entity's expense, if Covered Entity determines that examination is necessary to certify that Business Associate's Information Security safeguards comply with the HIPAA Rules or this Agreement.

9. Amendment

- f. Amendment to Comply with Law. The Parties acknowledge that state and federal laws and regulations relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide procedures to ensure compliance with such

developments.

- i. In the event of any change to state or federal laws and regulations relating to data security and privacy affecting this Agreement, the Parties shall take such action as is necessary to implement the changes to the standards and requirements of HIPAA, the HIPAA Rules and other applicable rules relating to the confidentiality, integrity, availability and security of PHI with respect to this Agreement.
- ii. Business Associate shall provide to Covered Entity written assurance satisfactory to Covered Entity that Business Associate shall adequately safeguard all PHI, and obtain written assurance satisfactory to Covered Entity from Business Associate's Subcontractors and agents that they shall adequately safeguard all PHI.
- iii. Upon the request of either Party, the other Party promptly shall negotiate in good faith the terms of an amendment to the Contract embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Rules, or other applicable rules.
- iv. Covered Entity may terminate this Agreement upon 30 days' prior written notice in the event that:
 - A. Business Associate does not promptly enter into negotiations to amend the Contract and this Agreement when requested by Covered Entity pursuant to this Section; or
 - B. Business Associate does not enter into an amendment to the Contract and this Agreement, which provides assurances regarding the safeguarding of PHI sufficient, in Covered Entity's sole discretion, to satisfy the standards and requirements of the HIPAA, the HIPAA Rules and applicable law.
- c. Amendment of Appendix. The Appendix to this Agreement may be modified or amended by the mutual written agreement of the Parties, without amendment of this Agreement. Any modified or amended Appendix agreed to in writing by the Parties shall supersede and replace any prior version of the Appendix.

10. Assistance in Litigation or Administrative Proceedings

Covered Entity shall provide written notice to Business Associate if litigation or administrative proceeding is commenced against Covered Entity, its directors, officers, or employees, based on a claimed violation by Business Associate of HIPAA, the HIPAA Rules or other laws

relating to security and privacy or PHI. Upon receipt of such notice and to the extent requested by Covered Entity, Business Associate shall, and shall cause its employees, Subcontractors, or agents assisting Business Associate in the performance of its obligations under the Contract to, assist Covered Entity in the defense of such litigation or proceedings. Business Associate shall, and shall cause its employees, Subcontractor's and agents to, provide assistance, to Covered Entity, which may include testifying as a witness at such proceedings. Business Associate or any of its employees, Subcontractors or agents shall not be required to provide such assistance if Business Associate is a named adverse party.

11. Interpretation and Order of Precedence

Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Rules. In the event of an inconsistency between the Contract and this Agreement, this Agreement shall control. This Agreement supersedes and replaces any previous, separately executed HIPAA business associate agreement between the Parties.

12. Survival

Provisions of this Agreement requiring continued performance, compliance, or effect after termination shall survive termination of this contract or this agreement and shall be enforceable by Covered Entity.

Appendix to HIPPA Business Associate Agreement

This Appendix ("Appendix") to the HIPAA Business Associate Agreement ("Agreement") is an appendix to the Contract and the Agreement. For the purposes of this Appendix, defined terms shall have the meanings ascribed to them in the Agreement and the Contract.

Unless the context clearly requires a distinction between the Contract, the Agreement, and this Appendix, all references to "Contract" or "Agreement" shall include this Appendix.

1. Purpose

This Appendix sets forth additional terms to the Agreement. Any sub-section of this Appendix marked as "Reserved" shall be construed as setting forth no additional terms.

2. Additional Terms

- a. Additional Permitted Uses. In addition to those purposes set forth in the Agreement, Business Associate may use PHI for the following additional purposes:
 - i. Reserved.
- b. Additional Permitted Disclosures. In addition to those purposes set forth in the Agreement, Business Associate may disclose PHI for the following additional purposes:
 - i. Reserved.
- c. Approved Subcontractors. Covered Entity agrees that the following Subcontractors or agents of Business Associate may receive PHI under the Agreement:
 - ii. Reserved.
- d. Definition of Receipt of PHI. Business Associate's receipt of PHI under this Contract shall be deemed to occur, and Business Associate's obligations under the Agreement shall commence, as follows:
 - i. Reserved.
- e. Additional Restrictions on Business Associate. Business Associate agrees to comply with the following additional restrictions on Business Associate's use and disclosure of PHI under the Contract:
 - i. Reserved.
- f. Additional Terms. Business Associate agrees to comply with the following additional terms under the Agreement:
 - i. Reserved.

ORDINANCE NO. 076, 2025
 OF THE COUNCIL OF THE CITY OF FORT COLLINS
 MAKING A SUPPLEMENTAL APPROPRIATION OF FEDERAL
 EMERGENCY MANAGEMENT ADMINISTRATION'S BUILDING
 RESILIENT INFRASTRUCTURE AND COMMUNITIES PROGRAM
 GRANT FUNDS AND AUTHORIZING TRANSFERS FOR THE
 NATURE-BASED SOLUTIONS PLAN AND STORMWATER PARK
 CONCEPT PLAN PROJECT

A. The purpose of this item is to enable the City to receive and expend federal funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project (the "Project").

B. The Project seeks to find a predictable solution for developers who wish to overlay natural habitat protection zoning standards, nature based landscape designs and naturalized stormwater facilities in their neighborhood developments in Fort Collins. The purpose of this Project is to create a comprehensive master plan that integrates Nature-Based Solutions ("NbS") to enhance stormwater management at the neighborhood level and protect ecologically significant features identified by the Fort Collins Land Use Code and buffered from development.

C. The intent of the Project is to find an engineering and landscape design solution that enhances neighborhoods in Fort Collins with a harmonious blend of nature, fostering a sense of place, environmental stewardship, and community well-being. Through the integration of nature-based solutions and natural habitat design standards, staff envision increased community benefit from future development scenarios through:

- Alignment of stormwater management design criteria and natural habitat buffer zones ("NHBZs") established by Citywide policy, codes and standards;
- Added value from Utilities infrastructure and enhanced public benefit from developer requirements; and
- NbS and NHBZs provide improved water quality, stormwater runoff, and recharge groundwater resources.

D. The Colorado Division of Homeland Security and Emergency Management, through the Colorado Department of Public Safety ("CDPS"), awarded the City of Fort Collins \$398,431 of unanticipated revenue to develop the Project and has proposed an intergovernmental grant agreement with the City.

E. This award is part of the Federal Emergency Management Administration's ("FEMA's") Building Resilient Infrastructure and Communities ("BRIC") 2023 program. The \$398,431 award is federal funds. The City has a required cost share of \$245,641 that will be met through City staff time. City staff time will be used through the life of the grant funded Project, from 2025 through October 23, 2027. Based on City staff time being part of annual ongoing fund budgets, the City will use budgets as appropriated by City Council each annual fiscal year associated with such City staff time to meet the required cost share requirement of this grant.

F. Grant and cost share funds will support development of the Project by:

- Appropriating \$398,431 of unanticipated revenue awarded through FEMA's BRIC program;
- Using matching funds in the amount of \$85,378 from existing 2025 appropriations in the Community Development and Neighborhood Services operating budget in the General Fund into this grant Project for staff time;
- Using matching funds in the amount of \$11,841 from existing 2025 appropriations in the Stormwater Engineering operating budget in the Stormwater fund into this grant Project for staff time;
- Using matching funds in the amount of \$5,957 from existing 2025 appropriations in the Communications and Public Involvement operating budget in the General Fund into this grant Project for staff time; and
- Using City staff time in subsequent year 2026 by requesting Council in 2026 to transfer the value of City staff time in 2026 from the operating (lapsing) budget of both the General Fund and the Stormwater Fund to the non-lapsing grant Project.

G. Article V, Section 9 of the City Charter permits the City Council, upon recommendation of the City Manager, to make a supplemental appropriation by ordinance at any time during the fiscal year, provided that the total amount of such supplemental appropriation, in combination with all previous appropriations for that fiscal year, do not exceed the current estimate of actual and anticipated revenues and all other funds to be received during the fiscal year.

H. The City Manager has recommended the appropriations described herein and determined that the funds to be appropriated are available and previously unappropriated from the General Fund and that this appropriation will not cause the total amount appropriated in the General Fund to exceed the current estimate of actual and anticipated revenues and all other funds to be received in this Fund during this fiscal year.

I. Article V, Section 10 of the City Charter authorizes the City Council, upon recommendation by the City Manager, to transfer by ordinance any unexpended and unencumbered appropriated amount or portion thereof from one fund or capital project to another fund or capital project, provided that the purpose for which the transferred funds are to be expended remains unchanged, the purpose for which the funds were initially appropriated no longer exists, or the proposed transfer is from a fund or capital project in which the amount appropriated exceeds the amount needed to accomplish the purpose specified in the appropriation ordinance.

J. The City Manager has recommended the transfer of \$85,378 from the Community Development and Neighborhood Services operating budget to the General Fund Grant Project budget, \$11,841 from the Stormwater Engineering operating budget to the Stormwater Fund Grant Project budget, and \$5,957 from the Communications and Public Involvement operating budget to the General Fund Grant Project budget and

determined that the purpose for which the transferred funds are to be expended remains unchanged.

K. Article V, Section 11 of the City Charter authorizes the City Council to designate in the ordinance when appropriating funds for a federal, state or private grant, that such appropriation shall not lapse at the end of the fiscal year in which the appropriation is made, but continue until the earlier of the expiration of the federal, state or private grant or the City's expenditure of all funds received from such grant.

L. The City Council wishes to designate the appropriation herein of the CDPS BRIC grant funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project as an appropriation that shall not lapse until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

M. These appropriations benefit the public health, safety, and welfare of the residents of Fort Collins and serve the public purposes of facilitating design, developing predictable solutions, and improving the City's natural habitats and landscapes and stormwater infrastructure relating to neighborhood development.

N. City Council has specifically approved policies, work plan items, Land Use Code updates, stormwater criteria, and priorities that this FEMA BRIC award and the Project are in furtherance of. The Project aligns with the following Council outcome areas and priorities:

- Economic Health: Reliable infrastructure for electricity, water, wastewater and flood protection is critical to ensure community resiliency amidst a changing climate;
- Environmental Health: Sustain the health of the Cache la Poudre River and regional watersheds while delivering a resilient, economically responsible and high-quality water supply for all Fort Collins residents; and
- Council Priority: Protect Community Water Systems in an Integrated Way to Ensure Resilient Water Resources and Healthy Watersheds.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. There is hereby appropriated from new revenue or other funds in the General Fund the sum of THREE HUNDRED NINETY-EIGHT THOUSAND FOUR HUNDRED THIRTY-ONE DOLLARS (\$398,431) to be expended in the General Fund for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

Section 2. The unexpended and unencumbered appropriated amount of EIGHTY-FIVE THOUSAND THREE HUNDRED SEVENTY-EIGHT DOLLARS (\$85,378) is authorized for transfer from the Community Development and Neighborhood Services operating budget to the General Fund Grant Project budget and appropriated therein to

be expended for matching funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

Section 3. The unexpended and unencumbered appropriated amount of ELEVEN THOUSAND EIGHT HUNDRED FORTY-ONE DOLLARS (\$11,841) is authorized for transfer from the Stormwater Engineering operating budget to the Stormwater Fund Grant Project budget and appropriated therein to be expended for matching funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

Section 4. The unexpended and unencumbered appropriated amount of FIVE THOUSAND NINE HUNDRED FIFTY-SEVEN DOLLARS (\$5,957) is authorized for transfer from the Communications and Public Involvement operating budget to the General Fund Grant Project budget and appropriated therein to be expended for matching funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project.

Section 5. The appropriation herein for the CDPS BRIC grant funds for the Nature-Based Solutions Plan and Stormwater Park Concept Plan Project is hereby designated, as authorized in Article V, Section 11 of the City Charter, as an appropriation that shall not lapse at the end of this fiscal year but continue until the earlier of the expiration of the grant or the City's expenditure of all funds received from such grant.

Introduced, considered favorably on first reading on May 6, 2025, and approved on second reading for final passage on May 20, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 30, 2025

Approving Attorney: Heather N. Jarvis

FEMA BRIC Grant

Nature-based Solutions Master Plan

Kirk Longstein

Senior Environmental Planner



Fort Collins Land Use Code Section 5.6.1 applies if any portion of a development site is within five hundred (500) feet of an area or feature identified as a natural habitat or feature.

In 2024, Environmental Planning reviewed **124 development applications with Natural Habitats and Features.**

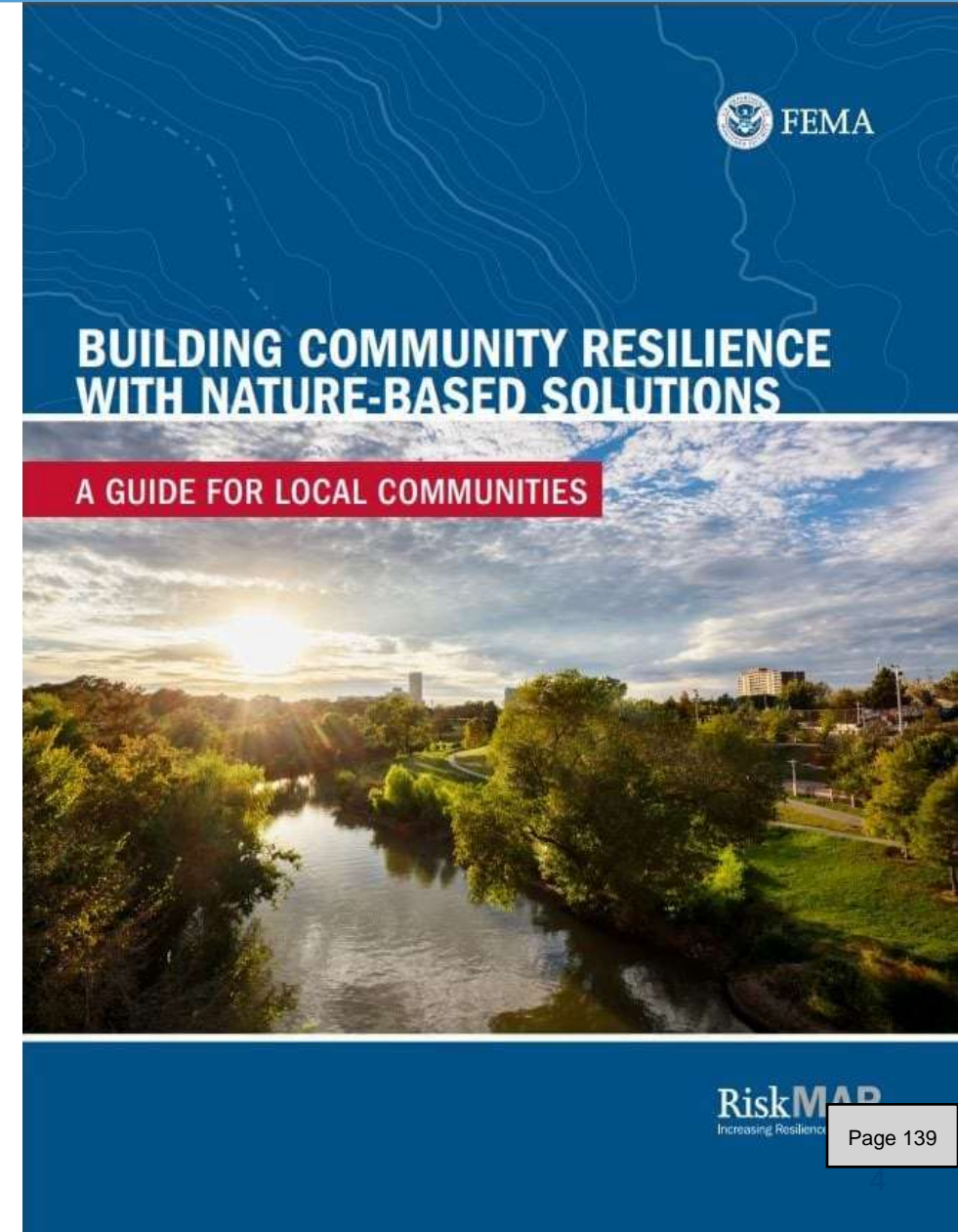
The Natural Habitat Buffer Zone inspector provided **more than 100 visits to 32 active development sites** with natural habitats and features.



- LUC 5.10.1 lacks sufficient consideration for enhanced ecological function within landscape treatment areas, street trees, and stormwater facilities.
- LUC 5.6.1(D)(3) allows Utilities (e.g., Stormwater) to be located inside the Natural Habitat Buffer Zone but there lacks sufficient guidelines that ensure such improvements are compatible with natural habitat features.
- Stormwater Criteria Appendix B guidelines lack clarity on how to enhance ecological function to the existing (or constructed) habitat characteristics.



- FY 2023 FEMA BRIC Grant = \$398,431
- Subrecipient through the State of Colorado
- City In-Kind contribution = public involvement Staff time
- Grant Agreement Period of Performance: October 2024 – October 2027
- Create a Nature-Based Solutions Master Plan + Site Scale Concept Design



- **Purpose + Vision**

The creation of a Nature-Based Solutions Master Plan provides a companion framework to the stormwater design criteria that is focused on using ecological design as a primary tool to manage flood risk.

- **Goals**

Community-defined environmental planning outcomes.

- **Key Opportunities + Case Stories**

Focus on enhancing new stormwater infrastructure, natural habitat buffer zones, and habitat connectivity in the urban core.

- **Barriers + Gaps**

Identify regulatory, design, and administrative constraints limiting adoption of nature-based solutions and where policy updates are needed.

- **Technical Design Guidelines**

Technical design guidelines offer practical guidance for implementing nature-based solutions through site design, material selection, and construction techniques.

- **Site Scale Concept Design**

This section presents a conceptual design that integrates flood control, native habitat restoration, and passive recreation. By applying the forthcoming Nature-based Solution design guidelines, the concept will showcase how stormwater infrastructure can deliver ecological function and public benefit on an actual site within the Dry Creek drainage basin.



Evaluate gaps, identify key opportunities and provide policy recommendations to City Council that achieve the following outcomes:

1. **Adapt existing development standards** to align with urban infill and the redevelopment of commercial centers.
2. **Resolve policy conflicts** between engineering design criteria and ecological principles.
3. **Improve predictability** for the development review process.
4. **Enhance environmental planning outcomes** on developments where Natural Habitat Buffer Zones are not present.



1. Request for Proposal – third-party selection
2. Public Involvement
3. City Council Status Update



File Attachments for Item:

9. First Reading of Ordinance No. 077, 2025, Replacing Ordinance No. 040, 2025, and Approving the Intergovernmental Agreement Between the City of Fort Collins and the Fort Collins, Colorado, Downtown Development Authority Governing the Use of a Line of Credit for the Financing of Downtown Development Authority Projects and Programs and Delegating to the Downtown Development Authority Thereunder the Power to Incur Debt in Relation Thereto as Authorized by State Law.

The purpose of this item is to approve an ordinance to authorize the Mayor to sign an intergovernmental agreement between the City and Downtown Development Authority (DDA) that will govern the processes for administering a line of credit for financing DDA projects and programs for a six-year term from 2025 through 2030 and a maximum pre-draw limit of \$5 million. **This item was previously approved by Ordinance No. 040, 2025; however, the Exhibits A, B, and C-1 to C-5 attached to and part of the intergovernmental agreement were not included in the meeting packet on March 18, 2025, for the second reading of the Ordinance. The only changes on this item for its approval and replacement of Ordinance No. 040, 2025, other than updating the dates, are the inclusion of the intergovernmental agreement attachments.**

The current Line of Credit (LOC) established in 2012 and renewed in 2018 by the City on behalf of the DDA expired at the end of 2024. The City and DDA began taking steps in early 2024 to renew this debt instrument with First National Bank of Omaha (FNBO) for another six-year term, as it will be needed by the DDA to execute its projects and programs beginning in budget year 2025 and continuing through 2030. The renewal of the bank authorized Line of Credit is needed by the DDA to satisfy compliance with C.R.S. § 31- 25-807(3)(a)(II).

On November 6, 2024, the Council Finance Committee reviewed the purpose and approach for bringing forth a third IGA to accommodate the DDA's authorization to use a Line of Credit and satisfy compliance with C.R.S. § 31- 25-807(3)(a)(II). The Council Finance Committee was supportive of advancement of the IGA to Council.

On February 13, 2025, the DDA Board adopted Resolution 2025-02 authorizing the DDA's approval of the IGA and the line of credit promissory note from First National Bank of Omaha. The IGA is now advanced to Council and pursuant to the DDA Act requires adoption by ordinance.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Matt Robenalt, Executive Director, Downtown Development Authority
Kristy Klenk, Finance & HR Manager, Downtown Development Authority
Adam Halvorson, Sr Analyst, Treasury, City of Fort Collins

SUBJECT

First Reading of Ordinance No. 077, 2025, Replacing Ordinance No. 040, 2025, and Approving the Intergovernmental Agreement Between the City of Fort Collins and the Fort Collins, Colorado, Downtown Development Authority Governing the Use of a Line of Credit for the Financing of Downtown Development Authority Projects and Programs and Delegating to the Downtown Development Authority Thereunder the Power to Incur Debt in Relation Thereto as Authorized by State Law.

EXECUTIVE SUMMARY

The purpose of this item is to approve an ordinance to authorize the Mayor to sign an intergovernmental agreement between the City and Downtown Development Authority (DDA) that will govern the processes for administering a line of credit for financing DDA projects and programs for a six-year term from 2025 through 2030 and a maximum pre-draw limit of \$5 million. **This item was previously approved by Ordinance No. 040, 2025; however, the Exhibits A, B, and C-1 to C-5 attached to and part of the intergovernmental agreement were not included in the meeting packet on March 18, 2025, for the second reading of the Ordinance. The only changes on this item for its approval and replacement of Ordinance No. 040, 2025, other than updating the dates, are the inclusion of the intergovernmental agreement attachments.**

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On November 6, 2024, the Council Finance Committee reviewed the purpose and approach for bringing forth a third IGA to accommodate the DDA's authorization to use a Line of Credit and satisfy compliance with C.R.S. § 31- 25-807(3)(a)(II). The Council Finance Committee was supportive of advancement of the IGA to Council.

On February 13, 2025, the DDA Board adopted Resolution 2025-02 authorizing the DDA's approval of the IGA and the line of credit promissory note from First National Bank of Omaha. The IGA is now advanced to Council and pursuant to the DDA Act requires adoption by ordinance.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on First Reading.

BACKGROUND / DISCUSSION

Title 31, Article 25, part 8, Colorado Revised Statutes and Chapter 2, Article IV, Division 1 of the City Code (the “DDA Statute”) has inherent processes that require the City and the DDA to work collaboratively to achieve the purpose of the legislation. Among these expected collaborations is the process for financing DDA activities. In 2012, Council adopted Ordinance No. 089, 2012, and the City and DDA established a line of credit (LOC) with First National Bank to satisfy the statutory requirement to generate proceeds from debt to be used by the DDA to execute its projects and programs and implement the DDA’s Plan of Development. The tax increment revenues are generated each year by the increase in property values within the boundaries of the DDA and the DDA Statutes require that those revenues be applied towards debt, and it is the proceeds from the debt that is technically used to fund projects and programs of the DDA.

In 2018, Council adopted Ordinance No. 066, 2018, to renew the LOC for another six-year term from 2019 to 2024 year end. This LOC expired at the end of 2024. The DDA and City began taking steps in 2024 to renew this debt instrument with First National Bank for another six-year term, as it will be needed by the DDA to execute its projects and programs beginning in budget year 2025.

Additionally, in 2012, Council approved Resolution 2012-081 and the DDA and City created an intergovernmental agreement (“2012 IGA”) that established the process by which the two organizations would:

- Initiate requests for a draw from the LOC
- Verify tax increment revenue cash available to repay the debt
- Account for the loan proceeds released from the LOC, and
- Execute repayment with tax increment within 7 days of the initial LOC draw

A second Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs was approved by City Council by Resolution 2018-046 to reflect the terms of the renewed LOC (“2018 IGA”).

What is New for 2025?

In 2023, Senate Bill 23-175 (“SB23-175”) was signed into law, amending state law to provide a new hybridized option for meeting the statutory requirements for financing the projects and programs of downtown development authorities. SB23-175 authorizes downtown development authorities to incur debt to be repaid by tax increment revenues if an intergovernmental agreement is in place between the municipality and the downtown development authority. Prior to SB23-175, the statute required that all debt issued for the benefit of the development authority be exclusively the debt of the municipality.

Many of the downtown development authorities in Colorado use the same line of credit financing approach as the Fort Collins DDA and City of Fort Collins. Because the approach has some steps that amount to busy-work for municipal finance staff, there was wide support to create an option to transfer much of the administrative burden to development authorities by allowing them to incur their own debt, pursuant to SB23-175.

To implement the authority granted by SB23-175, the staff of the City and the DDA began discussions as the 2018 IGA term ended on the steps necessary to establish a new line of credit. Staff also conferred with legal counsel serving the DDA and the City, as well as the bank through which the previous line of credit was issued, First National Bank. Based on these discussions, staff and legal counsel have drafted a third

intergovernmental agreement to clearly define the scope of authority being delegated to the DDA and to establish the necessary procedural steps between the City, DDA and bank.

The draft 2025 intergovernmental agreement (the “2025 IGA”) and the line of credit loan promissory note from First National Bank of Omaha were approved by the DDA Board on February 13, 2025. The 2025 IGA has now advanced to Council for approval. This schedule for adoption is several months ahead of when the City will receive the distribution of the 2025 tax increment revenues from the County Treasurer that would be applied to pay off any draws from a new line of credit established pursuant to the 2025 IGA, and this timing is supportive of the DDA's cashflow timing needs for projects it will be funding in 2025.

The purpose of this item is to correct an omission from the second reading meeting packet of Ordinance No. 040, 2025. This Ordinance and the 2025 IGA attached hereto as Exhibit “A”, if approved, will replace Ordinance No. 040, 2025 and the version of 2025 IGA which was attached thereto Exhibit “A”. On March 18, 2025, the version of the 2025 IGA before Council on second reading of Ordinance No. 040, 2025, was not complete because Exhibits A, B, and C-1 to C-5 attached to and part of the 2025 IGA were not included in the meeting packet. Other than changing the dates of action on and effective dates of this Ordinance and the proper inclusion of Exhibits A, B, and C-1 to C-5 to the 2025 IGA, this Ordinance, the 2025 IGA attached thereto as Exhibit “A”, and other explanatory and supporting materials (including this Agenda Item Summary) are the same as those presented to Council for its consideration on second reading and final passage of Ordinance No. 040, 2025 on March 18, 2025.

CITY FINANCIAL IMPACTS

When the DDA and City began using the LOC financing approach in 2012, it provided benefits and positive impacts over the much more expensive forms of financing such as issuance of traditional revenue bonds, certificates of participation, or private-placement financing with banks and other investors. Using the LOC approach to finance DDA projects and programs results in a significantly shorter period of time in which the debt incurs interest. The savings on financing costs means that more funding is available to invest directly into projects and programs in the downtown, and less is spent on finance fees and interest expenses.

DDA staff analyzed the savings from this approach used between 2012-2024 against that of the other forms of traditional financing used by the City and DDA in the past. The financial savings is significant. Since 2012, the LOC total interest and financing fees for \$46,758,242 of principal debt was \$19,006. In contrast, the total interest and finance fees for the City/DDA financing approach that traditionally used certificates of participation and private placement bonds for \$15,279,063 of principal debt was \$3,412,065.

Other benefits and positive impacts using the LOC include:

- Strong expression of fiduciary stewardship of public funds;
- Recognition that investment of tax increment funds, derived from property tax assessments of overlapping tax entities, creates positive growth in assessed value and thereby increased the value of the property tax base for all overlapping entities. (82% of the DDA tax increment comes from tax entities other than the City such as Larimer County and Poudre School District who benefit financially from the DDA's automatic share back of tax increment and the rising value of base assessed valuation in the district);
- Funding partnerships of the DDA undertaken with the City and private sector require no cost of capital charges assessed to the projects because the DDA has found a very inexpensive method to finance its debt used to support these partnerships; and
- Every draw made on the LOC is paid off within seven (7) days, which means no effect at the end of the calendar year on the City's fund balance or City Annual Comprehensive Financial Report, in which the DDA's finances are reported.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

At its November 6, 2024 meeting, the Council Finance Committee was supportive of bringing the 2025 IGA forward to accommodate the renewal of the bank authorized Line of Credit to be used by the DDA and satisfy compliance with C.R.S. §31-25-807(3)(a)(II).

DDA Board

At its regular meeting on February 13, 2025, the DDA Board of Directors adopted Resolution 2025-02, recommending to the Fort Collins City Council the renewal of a Line of Credit with First National Bank of Omaha for a six (6) year period with a maximum per-draw limit of five million dollars (\$5,000,000) to be placed in the Downtown Development Authority's Financing Activity Fund for expenditure on certain projects and programs in accordance with the Downtown Development Authority Plan of Development and the approval of the Intergovernmental Agreement governing the Line of Credit.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Ordinance No. 077, 2025
2. Exhibit A to Ordinance
3. Downtown Development Authority Boundary Map
4. Downtown Development Authority Board Meeting Minutes, February 13, 2025 (excerpt)
5. Downtown Development Authority Resolution 2025-02
6. Council Finance Committee Minutes, November 6, 2024 (excerpt)
7. DDA Expenditures from 2021 to 2023 (Requested from CFC)

ORDINANCE NO. 077, 2025
OF THE COUNCIL OF THE CITY OF FORT COLLINS
REPLACING ORDINANCE NO. 040, 2025, AND
APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND THE FORT
COLLINS, COLORADO, DOWNTOWN DEVELOPMENT
AUTHORITY GOVERNING THE USE OF A LINE OF CREDIT FOR
THE FINANCING OF DOWNTOWN DEVELOPMENT AUTHORITY
PROJECTS AND PROGRAMS AND DELEGATING TO THE
DOWNTOWN DEVELOPMENT AUTHORITY THEREUNDER THE
POWER TO INCUR DEBT IN RELATION THERETO AS
AUTHORIZED BY STATE LAW

A. On April 21, 1981, City Council approved Ordinance No. 046, 1981 to establish the Fort Collins, Colorado, Downtown Development Authority (“DDA”), pursuant to the provisions of Title 31, Article 25, part 8, Colorado Revised Statutes and Chapter 2, Article IV, Division 1 of the City Code (the “DDA Statute”).

B. The DDA Statute requires that the organization of downtown development authorities will serve a public use; promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; halt or prevent deterioration of property values or structures within central business districts; halt or prevent the growth of blighted areas within such districts; and assist municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof.

C. The primary means of financing DDA projects and programs is through a property tax increment collected within the DDA boundaries, and C.R.S. § 31-25-807(3)(a)(II) requires that the City or DDA must incur some form of debt in order to finance such projects and programs of the DDA using property tax increment revenues collected within the DDA boundaries.

D. The property tax revenues of the DDA, once distributed to the City by Larimer County, Colorado, are deposited into an account held by the City (the “DDA Debt Service Fund”).

E. On October 15, 2012, the City and the DDA entered into an intergovernmental agreement to establish a line of credit drawn from the account in which property tax increment revenues were deposited in order to finance DDA projects and programs with a six-year term (the “2012 IGA”).

F. On September 19, 2018, the City and the DDA entered into a second intergovernmental agreement to extend agreement for another six-year term and to increase the per-draw line of credit to \$5,000,000 (the “2018 IGA”).

G. Effective August 7, 2023, C.R.S. § 31-25-807(3)(a)(II) was amended by Senate Bill 23-175 to provide that a city, pursuant to an intergovernmental agreement with a downtown development authority and approved by city ordinance, may delegate to a downtown development authority the power to incur loans or indebtedness or obtain advances and to pledge tax increment money for the payment of any loans, advances, or indebtedness.

H. The City desires to delegate to the DDA the power to incur such indebtedness by establishing a line of credit with First National Bank of Omaha on the same general terms as the City under the 2012 IGA and 2018 IGA (the “DDA Line of Credit”), as authorized by C.R.S § 31-25-807(a)(3)(II), as amended, which will allow for the shifting of certain administrative burdens related to the financing of DDA projects and programs from the City to the DDA, which is beneficial to the City and which the DDA is willing and able to perform.

I. In order to update and replace the line of credit arrangement established in the 2018 IGA, and to shift the administrative burden related to the financing of DDA operations from the City to the DDA, staff of the City and the DDA have negotiated a new intergovernmental agreement regarding the financing of DDA projects and programs using the DDA Line of Credit, in the form attached hereto as Exhibit “A” (the “2025 IGA”), which has a term of six years and provides for a maximum per-draw limit of five million dollars.

J. The Board of Directors of the DDA, through the adoption of Resolution 2025-02, has expressed its willingness to perform the administrative burdens of financing its operations, as described in the 2025 IGA, and recommends to the City Council approval of the 2025 IGA.

K. A line of credit established by the DDA with a financial institution, as authorized by the City under the 2025 IGA, meets the requirements of C.R.S. § 31-25-807(3)(a)(II), as amended, and the costs and interest associated with such a line of credit are much lower than would be the case with other types of financing.

L. A line of credit does not create a multi-fiscal year direct or indirect debt or financial obligation on the part of the City or the DDA within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision.

M. It is in the best interests of both the City and the DDA to reduce financing costs of DDA project and programs to preserve the maximum amount of property tax increment revenues for DDA projects and programs within its boundaries.

N. The City is authorized to enter into intergovernmental agreements to provide any function, service, or facility under Article II, Section 16 of the Charter of the City of Fort Collins and C.R.S. § 29-1-203, and the City desires to enter into the 2025 IGA.

O. This Ordinance and the 2025 IGA attached hereto as Exhibit "A" replaces Ordinance No. 040, 2025 and the version of 2025 IGA which was attached thereto Exhibit "A". The version of the 2025 IGA before Council on second reading of Ordinance No. 040, 2025 was not complete because Exhibits A, B, and C-1 to C-5 attached to and part of the 2025 IGA were not included in the meeting packet. Other than changing the dates of action on and effective dates of this Ordinance and the proper inclusion of Exhibits A, B, and C-1 to C-5 to the 2025 IGA, this Ordinance, the 2025 IGA attached thereto as Exhibit "A", and other explanatory and supporting materials are the same as those presented to Council for its consideration on second reading and final passage of Ordinance No. 040, 2025, on March 18, 2025.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to execute the 2025 IGA on behalf of the City in substantially the form attached hereto as Exhibit "A", and incorporated in by this reference with such modifications as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Ordinance.

Introduced, considered favorably on first reading on May 6, 2025, and approved on second reading for final passage on May 20, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 30, 2025

Approving Attorney: Dianne Criswell

**THIRD INTERGOVERNMENTAL AGREEMENT
GOVERNING A LINE OF CREDIT FOR FINANCING
DOWNTOWN DEVELOPMENT AUTHORITY
PROJECTS AND PROGRAMS**

This INTERGOVERNMENTAL AGREEMENT (“IGA”) is entered into this _____ day of _____, 2025, by and between the FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic (the “DDA”) and the CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation (the “City”).

WITNESSETH:

WHEREAS, the DDA has been created pursuant to the provisions of Title 31, Article 25, part 8, Colorado Revised Statutes, and Chapter 2, Article IV, Division 1 of the City Code (the “DDA Statute”); and

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities will serve a public use; promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within central business districts; halt or prevent the growth of blighted areas within such district, and assist municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof; and

WHEREAS, the DDA provides an invaluable service to the City by promoting the health, safety, prosperity, security and general welfare of those living and working within its boundaries; and

WHEREAS, pursuant to C.R.S. § 31-25-808(1)(f), the DDA is empowered to enter into contracts with governmental agencies and public bodies in furtherance of the statutory mission of the DDA; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council of the City, by ordinance or resolution, to enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, the primary means of financing DDA projects and programs is through the use of property tax increment collected within the DDA boundaries, and C.R.S. §31-25-807(3)(a)(II) requires that the City or DDA incur some form of debt in order to finance such projects and programs using property tax increment revenues collected within the DDA boundaries; and

WHEREAS, such property tax increment revenues, once remitted to the City by Larimer County, Colorado, are deposited into an account held by the City (the “DDA Debt Service Fund”); and

WHEREAS, on October 15, 2012, the parties entered in that certain agreement entitled “Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs” which established a line of credit to finance certain DDA projects and programs and defined the process for use of such line of credit (the “2012 IGA”); and

WHEREAS, the 2012 IGA had a term of six (6) years and expired on December 31, 2018; and

WHEREAS, on September 19, 2018, the parties entered in that certain agreement entitled “Second Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs” which extended the term of the line of credit established under the 2012 IGA and increased the per-draw limit under the line of credit to \$5,000,000 (the “2018 IGA”); and

WHEREAS, the 2018 IGA had a term of six (6) years and expired on December 31, 2024; and

WHEREAS, under both the 2012 IGA and the 2018 IGA, the line of credit was established between the City and First National Bank of Omaha (“First National Bank”) through execution of a line of credit agreement and promissory note, consistent with the DDA Statute, which at the time required that the City incur the debt necessary to finance DDA projects and programs using property tax increment revenues under C.R.S. § 31-25-807(3)(a)(II); and

WHEREAS, effective August 7, 2023, C.R.S. § 31-25-807(3)(a)(II) was amended by Senate Bill 23-175 to provide that a city, pursuant to an intergovernmental agreement with a downtown development authority, approved by ordinance of the city, may delegate to a downtown development authority the power to incur loans or indebtedness or obtain advances and to pledge tax increment money for the payment of any loans, advances, or indebtedness; and

WHEREAS, the City, under this IGA, desires to delegate to the DDA the power to incur the indebtedness evidenced by the line of credit agreement and promissory note, and related assignment of deposit account, described in Section 2 below, which will allow for the shifting of certain administrative burdens related to the financing of DDA operations from the City to the DDA, which is beneficial to the City and which the DDA is willing and able to perform; and

WHEREAS, the parties desire to enter into this IGA for the purpose of replacing the line of credit established under the 2012 IGA and the 2018 IGA, for a term of six (6) years, on the same general terms and conditions contained in the 2012 IGA and the 2018 IGA, except as described above and as depicted on Exhibit B (“Exhibit B” being defined and described in Section 3.4 below); and

WHEREAS, a line of credit established by the DDA with a financial institution, as authorized by the City pursuant to this IGA, meets the requirements of C.R.S. § 31-25-807(3)(a)(II), as amended, and the costs and interest associated with such a line of credit are much lower than would be the case with other types of financing; and

WHEREAS, it is in the best interests of both the DDA and the City to reduce financing costs of DDA projects and programs in order to preserve the maximum amount of property tax increment revenues for DDA projects and programs within its boundaries.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties as hereafter provided and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. TERM.

The term of this IGA shall commence upon execution by the parties and continue through December 31, 2030 (“Term”), unless earlier terminated by mutual agreement.

2. LINE OF CREDIT.

Attached hereto as **Exhibit A**, and incorporated herein by reference, is a copy of the Promissory Note and Agreement, and related Assignment of Deposit Account (collectively, the “LOC Agreement”), between the DDA and First National Bank establishing an annual revolving line of credit, renewable each fiscal year of the Term for the benefit of the DDA, and which, in addition to other terms and conditions for its use, provides for a maximum per-draw limit of Five Million Dollars (\$5,000,000) (the “Line of Credit”).

3. REQUIREMENTS FOR DRAWS ON LINE OF CREDIT.

Any draw on the Line of Credit by the DDA during the Term shall be in accordance with all of the following requirements:

3.1 The DDA Board shall annually adopt a resolution approving its budget and shall adopt a resolution recommending the City Council of the City appropriate DDA monies to fund the DDA budget; and

3.2 The City Council of the City shall annually approve the DDA budget and by ordinance appropriate funds therefor, including funds for debt service for the Line of Credit and expenditure of the Line of Credit proceeds, as applicable; and

3.3 Any draw on the Line of Credit shall be used only to pay the costs of DDA projects and programs approved in the annual DDA budget and for which funds have been appropriated by the City; and

3.4 The sequence of steps for drawing on the line of credit shall be as depicted in the flowchart contained in **Exhibit B**, attached hereto and incorporated herein by reference; and

3.5 At least fourteen (14) days prior to any draw on the Line of Credit, the DDA's Executive Director shall determine and report to the City's Chief Financial Officer the current level of total debt that has at that time been issued under the existing voter authorization for DDA debt and further shall verify and report to the City's Chief Financial Officer that there are sufficient tax increment monies in the DDA's Debt Service Fund to replenish the Line of Credit in the amount of the draw and the interest cost. The DDA's Executive Director shall supply the City's Chief Financial Officer with documentation supporting such determinations and reporting, with examples of the documentation to be supplied being depicted in **Exhibits C-1 through C-5**, attached hereto and incorporated herein by reference. The DDA shall also notify the City's Chief Financial Officer of the date on which the DDA intends to make a draw request. The City's Chief Financial Officer shall review such information and documentation reported, and shall promptly notify the DDA of any errors or deficiencies identified; and

3.6 The DDA shall have the authority to request any draw on the Line of Credit consistent with the LOC Agreement and this IGA; provided, however, that the DDA shall make no draw on the Line of Credit in excess of available debt authorization, available tax increment monies, or which would result in the repayment of the Line of Credit after the then fiscal year. The DDA shall notify the City's Chief Financial Officer of any draw request no later than twenty-four (24) hours after making any such request; and

3.7 At the time of a draw request by the DDA, the City's Chief Financial Officer shall initiate such action as is necessary to repay the draw using funds from the DDA's Debt Service Fund within seven (7) business days of the DDA's receipt of the draw, such that the Line of Credit is fully replenished to its Five Million Dollars (\$5,000,000) limit of available credit within seven (7) business days of receipt of each such draw; and

3.8 Upon receipt from First National Bank, the DDA shall transfer the proceeds from the related Line of Credit draw into the City-held DDA Financing Activity Fund, and the City's Chief Financial Officer shall cause such funds to be available to the DDA.

4. EARLY TERMINATION

In the event that for any reason the Line of Credit is terminated, the parties agree that they will work together in good faith to secure another line of credit that meets the purposes of this IGA, subject to such City Council and DDA Board approval as may be required. In such event, any such new letter of credit shall be subject to the provisions of, but shall not require an amendment to, this IGA. The parties acknowledge that the tax increment funds that comprise the DDA's Debt Service Fund are held in a First National Bank account owned by the City and that, under the section of the LOC Agreement entitled "Conditions Precedent to an Advance," the City must continue to hold such funds in a First National Bank account in order for the Line of Credit to remain in effect. In recognition thereof, the City agrees to notify the DDA, as soon as is practicable, of any decision to change banking providers, to allow the parties sufficient time to negotiate a replacement for the Line of Credit with the City's new banking provider.

5. NOTICE.

All notices to be given to parties hereunder shall be in writing and shall be sent by certified mail to the addresses specified below:

DDA: Downtown Development Authority
Attn: Executive Director
19 Old Town Square, Suite 230
Fort Collins, CO 80524

With a copy to: Joshua C. Liley
Liley Law, LLC
2627 Redwing Road, Suite 342
Fort Collins, CO 80526

CITY: City of Fort Collins
Attn: Chief Financial Officer
215 North Manson Street
Fort Collins, CO 80524

With a copy to: City of Fort Collins
Attn: City Attorney
300 LaPorte Avenue
Fort Collins, CO 80521

6. THIRD PARTY BENEFICIARIES.

This IGA shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

7. INTERPRETATION.

Nothing in this IGA is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of the City or the DDA within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision.

8. GOVERNING LAW/SEVERABILITY.

The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this IGA. In the event any provision of this IGA shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this IGA.

IN WITNESS WHEREOF, the parties have executed this IGA the day and year first above written.

CITY OF FORT COLLINS, COLORADO,
a Colorado municipal corporation

By: _____
Jeni Arndt, Mayor

APPROVED AS TO FORM:

Dianne Criswell, Senior Assistant City Attorney

ATTEST:

Name: _____ Title: _____

THE FORT COLLINS, COLORADO,
DOWNTOWN DEVELOPMENT
AUTHORITY, a body corporate and politic

By: _____
David Lingle, Chair

ATTEST:

Cheryl Zimlich, Secretary

EXHIBIT
A TO IGA

Item 9.

#####00000000000577812052024

PROMISSORY NOTE
AND
AGREEMENT

Borrower: Fort Collins, Colorado, Downtown Development
Authority
19 Old Town Square, Suite #230
Fort Collins, CO 80524

Lender: First National Bank of Omaha
Branch #001
1620 Dodge Street
Omaha, NE 68197

Principal Amount: \$5,000,000.00

Date of Note: February 5, 2025

THIS PROMISSORY NOTE AND AGREEMENT (the "Note") is entered into effective the Date of the Note set forth above by Borrower and Lender identified herein. For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby state and agree as follows:

PROMISE TO PAY. Fort Collins, Colorado, Downtown Development Authority ("Borrower") promises to pay to First National Bank of Omaha ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million & 00/100 Dollars (\$5,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance and any other fees and charges which may be due. Interest shall be calculated from the date of each Advance until repayment of each Advance. The maturity date of this Note shall be December 31, 2025. The maturity date of this Note will be automatically extended one year for five consecutive years, ending December 31, 2030, so long as Borrower fully repays all outstanding Indebtedness as of each maturity date, and so long as no Event of Default shall have occurred during the preceding year.

LINE OF CREDIT. Lender agrees to make Advances to Borrower from time to time from the date of this Note until the maturity date, provided that the aggregate amount of such Advances outstanding at any time does not exceed the maximum principal amount of this Note. This Note evidences a revolving line of credit. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested either orally or in writing by Borrower or as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. Each Advance shall be conclusively deemed to have been made at the request of and for the benefit of Borrower when (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. Each Advance will be deposited into a deposit account (account number _____) maintained with Lender by the Borrower and pledged by Borrower as Collateral for this Note and Loan (the "Pledged Deposit Account"). The Pledged Deposit Account shall be subject to a hold prohibiting any withdrawals from the Pledged Deposit Account until Borrower has repaid the amount of all Advances and any other outstanding amounts payable in accordance with the terms of this Note to Lender. Upon Borrower's satisfaction of any such payments, Lender will release the hold on the Pledged Deposit Account and Borrower shall be entitled to withdraw any funds in the Pledged Deposit Account. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Note and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security Interests; (4) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Note or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Note, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Note or under any Related Document.

Deposit of Tax Increment Funds. Tax Increment Funds or cash deposits of an amount in excess of the requested Advance and any and all outstanding and unpaid amounts of principal and interest due under this Note shall be held in the depository account (account number ending in x739) maintained with the Lender by the City of Fort Collins, Colorado.

PAYMENT. Borrower will pay this loan according to the following payment schedule: Borrower will pay the principal amount of each Advance made hereunder within seven (7) business days from the date of that Advance, together with interest accrued on that Advance, and any fees and expenses owing on that Advance. In addition, on December 31st of each year, Borrower shall pay to Lender a maturity payment of all outstanding principal, interest, and other fees and expenses which may then be due and owing to Lender under the Note. Interest will accrue on each Advance at the Variable Interest Rate set forth below, subject to a minimum finance charge per Advance of Five Hundred and 00/100 dollars (\$500.00). Unless otherwise agreed or required by applicable law, payments will be applied to interest, principal, and expenses owing under the Note in an order determined by Lender. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the U.S. Prime Rate as published by the Wall Street Journal and currently is determined by the base rate on corporate loans posted by at least seventy percent (70%) of the nation's ten (10) largest banks (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day during the term of the loan. Borrower understands that Lender may make loans based on other rates as well. **The Index currently is 7.500% per annum.** Interest on the unpaid principal balance of this Note will be calculated as described in the "INTEREST CALCULATION METHOD" paragraph using a rate equal to the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 7.500% per annum based on a year of 360 days. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 3.000% per annum or more than the maximum rate allowed by applicable law.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: First National Bank of Omaha, Branch #001, 1620 Dodge Street, Omaha, NE 68197.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$25.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding an additional 6.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of the Collateral or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf, under this Note or the related documents in connection with the obtaining of the loan evidenced by this Note or any security document directly or indirectly securing repayment of this Note is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Note or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Execution; Attachment. Any execution or attachment is levied against the Collateral, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Default Under Other Lien Documents. A default occurs under any security agreement covering all or any portion of the Collateral.

Judgment. Unless adequately covered by insurance in the opinion of Lender, the entry of a final judgment for the payment of money involving more than ten thousand dollars (\$10,000.00) against Borrower and the failure by Borrower to discharge the same, or cause it to be discharged, or bonded off to Lender's satisfaction, within thirty (30) days from the date of the order, decree or process under which or pursuant to which such judgment was entered.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS; EFFECT OF AN EVENT OF DEFAULT. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the reasonable costs of such collection. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including without limitation attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Organization. Borrower is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Colorado. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 19 Old Town Square, Suite #230, Fort Collins, CO 80524. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Authorization. Borrower's execution, delivery, and performance of this Note and all the Related Documents have been duly authorized by all necessary action by Borrower, including approvals of the City Council of the City of Fort Collins, Colorado, and do not conflict with, result in a violation of, or constitute a default under (1) any provision of any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties. Borrower has the power and authority to enter into the Note and the Related Documents and to grant collateral as security for the Loan. Borrower has the further power and authority to carry on Borrower's business as presently conducted.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan or this Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Repayment. Repay all Advances in accordance with the terms of this Note.

Annual Fee. Pay to Lender an annual fee in the amount of One Thousand Two Hundred Fifty and 00/100 dollars (\$1,250.00) ("Annual Fee"). Borrower will pay the initial Annual Fee on or before February 5, 2025 and on or before each February 5th thereafter during the term of the Loan.

Financial Statements. Furnish Lender with the following:

Required FYE Financial Statements. As soon as available, but in no event later than six months after the end of each year, Borrower's asset and liabilities balance sheet and income statement for Borrower's fiscal year most recently ended. Said report shall be prepared by Borrower consistent with GASB, audited by a certified public accountant acceptable to Lender, and in a format reasonably acceptable to Lender that includes both direct and contingent liabilities. Borrower shall provide Lender with such other financial statements and other related information at such frequencies and in such detail as Lender may reasonably request.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either

Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Colorado.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Larimer County, State of Colorado.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$30.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by an Assignment of Deposit Account dated February 5, 2025, and any and all other security agreements or documents and any and all other collateral agreements or documents associated with this Loan or Note whether now existing or hereafter arising.

ERRORS AND OMISSIONS. Borrower agrees, if requested by Lender, to fully cooperate in the correction, if necessary, in the reasonable discretion of Lender of any and all loan closing documents so that all documents accurately describe the loan between Lender and Borrower. Borrower agrees to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with Lender requests within thirty (30) days.

U.S.A. PATRIOT ACT. To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all banks to obtain and verify the identity of each person or business that opens an account. When Borrower opens an account, Lender will ask Borrower for information that will allow Lender to properly identify Borrower and Lender will verify that information. If Lender cannot properly verify identity within 30 calendar days, Lender reserves the right to deem all of the balance and accrued interest due and payable immediately.

ELECTRONIC COPIES. Lender may copy, electronically or otherwise, and thereafter destroy, the originals of this Agreement and/or Related Documents in the regular course of Lender's business. All such copies produced from an electronic form or by any other reliable means (i.e., photographic image or facsimile) shall in all respects be considered equivalent to an original, and Borrower hereby waives any rights or objections to the use of such copies.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Note, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Note. No alteration of or amendment to this Note shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Non-Liability of Lender. The relationship between Borrower and Lender created by this Note is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Lender and Borrower. Borrower is exercising Borrower's own judgment with respect to Borrower's business. All information supplied to Lender is for Lender's protection only and no other party is entitled to rely on such information. There is no duty for Lender to review, inspect, supervise or inform Borrower of any matter with respect to Borrower's business. Lender and Borrower intend that Lender may reasonably rely on all information supplied by Borrower to Lender, together with all representations and warranties given by Borrower to Lender, without investigation or confirmation by Lender and that any investigation or failure to investigate will not diminish Lender's right to so rely.

Notice of Lender's Breach. Borrower must notify Lender in writing of any breach of this Note or the Related Documents by Lender and any other claim, cause of action or offset against Lender within thirty (30) days after the occurrence of such breach or after the accrual of such claim, cause of action or offset. Borrower waives any claim, cause of action or offset for which notice is not given in accordance with this paragraph. Lender is entitled to rely on any failure to give such notice.

Indemnification of Lender. To the extent authorized by law, Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Lender's attorneys' fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Note and the exercise of the rights and remedies granted Lender under this, as well as by: (1) the ownership, use, operation, construction, renovation, demolition, preservation, management, repair, condition, or maintenance of any part of the Collateral; (2) the exercise of any of Borrower's rights collaterally assigned and pledged to Lender hereunder; (3) any failure of Borrower to perform any of its obligations hereunder; and/or (4) any failure of Borrower to comply with the environmental and ERISA obligations, representations and warranties set forth herein. The foregoing indemnity provisions shall survive the cancellation of this Note as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Note following default hereunder. Borrower's indemnity obligations under this section shall not in any way be affected by the presence or absence of covering insurance, or by the amount of such insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under any insurance policy or policies affecting the Collateral and/or Borrower's business activities. Should any claim, action or proceeding be made or brought against Lender by reason of any event as to which Borrower's indemnification obligations apply, then, upon Lender's demand, Borrower, at its sole cost and expense, shall defend such claim, action or proceeding in Borrower's name, if necessary, by the attorneys for Borrower's insurance carrier (if such claim, action or proceeding is covered by insurance), or otherwise by such attorneys as Lender shall approve. Lender may also engage its own attorneys at its reasonable discretion to defend Borrower and to assist in its defense and Borrower agrees to pay the fees and disbursements of such attorneys.

Counterparts. This Note may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Note.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Note unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Note shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Note. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Note, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Note. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Note shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Note shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Note.

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Note.

Borrower. The word "Borrower" means Fort Collins, Colorado, Downtown Development Authority and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

GASB. The word "GASB" means Governmental Accounting Standards Board.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means First National Bank of Omaha and its successors and assigns.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, individually, collectively, and interchangeably, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE AND AGREEMENT.

BORROWER:
FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

By: _____
Matthew J. Robenalt, Executive Director of Fort Collins, Colorado,
Downtown Development Authority

LENDER:
FIRST NATIONAL BANK OF OMAHA

By: _____
Mark Thiebaut, Relationship Manager, Commercial
Banking

#####00000000000583012052024

ASSIGNMENT OF DEPOSIT ACCOUNT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,000,000.00	2-05-2025	12-31-2030				10187	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "****" has been omitted due to text length limitations.

Grantor:	Fort Collins, Colorado, Downtown Development Authority 19 Old Town Square, Suite #230 Fort Collins, CO 80524	Lender:	First National Bank of Omaha Branch #001 1620 Dodge Street Omaha, NE 68197
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THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated February 5, 2025, is made and executed between Fort Collins, Colorado, Downtown Development Authority ("Grantor") and First National Bank of Omaha ("Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit account(s) described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" means the following described deposit account(s) ("Account"):

Checking Account Number TBD with Lender

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

CROSS-COLLATERALIZATION. In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Further Transfer. Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

Proceeds. Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there no longer is any Indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing the Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or ability to perform Grantor's obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all Indebtedness of Grantor to Lender immediately due and payable, without notice of any kind to Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Account and apply them to the Indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the Indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the Indebtedness will be paid to Grantor as the interests of Grantor may appear. Grantor agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the Indebtedness. Lender also shall have all the rights of a secured party under the Colorado Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

Transfer Title. Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Colorado Uniform Commercial Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Cumulative Remedies. All of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

ELECTRONIC COPIES. Lender may copy, electronically or otherwise, and thereafter destroy, the originals of this Agreement and/or Related Documents in the regular course of Lender's business. All such copies produced from an electronic form or by any other reliable means (i.e., photographic image or facsimile) shall in all respects be considered equivalent to an original, and Borrower hereby waives any rights or objections to the use of such copies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's reasonable costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the reasonable costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Colorado.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Larimer County, State of Colorado.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in

payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Account. The word "Account" means the deposit account(s) described in the "Collateral Description" section.

Agreement. The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

Borrower. The word "Borrower" means Fort Collins, Colorado, Downtown Development Authority and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means Fort Collins, Colorado, Downtown Development Authority.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

Lender. The word "Lender" means First National Bank of Omaha, its successors and assigns.

Note. The word "Note" means any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereinafter incurred or created, including, without limitation, all loans, advances, interest, costs debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower together with all modifications, increases, renewals, and extensions of the aforementioned. Additionally, hereby incorporated as if fully set forth herein are the terms and conditions of any promissory note, agreement or other document executed by Borrower and/or Lender indicating this security instrument or the property described herein shall be considered "Collateral" securing such promissory note, agreement, or other instrument, or any similar reference.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED FEBRUARY 5, 2025.

GRANTOR:

FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

By:

Matthew J. Robenalt, Executive Director of Fort
Collins, Colorado, Downtown Development
Authority

LENDER:

FIRST NATIONAL BANK OF OMAHA

X

Mark Thiebaut, Relationship Manager, Commercial
Banking

DDA/City Line of Credit Flowchart

A) Step 1 - DDA verifies cash available in Debt Service Fund
(Responsible party: DDA)

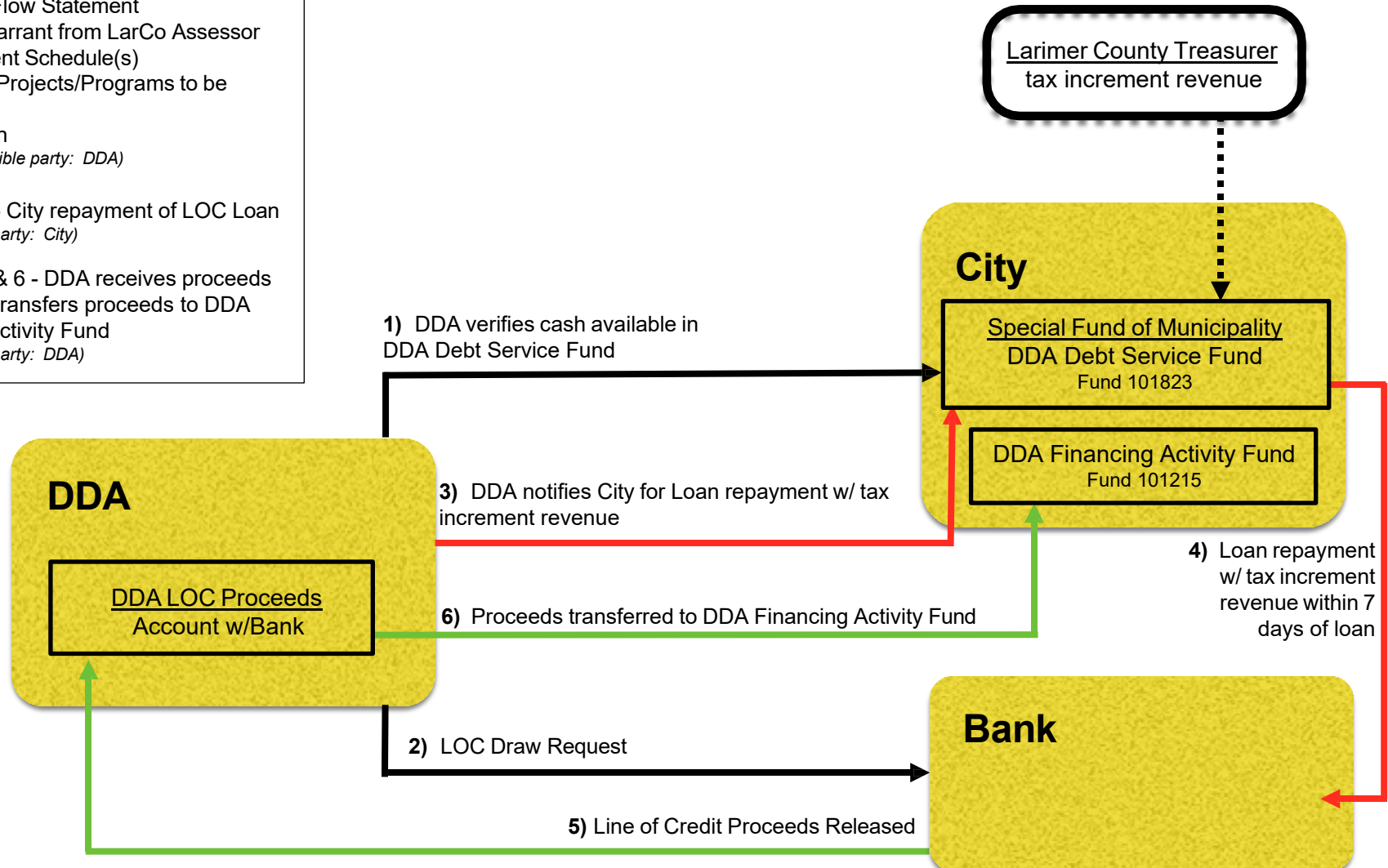
B) Step 2 & 3 - DDA initiate loan transfers with Bank and repayment from City. DDA provides documentation as verification:

- Cash Flow Statement
- Tax Warrant from LarCo Assessor
- Payment Schedule(s)
- List of Projects/Programs to be funded with loan

(Responsible party: DDA)

C) Step 4 - City repayment of LOC Loan
(Responsible party: City)

D) Step 5 & 6 - DDA receives proceeds from bank, transfers proceeds to DDA Financing Activity Fund
(Responsible party: DDA)



Downtown Development Authority Tax Increment Cash Flow Statement

A		B	C	D	E	F	G	H	I	J	K
1			Sep 2023 for FY24	Mar 2024 for FY24	Sep 2024 for FY25						
2		Actuals	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
3	Budget Year	<u>2023</u>	<u>2024</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>
FUND SOURCES											
4	Debt Service Accounting/ACFR Fund Balance	243,968	263,723	187,110	257,335						
5	Less: Unrealized Gain/Add: Unrealized Loss (Budget Year Only)			57,774	-						
6	TOTAL DEBT SERVICE CASH FUND BALANCE	243,968	263,723	244,884	257,335	254,854	233,569	270,615	307,691	357,315	406,987
7	Business Marketing and Communications Program & Gift Card Program Carryover			161,601							
8	Capital Asset General Maintenance 2023 Carryover			174,307							
9	Capital Asset Reserves 2023			384,583							
10	TOTAL BMC, CAPITAL ASSET GENERAL MAINTENANCE & RESERVES 2023	504,158		720,491							
REVENUES											
11	Tax Increment	6,240,806	8,416,289	8,074,540	8,115,031	8,105,517	8,605,869	9,133,490	9,689,867	10,276,566	10,895,240
12	Plus: Woodward Tax Increment	591,248	591,248	591,248	591,248	1,075,254	1,075,254	1,075,254	1,075,254	1,075,254	1,075,254
13	Interest Revenue	52,075	0	0	0	0	0	0	0	0	0
14	TOTAL REVENUES	6,884,129	9,007,537	8,665,788	8,706,279	9,180,771	9,681,123	10,208,744	10,765,121	11,351,820	11,970,494
COMMITTED EXPENDITURES											
15	Woodward Bond Issue Debt	431,611	431,611	431,611	431,611	731,173	731,173	731,173	731,173	731,173	731,173
16	Parking Garage IGA (Old Firehouse Parking Structure)	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000
17	Housing Catalyst/FC DDA LLC Loan (Oak 140)	121,869	121,869	121,869	121,869	121,869					
18	Total Multi Year Reimbursements After Savings + Collections	534,254	617,431	617,264	665,760	798,524	743,119	598,042	408,918	400,859	344,082
19	TOTAL COMMITMENTS	1,387,734	1,470,911	1,470,744	1,519,240	1,951,566	1,774,292	1,629,215	1,440,091	1,432,032	1,375,255
PM FEES & BMC/GC & MAINTENANCE FUNDS											
20	Project Management Fees	257,719	54,826	64,826	134,411	Developed Annually					
21	DDA 5 Mill Property Tax TIF Revenue to O&M		402,056	397,699	400,030	Developed Annually					
22	Business Marketing and Communications Program & Gift Card Program	350,200	107,000	318,743	328,305	338,154	348,299	358,748	369,510	380,596	392,014
23	Capital Asset General Maintenance	563,659	942,589	832,771	802,086	1,157,930	1,245,402	1,415,092	1,522,588	1,731,464	1,863,644
24	Capital Asset Reserve	306,505	444,691	449,191	395,571	419,362	523,805	486,306	637,396	514,689	510,357
25	Capital Asset Replacement Annual Program Contribution	141,695	189,300	262,900	211,200	Developed Annually					
26	TOTAL PM FEES, BUSINESS MARKETING/GC, & MAINTENANCE FUNDS	1,619,778	2,140,462	2,326,130	2,271,603	1,915,447	2,117,506	2,260,146	2,529,495	2,626,749	2,766,014
27	UNCOMMITTED DISCRETIONARY FUNDS	4,437,633	5,396,033	5,576,956	4,917,919	5,335,043	5,752,280	6,282,307	6,745,912	7,243,367	7,942,478
28	FUND BALANCE	187,110	263,854	257,335	254,854	233,569	270,615	307,691	357,315	406,987	293,734

EXHIBIT C - 1 TO IGA

A

1		B	C	D	E	F	G	H	I	J	K	Item 9.
2			Sep 2023 for FY24	Mar 2024 for FY24	Sep 2024 for FY25							
3	Budget Year	Actuals	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	
	FUND BALANCE ALLOCATIONS	<u>2023</u>	<u>2024</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2027</u>	<u>2028</u>	<u>2029</u>	<u>2030</u>	<u>2031</u>	
	Reserves											
29	Multi-year Reimbursements (5.5% of next year)	33,950	46,400	46,400	43,919	40,872	32,892	22,490	22,047	18,925	-	
30	Committed - Half of Next Year Commitments	210,935	210,935	210,935	210,935	150,000	150,000	150,000	150,000	150,000	0	
31	Reserves Total	244,884	257,335	257,335	254,853	190,872	182,892	172,490	172,047	168,925	0	
32	Balance - Uncommitted for following year			0	0	42,698	87,722	135,201	185,268	238,063	293,734	
33	Cash Fund Balance	244,884	257,335	257,335	254,854	233,569	270,615	307,690	357,315	406,988	293,734	
34	Adjustment for previous year											
35	Unrealized gain/(loss) for budget year	(57,774)										
36	Accounting/ACFR Fund Balance	187,110										

NOTES:												
Woodward Bond			\$6,050,000 bond (2013) - Current rate of 1.65%, reset each September 26th anniversary; Principal Bal = \$2,899,150.99 as of 1/1/2024									
Tax Increment Revenue			Budget Year 2025: August Certification from Larimer County Assessor's Office until final December Certification is released. Forecast Years 2026 through 2031: Historical growth average of 5.45% in Assessed Value									
Legend			Projected Property Tax RevenueProjected Approval of Continuation of LOCProjected Addition of New Alleys									

2024 TIF Tax Warrant

FORT COLLINS DOWNTOWN DEV. AUTH
Authority # 058

EXHIBIT C-2 TO IGA

12/20/2024
 Item 9.

Base 112,926,987
Increment 159,883,441
Total Assessed 272,810,428

<i>Auth</i>	<i>AuthorityName</i>	<i>Area %</i>	<i>Share Back%</i>	<i>Effective Increment *</i>	<i>Effective Base *</i>	<i>Total Assessed</i>	<i>TIF Levy</i>	<i>Total Revenue</i>	<i>Entity Revenue</i>	<i>TIF Revenue</i>
006	POUDRE R-1 SCHOOL DISTRICT	100.000000%	50	79,941,720	192,868,708	272,810,428	57.37	15,651,134	11,064,878	4,586,256
028	LARIMER COUNTY	100.000000%	50	79,941,720	192,868,708	272,810,428	22.461	6,127,595	4,332,024	1,795,571
032	CITY OF FORT COLLINS	100.000000%	0	159,883,441	112,926,987	272,810,428	9.797	2,672,724	1,106,346	1,566,378
054	HEALTH DISTRICT OF NORTHERN LARIMER CNTY	100.000000%	50	79,941,720	192,868,708	272,810,428	2.167	591,180	417,946	173,234
058	FORT COLLINS DOWNTOWN DEVELOPMENT AUTH	100.000000%	50	79,941,720	192,868,708	272,810,428	5	1,364,052	964,343	399,709
059	FORT COLLINS G.I.D. NO. 1	50.440043%	0	80,645,276	56,960,421	137,605,697	4.924	677,570	280,473	397,097
064	LARIMER COUNTY PEST CONTROL	84.637462%	50	67,660,643	163,239,179	230,899,822	0.142	32,788	23,180	9,608
095	BOXELDER SANITATION DISTRICT	5.113900%	50	4,088,140	9,863,112	13,951,252	0	0	0	0
110	EAST LARIMER COUNTY WATER DISTRICT	19.070858%	50	15,245,572	36,781,718	52,027,290	0	0	0	0
112	POUDRE RIVER PUBLIC LIBRARY DISTRICT	100.000000%	50	79,941,720	192,868,708	272,810,428	3.015	822,523	581,499	241,024
117	NORTHERN COLORADO WATER CONS DISTRICT	100.000000%	50	79,941,720	192,868,708	272,810,428	1	272,810	192,868	79,942

\$9,248,819
Total TIF Rev

* Base and increment values certified to taxing entities

EXHIBIT 3-C TO IGA

Item 9.

Woodward Loan														
2013		6,050,000												
2014		-												
Reimbursement Amount		6,050,000		Start Date		1-Sep-13								
				Matures		1-Sep-31								
				Years		18								

EXHIBIT C-4 TO IGA

Year		Contribution	Interest	Total
Dec 1	2019	\$300,000.00	\$0.00	\$300,000.00
Dec 1	2020	300,000.00	0.00	300,000.00
Dec 1	2021	300,000.00	0.00	300,000.00
Dec 1	2022	300,000.00	0.00	300,000.00
Dec 1	2023	300,000.00	0.00	300,000.00
Dec 1	2024	300,000.00	0.00	300,000.00
Dec 1	2025	300,000.00	0.00	300,000.00
Dec 1	2026	300,000.00	0.00	300,000.00
Dec 1	2027	300,000.00	0.00	300,000.00
Dec 1	2028	300,000.00	0.00	300,000.00
Dec 1	2029	300,000.00	0.00	300,000.00
Dec 1	2030	300,000.00	0.00	300,000.00
Dec 1	2031	300,000.00	0.00	300,000.00
		\$3,900,000.00	\$0.00	\$3,900,000.00

EXAMPLE

EXHIBIT C-5 TO IGA

Item 9.

Downtown Development Authority 2024 Line of Credit Draws

Draw #1: 5/28/2024

Projects/Programs to be Funded:

Alley Capital General Maintenance	258,076.00
Alley Enhancements 2024-2025 (E Myrtle to Mulberry, Chesnut to Pine)	1,100,000.00
Equipment One-time Purchase	215,000.00
Façade Grant Program	26,531.00
FCDDA Loan	121,869.00
Holiday Lights	35,000.00
Interactive Light Display in Old Town Square	93,000.00
Multi-year reimbursement	617,264.00
Old Firehouse Alley Garage IGA	300,000.00
Old Town Square General Maintenance	200,000.00
Old Town Square Capital Reserve/Replacement	92,960.00
Surveillance Camera Operations	4,295.00
Warehouse	70,300.00
Project Management Fees	64,826.00
5 Mill Property Tax TIF Revenue	397,699.00
2024 Projects and Programs Reserve aka Uncommitted Discretionary Funds	1,403,180.00
Total Line of Credit Draw #1 for 2024	5,000,000.00

Final Draft Draw #2: 12/26/2024

2024 Projects and Programs Reserve aka Uncommitted Discretionary Funds	1,490,504.00
Alley Enhancements 2024-2025 (E Myrtle to Mulberry, Chesnut to Pine)	1,550,000.00
Total Line of Credit Draw #2 for 2024	3,040,504.00

Total Line of Credit Draws 2024	8,040,504.00
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Downtown Development Authority Boundary



1 inch = 1,320 feet

0 0.125 0.25 0.5 Miles



Amended: March 7,
Printed: October 01,

DOWNTOWN DEVELOPMENT AUTHORITY
Regular Directors' Meeting

Susan Gutowsky, Council Liaison	970-294-2575
Kristin Stephens, County Commission Liaison	970-498-7001
Dave Lingle, Board Chair	970-227-4166

MINUTES of February 13, 2025

The Board of Directors of the Downtown Development Authority met in Regular Session at 7:30 a.m. on Thursday, February 13, 2025, at Rocky Mountain Innosphere, 320 E. Vine Drive, Fort Collins, CO 80524.

PRESENT

Abigail Christensen; Sam Coutts; Susan Gutowsky; Dave Lingle; Holli McElwee; Jenny Schultz; Randy Shortridge; Kristin Stephens (arrived 7:35 a.m.); Cheryl Zimlich

ABSENT

Rebecca Hill; Mandi Huston

STAFF

Matt Robenalt, Executive Director; Jala Curtis, Marketing and Communications Program Supervisor; Todd Dangerfield, Project Manager; Tom Dent, Technology & Maintenance Manager; Janna Dickerson, Marketing and Communications Coordinator; Derek Getto, Project Manager for Policy & Programs; Kristy Klenk, Finance & HR Manager; Krista Knott, Administrative Manager; Josh Liley, Legal Counsel

GUESTS

Michael Bussman, City of Fort Collins; Kelly DiMartino, City of Fort Collins; Florian Fiebig, City of Fort Collins; Cortney Geary, City of Fort Collins; Dana Hornkohl, City of Fort Collins; Erin Udell, Coloradoan

CALL TO ORDER

Dave Lingle called the meeting to order at 7:31 a.m. Mr. Lingle welcomed the newest Board member, Abigail Christensen.

APPROVAL OF MINUTES

Moved by Jenny Schultz, seconded by Susan Gutowsky: To approve the minutes of December 12, 2024. The motion passed unanimously.

ALL IDEAS: BIG AND SMALL

There were no ideas presented by the public.

UPDATES

There were no questions about updates.

CONSENT AGENDA**RESOLUTION 2025-01 POSTING OF PUBLIC MEETING NOTICES**

Matt Robenalt noted this annual housekeeping item establishes the designation of the official location for the public meeting notices on the downtownfortcollins.org website.

Moved by Sam Coutts, seconded by Susan Gutowsky: To approve Resolution 2025-01 designating a location for the posting of public meeting notices. The Resolution passed unanimously.

REGULAR AGENDA**EXECUTIVE SESSION**

Moved by Jenny Schultz, seconded by Kristin Stephens: to enter into executive session for the purpose of 360 Linden Street Redevelopment, pursuant to C.R.S. 24-6-402(4)(e)(I): the motion carried.

Moved by Jenny Schultz, seconded by Susan Gutowsky to move out of executive session and return to the regular session of the meeting. The motion passed unanimously.

EXECUTIVE SESSION FOLLOW UP

There was no further discussion or formal action resulting from the executive session.

RESOLUTION 2025-02 APPROVING THE ESTABLISHMENT OF A LINE OF CREDIT WITH FIRST NATIONAL BANK OF OMAHA FOR THE FINANCING OF DDA PROJECTS AND PROGRAMS AND APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FORT COLLINS, COLORADO, IN RELATION THERETO

Matt Robenalt recounted a brief history of the DDA's Line of Credit financing model, noting its establishment in 2012 and renewed in 2018. In 2024, the second six-year term of Line of Credit expired. The tax increment revenues created each year from the private investment that has occurred downtown and as determined by the County Assessor, and as required by the DDA Act is to be used specifically to pay off debt. The City and DDA are required by the DDA statute to work collaboratively to establish and finance debt, and the proceeds created from the debt is to be used by the DDA to undertake its projects and programs.

Mr. Robenalt reviewed the major categories of funding needs between now and 2030, which include the ongoing commitment to the long-term debt service on the Firehouse Alley Parking Garage, a loan with Housing Catalyst for Oak 140, the capital asset maintenance obligations for all enhanced public infrastructure, commitments for multi-year reimbursements for public-private partnerships, the Board approved 5-year Investment Plan, and anything additional that may come up as a partnership opportunity. He noted this form of financing using a line of credit with a local bank is beneficial as it results in significantly shorter periods of time in which debt incurs interest, which allows for more funding available to invest in projects and programs downtown.

Mr. Robenalt highlighted the desired outcomes of this Line of Credit financing approach, which minimizes the cost to deliver investments, demonstrates good fiduciary stewardship of public funds, and recognizes that 82% of tax increment comes from the Poudre School District and Larimer County, and maintains long-standing practice that the DDA can grant money for partnerships with the City with no cost of capital assessed to City projects. Additionally, using the line of credit financing approach, which

is set up with a defined process through an IGA with the City to ensure no more than seven days transpire before the debt is paid off, and results in having no effect on the City's fund balance at the end of the fiscal year. The DDA has financed over \$46 million in principle debt with financing fees and interest amounting to little more than \$17,000 using the line of credit approach, and during the same time period financed \$17 million in principal debt, using traditional methods such as certificates of participation and private placement bonds, and paid more than \$3.7 million in financing costs. Mr. Robenalt pointed out the significant amount of saving realized from lower financing costs, thus allowing the DDA to direct more investment into projects and programs.

A bill amending the DDA Act was signed into law in 2023 that provided a new option for arranging the financing relationship between the DDA and City and creating the opportunity that the DDA may have its own debt and have it paid off with tax increment revenues received by the City. Prior to the amendment, the statute required debt only to be held in the City's name on behalf of the DDA. The City and DDA agreed to pursue this new option provided by SB23-175, as it will remove excessive busy work for City Finance staff that it was previously subject to when administering the line of credit on the DDA's behalf.

The new six-year Line of Credit term that has been negotiated with First National Bank for a third time will be in the DDA's name this time rather than in the City's name. The process steps for how the City and DDA will work together to administer payments for the line of credit debt is defined in the Intergovernmental Agreement. Adoption of Resolution 2025-02 would approve the IGA with the City, and approves three bank related documents that include the Promissory Note and Agreement for the line of credit, an Assignment of Account collateralizing a new account that the DDA will set up at First National Bank with a commitment by the City to pay off the line of credit with tax increment funds, and a Governmental Certificate, which acknowledges DDA's status as a governmental entity.

Susan Gutoswsky asked how it was determined which bank to go to for this Line of Credit. Mr. Robenalt said First National Bank was the City's primary account holder and that is where the DDA tax increment funds are currently held so it makes the transfer of funds to pay off the line of credit simpler and also the reason why the bank can offer these beneficial financing terms. He explained that this arrangement with the line of credit for the DDA is one of the ways that First National Bank meets its federal Community Reinvestment Act mandates and with the fees they basically charge they cover their costs for transacting the transfer of funds. The interest earned on a line of credit draw is inconsequential to the bank because of the seven day or less window in which the debt exists before it is paid off so this is about First National Bank recognizing the community benefit the DDA delivers. Randy Shortridge asked if that established relationship would ever move to a different bank. Mr. Robenalt noted that it could and this situation is specifically addressed in the IGA. Because the tax increment funds are held by the City in an account at First National Bank, if the City decides to move their funds to a different primary institution then the DDA would need to renegotiate with First National Bank or another bank for a line of credit. Mr. Shortridge asked if the City ever explored using other banks. Mr. Robenalt said that the City periodically goes out through an RFP process to determine its primary banking relationship, and this occurred a few years ago.

Moved by Jenny Schultz, seconded by Susan Gutowsky: To approve Resolution 2025-02 that the Executive Director will advance the IGA to the City Finance Department for adoption by the City Council, and subsequent execution of the Promissory Note & Agreement, Assignment of Deposit Account, and Government Certificate by the Executive Director. The Resolution passed unanimously.

NOTE: THIS DRAFT COPY OF MEETING MINUTES IS NOT INCLUSIVE OF ALL AGENDA ITEMS DISCUSSED BY THE DDA BOARD ON 2/13/2025. COMPLETE MEETING MINUTES WILL BE ISSUED FOR APPROVAL AT THE 3/13/2025 REGULAR DIRECTOR'S MEETING.

DRAFT COPY

RESOLUTION 2025-02**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY APPROVING THE ESTABLISHMENT OF A LINE OF CREDIT WITH FIRST NATIONAL BANK OF OMAHA FOR THE FINANCING OF DDA PROJECTS AND PROGRAMS AND APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FORT COLLINS, COLORADO, IN RELATION THERETO**

WHEREAS, the Fort Collins, Colorado, Downtown Development Authority (the “DDA”) has been created pursuant to the provisions of Title 31, Article 25, part 8, Colorado Revised Statutes (the “DDA Statute”), and Chapter 2, Article IV, Division 1 of the City Code of the City of Fort Collins, Colorado (the “City”);

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities will serve a public use; promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within central business districts; halt or prevent the growth of blighted areas within such district, and assist municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof;

WHEREAS, the primary means of financing DDA projects and programs is through the use of property tax increment collected within the DDA boundaries, and C.R.S. §31-25-807(3)(a)(II) requires that the City or DDA incur some form of debt in order to finance such projects and programs using property tax increment revenues collected within the DDA boundaries;

WHEREAS, such property tax increment revenues, once remitted to the City by Larimer County, Colorado, are deposited into an account held by the City (the “DDA Debt Service Fund”);

WHEREAS, on October 15, 2012, the DDA and the City entered in that certain agreement entitled “Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs”, which established a line of credit to finance certain DDA projects and programs and defined the process for use of such line of credit (the “2012 IGA”);

WHEREAS, the 2012 IGA had a term of six (6) years and expired on December 31, 2018;

WHEREAS, on September 19, 2018, the DDA and the City entered into in that certain agreement entitled “Second Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs”, which extended the term of the line of credit established under the 2012 IGA and increased the per-draw limit under the line of credit to \$5,000,000 (the “2018 IGA”);

WHEREAS, the 2018 IGA had a term of six (6) years and expired on December 31, 2024;

WHEREAS, under both the 2012 IGA and the 2018 IGA, the line of credit was established between the City and First National Bank of Omaha (“FNBO”) through execution of a line of credit agreement and promissory note, consistent with the DDA Statute, which at the time required that the City incur the debt necessary to finance DDA projects and programs using property tax increment revenues under C.R.S. § 31-25-807(3)(a)(II);

WHEREAS, effective August 7, 2023, C.R.S. § 31-25-807(3)(a)(II) was amended to provide that a city, pursuant to an intergovernmental agreement with a downtown development authority, approved by ordinance of the city, may delegate to the downtown development authority the power to incur loans or indebtedness or obtain advances and to pledge tax increment money for the payment of any loans, advances, or indebtedness;

WHEREAS, the City desires to delegate to the DDA the authority to incur such indebtedness by establishing a line of credit with FNBO on the same general terms as the City under the 2012 IGA and 2018 IGA, which will allow for the shifting of certain administrative burdens related to the financing of DDA projects and programs from the City to the DDA, which is beneficial to the City and which the DDA is willing and able to perform;

WHEREAS, FNBO has agreed to establish a line of credit for the DDA in accordance with the loan documents attached hereto and incorporated herein as **Exhibit A** (the “Line of Credit”), which consist of a promissory note and agreement, assignment of deposit account, and governmental certificate (collectively, the “Loan Documents”);

WHEREAS, the Line of Credit has an overall term of six (6) years and a per-draw limit of \$5,000,000;

WHEREAS, the DDA and the City desire to enter into an intergovernmental agreement regarding the financing of DDA projects and programs in the form depicted in **Exhibit B**, attached hereto and incorporated herein (the “2025 Line of Credit IGA”), which has term of six (6) years and would replace the now-expired 2018 IGA;

WHEREAS, the 2025 Line of Credit IGA is substantially similar in form to the 2012 IGA and the 2018 IGA, except for the Line of Credit parties as described above, and as depicted in Exhibit B to the 2025 Line of Credit IGA;

WHEREAS, as depicted in Exhibit B to the 2025 Line of Credit IGA, proceeds from a Line of Credit draw will be deposited into an account to be established by the DDA with FNBO (the “LOC Proceeds Account”), and a hold will be placed on such account until the City pays off the debt using tax increment funds held in the DDA Debt Service Fund, which will occur within seven (7) business days of the draw;

WHEREAS, once FNBO has received payment from the City, the hold will be removed and the DDA will transfer the Line of Credit proceeds into the City-held DDA Financing Activity Fund, where such proceeds will be available for use for DDA projects and programs;

WHEREAS, a line of credit established by the DDA with a financial institution, as authorized by the City pursuant to the 2025 Line of Credit IGA, meets the requirements of C.R.S. §31-25-807(3)(a)(II), as amended, and the costs and interest associated with such a line of credit are much lower than would be the case with other types of financing;

WHEREAS, it is in the best interests of both the DDA and the City to reduce financing costs of DDA projects and programs in order to preserve the maximum amount of property tax increment revenues for DDA projects and programs within its boundaries; and

WHEREAS, it is in the best interests of the DDA to approve the 2025 Line of Credit IGA and the Loan Documents, to allow for the financing of DDA projects and programs using tax increment revenues, and the DDA desires to approve the 2025 Line of Credit IGA and the Loan Documents.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY THAT:

Section 1. The foregoing recitals are incorporated herein by reference and adopted as findings and determinations of the DDA.

Section 2. The DDA hereby approves the 2025 Line of Credit IGA and the Loan Documents.

Section 3. The Executive Director is hereby authorized, following consultation with DDA legal counsel, to approve changes to the 2025 Line of Credit IGA and the Loan Documents in form and substance as deemed necessary to effectuate the purposes of this Resolution or to protect the interests of the DDA.

Section 4. The Board Chair is hereby authorized to execute the 2025 Line of Credit IGA on behalf of the DDA. The Board Chair's execution of the 2025 Line of Credit IGA shall be conclusive evidence of the DDA's approval of the 2025 Line of Credit IGA in accordance with the terms hereof.

Section 5. The Executive Director is hereby authorized to execute the Loan Documents on behalf of the DDA. The Executive Director's execution of the Loan Documents shall be conclusive evidence of the DDA's approval of the Loan Documents in accordance with the terms hereof.

Section 6. The Executive Director is hereby authorized to establish the LOC Proceeds Account with FNBO, and to execute any agreement, document, or instrument in relation thereto. The Executive Director's execution of any such agreement, document, or instrument shall be conclusive evidence of the DDA's approval of such agreement, document, or instrument in accordance with the terms hereof. In establishing such account, the Executive Director is directed to specify that withdrawals from the LOC Proceeds Account shall require the approval of both the Executive Director and either the Board Chair or Vice Chair.

Section 7. The Executive Director is hereby authorized and directed to take all action necessary or appropriate to implement and effectuate the provisions of this Resolution, the 2025 Line of Credit IGA, and the Loan Documents. The Executive Director's execution of any agreement, document, or instrument in relation thereto shall be conclusive evidence of the DDA's approval of such agreement, document, or instrument in accordance with the terms hereof.

Section 8. This Resolution shall be effective as of the date of its adoption.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Fort Collins, Colorado, Downtown Development Authority this 13th day of February, 2025.

FORT COLLINS, COLORADO, DOWNTOWN
DEVELOPMENT AUTHORITY, a body corporate
and politic



David Lingle, Board Chair

ATTEST:



Cheryl Zimlich, Secretary

EXHIBIT A

*****00000000000577812052024*

PROMISSORY NOTE AND AGREEMENT

Borrower: Fort Collins, Colorado, Downtown Development Authority
19 Old Town Square, Suite #230
Fort Collins, CO 80524

Lender: First National Bank of Omaha
Branch #001
1620 Dodge Street
Omaha, NE 68197

Principal Amount: \$5,000,000.00

Date of Note: February 5, 2025

THIS PROMISSORY NOTE AND AGREEMENT (the "Note") is entered into effective the Date of the Note set forth above by Borrower and Lender identified herein. For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby state and agree as follows:

PROMISE TO PAY. Fort Collins, Colorado, Downtown Development Authority ("Borrower") promises to pay to First National Bank of Omaha ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Million & 00/100 Dollars (\$5,000,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance and any other fees and charges which may be due. Interest shall be calculated from the date of each Advance until repayment of each Advance. The maturity date of this Note shall be December 31, 2025. The maturity date of this Note will be automatically extended one year for five consecutive years, ending December 31, 2030, so long as Borrower fully repays all outstanding indebtedness as of each maturity date, and so long as no Event of Default shall have occurred during the preceding year.

LINE OF CREDIT. Lender agrees to make Advances to Borrower from time to time from the date of this Note until the maturity date, provided that the aggregate amount of such Advances outstanding at any time does not exceed the maximum principal amount of this Note. This Note evidences a revolving line of credit. Advances under this Note, as well as directions for payment from Borrower's accounts, may be requested either orally or in writing by Borrower or as provided in this paragraph. Lender may, but need not, require that all oral requests be confirmed in writing. Each Advance shall be conclusively deemed to have been made at the request of and for the benefit of Borrower when (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. Each Advance will be deposited into a deposit account (account number _____) maintained with Lender by the Borrower and pledged by Borrower as Collateral for this Note and Loan (the "Pledged Deposit Account"). The Pledged Deposit Account shall be subject to a hold prohibiting any withdrawals from the Pledged Deposit Account until Borrower has repaid the amount of all Advances and any other outstanding amounts payable in accordance with the terms of this Note to Lender. Upon Borrower's satisfaction of any such payments, Lender will release the hold on the Pledged Deposit Account and Borrower shall be entitled to withdraw any funds in the Pledged Deposit Account. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Note and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security Interests; (4) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Note or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Note, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Note or under any Related Document.

Deposit of Tax Increment Funds. Tax Increment Funds or cash deposits of an amount in excess of the requested Advance and any and all outstanding and unpaid amounts of principal and interest due under this Note shall be held in the depository account (account number ending in x739) maintained with the Lender by the City of Fort Collins, Colorado.

PAYMENT. Borrower will pay this loan according to the following payment schedule: Borrower will pay the principal amount of each Advance made hereunder within seven (7) business days from the date of that Advance, together with interest accrued on that Advance, and any fees and expenses owing on that Advance. In addition, on December 31st of each year, Borrower shall pay to Lender a maturity payment of all outstanding principal, interest, and other fees and expenses which may then be due and owing to Lender under the Note. Interest will accrue on each Advance at the Variable Interest Rate set forth below, subject to a minimum finance charge per Advance of Five Hundred and 00/100 dollars (\$500.00). Unless otherwise agreed or required by applicable law, payments will be applied to interest, principal, and expenses owing under the Note in an order determined by Lender. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the U.S. Prime Rate as published by the Wall Street Journal and currently is determined by the base rate on corporate loans posted by at least seventy percent (70%) of the nation's ten (10) largest banks (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each day during the term of the loan. Borrower understands that Lender may make loans based on other rates as well. **The Index currently is 7.500% per annum.** Interest on the unpaid principal balance of this Note will be calculated as described in the "INTEREST CALCULATION METHOD" paragraph using a rate equal to the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 7.500% per annum based on a year of 360 days. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 3.000% per annum or more than the maximum rate allowed by applicable law.

INTEREST CALCULATION METHOD. Interest on this Note is computed on a 365/360 basis; that is, by applying the ratio of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method.

PREPAYMENT. Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: First National Bank of Omaha, Branch #001, 1620 Dodge Street, Omaha, NE 68197.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the regularly scheduled payment or \$25.00, whichever is greater.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by adding an additional 6.000 percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of the Collateral or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf, under this Note or the related documents in connection with the obtaining of the loan evidenced by this Note or any security document directly or indirectly securing repayment of this Note is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Insolvency. The dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Note or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Execution; Attachment. Any execution or attachment is levied against the Collateral, and such execution or attachment is not set aside, discharged or stayed within thirty (30) days after the same is levied.

Default Under Other Lien Documents. A default occurs under any security agreement covering all or any portion of the Collateral.

Judgment. Unless adequately covered by insurance in the opinion of Lender, the entry of a final judgment for the payment of money involving more than ten thousand dollars (\$10,000.00) against Borrower and the failure by Borrower to discharge the same, or cause it to be discharged, or bonded off to Lender's satisfaction, within thirty (30) days from the date of the order, decree or process under which or pursuant to which such judgment was entered.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

LENDER'S RIGHTS; EFFECT OF AN EVENT OF DEFAULT. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender the reasonable costs of such collection. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including without limitation attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Organization. Borrower is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Colorado. Borrower has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. Borrower maintains an office at 19 Old Town Square, Suite #230, Fort Collins, CO 80524. Unless Borrower has designated otherwise in writing, the principal office is the office at which Borrower keeps its books and records including its records concerning the Collateral. Borrower will notify Lender prior to any change in the location of Borrower's state of organization or any change in Borrower's name. Borrower shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Borrower and Borrower's business activities.

Authorization. Borrower's execution, delivery, and performance of this Note and all the Related Documents have been duly authorized by all necessary action by Borrower, including approvals of the City Council of the City of Fort Collins, Colorado, and do not conflict with, result in a violation of, or constitute a default under (1) any provision of any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties. Borrower has the power and authority to enter into the Note and the Related Documents and to grant collateral as security for the Loan. Borrower has the further power and authority to carry on Borrower's business as presently conducted.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan or this Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Repayment. Repay all Advances in accordance with the terms of this Note.

Annual Fee. Pay to Lender an annual fee in the amount of One Thousand Two Hundred Fifty and 00/100 dollars (\$1,250.00) ("Annual Fee"). Borrower will pay the initial Annual Fee on or before February 5, 2025 and on or before each February 5th thereafter during the term of the Loan.

Financial Statements. Furnish Lender with the following:

Required FYE Financial Statements. As soon as available, but in no event later than six months after the end of each year, Borrower's asset and liabilities balance sheet and income statement for Borrower's fiscal year most recently ended. Said report shall be prepared by Borrower consistent with GASB, audited by a certified public accountant acceptable to Lender, and in a format reasonably acceptable to Lender that includes both direct and contingent liabilities. Borrower shall provide Lender with such other financial statements and other related information at such frequencies and in such detail as Lender may reasonably request.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either

Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Colorado.

CHOICE OF VENUE. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Larimer County, State of Colorado.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$30.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by an Assignment of Deposit Account dated February 5, 2025, and any and all other security agreements or documents and any and all other collateral agreements or documents associated with this Loan or Note whether now existing or hereafter arising.

ERRORS AND OMISSIONS. Borrower agrees, if requested by Lender, to fully cooperate in the correction, if necessary, in the reasonable discretion of Lender of any and all loan closing documents so that all documents accurately describe the loan between Lender and Borrower. Borrower agrees to assume all costs including by way of illustration and not limitation, actual expenses, legal fees and marketing losses for failing to reasonably comply with Lender requests within thirty (30) days.

U.S.A. PATRIOT ACT. To help the government fight the funding of terrorism and money laundering activities, the USA PATRIOT Act requires all banks to obtain and verify the identity of each person or business that opens an account. When Borrower opens an account, Lender will ask Borrower for information that will allow Lender to properly identify Borrower and Lender will verify that information. If Lender cannot properly verify identity within 30 calendar days, Lender reserves the right to deem all of the balance and accrued interest due and payable immediately.

ELECTRONIC COPIES. Lender may copy, electronically or otherwise, and thereafter destroy, the originals of this Agreement and/or Related Documents in the regular course of Lender's business. All such copies produced from an electronic form or by any other reliable means (i.e., photographic image or facsimile) shall in all respects be considered equivalent to an original, and Borrower hereby waives any rights or objections to the use of such copies.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Note, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Note. No alteration of or amendment to this Note shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Non-Liability of Lender. The relationship between Borrower and Lender created by this Note is strictly a debtor and creditor relationship and not fiduciary in nature, nor is the relationship to be construed as creating any partnership or joint venture between Lender and Borrower. Borrower is exercising Borrower's own judgment with respect to Borrower's business. All information supplied to Lender is for Lender's protection only and no other party is entitled to rely on such information. There is no duty for Lender to review, inspect, supervise or inform Borrower of any matter with respect to Borrower's business. Lender and Borrower intend that Lender may reasonably rely on all information supplied by Borrower to Lender, together with all representations and warranties given by Borrower to Lender, without investigation or confirmation by Lender and that any investigation or failure to investigate will not diminish Lender's right to so rely.

Notice of Lender's Breach. Borrower must notify Lender in writing of any breach of this Note or the Related Documents by Lender and any other claim, cause of action or offset against Lender within thirty (30) days after the occurrence of such breach or after the accrual of such claim, cause of action or offset. Borrower waives any claim, cause of action or offset for which notice is not given in accordance with this paragraph. Lender is entitled to rely on any failure to give such notice.

Indemnification of Lender. To the extent authorized by law, Borrower agrees to indemnify, to defend and to save and hold Lender harmless from any and all claims, suits, obligations, damages, losses, costs and expenses (including, without limitation, Lender's attorneys' fees), demands, liabilities, penalties, fines and forfeitures of any nature whatsoever that may be asserted against or incurred by Lender, its officers, directors, employees, and agents arising out of, relating to, or in any manner occasioned by this Note and the exercise of the rights and remedies granted Lender under this, as well as by: (1) the ownership, use, operation, construction, renovation, demolition, preservation, management, repair, condition, or maintenance of any part of the Collateral; (2) the exercise of any of Borrower's rights collaterally assigned and pledged to Lender hereunder; (3) any failure of Borrower to perform any of its obligations hereunder; and/or (4) any failure of Borrower to comply with the environmental and ERISA obligations, representations and warranties set forth herein. The foregoing indemnity provisions shall survive the cancellation of this Note as to all matters arising or accruing prior to such cancellation and the foregoing indemnity shall survive in the event that Lender elects to exercise any of the remedies as provided under this Note following default hereunder. Borrower's indemnity obligations under this section shall not in any way be affected by the presence or absence of covering insurance, or by the amount of such insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under any insurance policy or policies affecting the Collateral and/or Borrower's business activities. Should any claim, action or proceeding be made or brought against Lender by reason of any event as to which Borrower's indemnification obligations apply, then, upon Lender's demand, Borrower, at its sole cost and expense, shall defend such claim, action or proceeding in Borrower's name, if necessary, by the attorneys for Borrower's insurance carrier (if such claim, action or proceeding is covered by insurance), or otherwise by such attorneys as Lender shall approve. Lender may also engage its own attorneys at its reasonable discretion to defend Borrower and to assist in its defense and Borrower agrees to pay the fees and disbursements of such attorneys.

Counterparts. This Note may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Note.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Note unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Note shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Note. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Note, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Note. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Note shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Note shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Note.

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Note.

Borrower. The word "Borrower" means Fort Collins, Colorado, Downtown Development Authority and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

GASB. The word "GASB" means Governmental Accounting Standards Board.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means First National Bank of Omaha and its successors and assigns.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, individually, collectively, and interchangeably, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE AND AGREEMENT.

BORROWER:

FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

By: _____

Matthew J. Robenalt, Executive Director of Fort Collins, Colorado,
Downtown Development Authority

LENDER:

FIRST NATIONAL BANK OF OMAHA

By: _____

Mark Thiebaut, Relationship Manager, Commercial
Banking

#####00000000000583012052024

ASSIGNMENT OF DEPOSIT ACCOUNT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,000,000.00	2-05-2025	12-31-2030				10187	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.

Any item above containing "****" has been omitted due to text length limitations.

Grantor:	Fort Collins, Colorado, Downtown Development Authority 19 Old Town Square, Suite #230 Fort Collins, CO 80524	Lender:	First National Bank of Omaha Branch #001 1620 Dodge Street Omaha, NE 68197
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THIS ASSIGNMENT OF DEPOSIT ACCOUNT dated February 5, 2025, is made and executed between Fort Collins, Colorado, Downtown Development Authority ("Grantor") and First National Bank of Omaha ("Lender").

ASSIGNMENT. For valuable consideration, Grantor assigns and grants to Lender a security interest in the Collateral, including without limitation the deposit account(s) described below, to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" means the following described deposit account(s) ("Account"):

Checking Account Number TBD with Lender

together with (A) all interest, whether now accrued or hereafter accruing; (B) all additional deposits hereafter made to the Account; (C) any and all proceeds from the Account; and (D) all renewals, replacements and substitutions for any of the foregoing.

CROSS-COLLATERALIZATION. In addition to the Note, this Agreement secures all obligations, debts and liabilities, plus interest thereon, of Grantor to Lender, or any one or more of them, as well as all claims by Lender against Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such amounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such amounts may be or hereafter may become otherwise unenforceable.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Ownership. Grantor is the lawful owner of the Collateral free and clear of all loans, liens, encumbrances, and claims except as disclosed to and accepted by Lender in writing.

Right to Grant Security Interest. Grantor has the full right, power, and authority to enter into this Agreement and to assign the Collateral to Lender.

No Prior Assignment. Grantor has not previously granted a security interest in the Collateral to any other creditor.

No Further Transfer. Grantor shall not sell, assign, encumber, or otherwise dispose of any of Grantor's rights in the Collateral except as provided in this Agreement.

No Defaults. There are no defaults relating to the Collateral, and there are no offsets or counterclaims to the same. Grantor will strictly and promptly do everything required of Grantor under the terms, conditions, promises, and agreements contained in or relating to the Collateral.

Proceeds. Any and all replacement or renewal certificates, instruments, or other benefits or proceeds related to the Collateral that are received by Grantor shall be held by Grantor in trust for Lender and immediately shall be delivered by Grantor to Lender to be held as part of the Collateral.

Validity; Binding Effect. This Agreement is binding upon Grantor and Grantor's successors and assigns and is legally enforceable in accordance with its terms.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement.

LENDER'S RIGHTS AND OBLIGATIONS WITH RESPECT TO THE COLLATERAL. While this Agreement is in effect, Lender may retain the rights to possession of the Collateral, together with any and all evidence of the Collateral, such as certificates or passbooks. This Agreement will remain in effect until (a) there no longer is any Indebtedness owing to Lender; (b) all other obligations secured by this Agreement have been fulfilled; and (c) Grantor, in writing, has requested from Lender a release of this Agreement.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon the occurrence of any Event of Default.

LIMITATIONS ON OBLIGATIONS OF LENDER. Lender shall use ordinary reasonable care in the physical preservation and custody of any certificate or passbook for the Collateral but shall have no other obligation to protect the Collateral or its value. In particular, but without limitation, Lender shall have no responsibility (A) for the collection or protection of any income on the Collateral; (B) for the preservation of rights against issuers of the Collateral or against third persons; (C) for ascertaining any maturities, conversions, exchanges, offers, tenders, or similar matters relating to the Collateral; nor (D) for informing the Grantor about any of the above, whether or not Lender has or is deemed to have knowledge of such matters.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or ability to perform Grantor's obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default, or at any time thereafter, Lender may exercise any one or more of the following rights and remedies, in addition to any rights or remedies that may be available at law, in equity, or otherwise:

Accelerate Indebtedness. Lender may declare all Indebtedness of Grantor to Lender immediately due and payable, without notice of any kind to Grantor.

Application of Account Proceeds. Lender may take directly all funds in the Account and apply them to the Indebtedness. If the Account is subject to an early withdrawal penalty, that penalty shall be deducted from the Account before its application to the Indebtedness, whether the Account is with Lender or some other institution. Any excess funds remaining after application of the Account proceeds to the Indebtedness will be paid to Grantor as the interests of Grantor may appear. Grantor agrees, to the extent permitted by law, to pay any deficiency after application of the proceeds of the Account to the Indebtedness. Lender also shall have all the rights of a secured party under the Colorado Uniform Commercial Code, even if the Account is not otherwise subject to such Code concerning security interests, and the parties to this Agreement agree that the provisions of the Code giving rights to a secured party shall nonetheless be a part of this Agreement.

Transfer Title. Lender may effect transfer of title upon sale of all or part of the Collateral. For this purpose, Grantor irrevocably appoints Lender as Grantor's attorney-in-fact to execute endorsements, assignments and instruments in the name of Grantor and each of them (if more than one) as shall be necessary or reasonable.

Other Rights and Remedies. Lender shall have and may exercise any or all of the rights and remedies of a secured creditor under the provisions of the Colorado Uniform Commercial Code, at law, in equity, or otherwise.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

Cumulative Remedies. All of Lender's rights and remedies, whether evidenced by this Agreement or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and to exercise its remedies.

ELECTRONIC COPIES. Lender may copy, electronically or otherwise, and thereafter destroy, the originals of this Agreement and/or Related Documents in the regular course of Lender's business. All such copies produced from an electronic form or by any other reliable means (i.e., photographic image or facsimile) shall in all respects be considered equivalent to an original, and Borrower hereby waives any rights or objections to the use of such copies.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Grantor agrees to pay upon demand all of Lender's reasonable costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Grantor shall pay the reasonable costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Grantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Colorado without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Colorado.

Choice of Venue. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Larimer County, State of Colorado.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as its true and lawful attorney-in-fact, irrevocably, with full power of substitution to do the following: (1) to demand, collect, receive, receipt for, sue and recover all sums of money or other property which may now or hereafter become due, owing or payable from the Collateral; (2) to execute, sign and endorse any and all claims, instruments, receipts, checks, drafts or warrants issued in

payment for the Collateral; (3) to settle or compromise any and all claims arising under the Collateral, and in the place and stead of Grantor, to execute and deliver its release and settlement for the claim; and (4) to file any claim or claims or to take any action or institute or take part in any proceedings, either in its own name or in the name of Grantor, or otherwise, which in the discretion of Lender may seem to be necessary or advisable. This power is given as security for the Indebtedness, and the authority hereby conferred is and shall be irrevocable and shall remain in full force and effect until renounced by Lender.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the Indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Indebtedness.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's Indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code:

Account. The word "Account" means the deposit account(s) described in the "Collateral Description" section.

Agreement. The word "Agreement" means this Assignment of Deposit Account, as this Assignment of Deposit Account may be amended or modified from time to time, together with all exhibits and schedules attached to this Assignment of Deposit Account from time to time.

Borrower. The word "Borrower" means Fort Collins, Colorado, Downtown Development Authority and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

Grantor. The word "Grantor" means Fort Collins, Colorado, Downtown Development Authority.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents. Specifically, without limitation, Indebtedness includes all amounts that may be indirectly secured by the Cross-Collateralization provision of this Agreement.

Lender. The word "Lender" means First National Bank of Omaha, its successors and assigns.

Note. The word "Note" means any and all of Borrower's liabilities, obligations and debts to Lender, now existing or hereinafter incurred or created, including, without limitation, all loans, advances, interest, costs debts, overdraft indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower together with all modifications, increases, renewals, and extensions of the aforementioned. Additionally, hereby incorporated as if fully set forth herein are the terms and conditions of any promissory note, agreement or other document executed by Borrower and/or Lender indicating this security instrument or the property described herein shall be considered "Collateral" securing such promissory note, agreement, or other instrument, or any similar reference.

Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS ASSIGNMENT OF DEPOSIT ACCOUNT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED FEBRUARY 5, 2025.

GRANTOR:

FORT COLLINS, COLORADO, DOWNTOWN DEVELOPMENT AUTHORITY

By:

Matthew J. Robenalt, Executive Director of Fort
Collins, Colorado, Downtown Development
Authority

LENDER:

FIRST NATIONAL BANK OF OMAHA

X

Mark Thiebaut, Relationship Manager, Commercial
Banking



#####00000000000580102052025

GOVERNMENTAL CERTIFICATE

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$5,000,000.00	02-05-2025	12-31-2030				10187	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "*****" has been omitted due to text length limitations.							

Entity: Fort Collins, Colorado, Downtown Development Authority
19 Old Town Square, Suite #230
Fort Collins, CO 80524

Lender: First National Bank of Omaha
Branch #001
1620 Dodge Street
Omaha, NE 68197

I, THE UNDERSIGNED, DO HEREBY CERTIFY AND STATE UNDER PENALTY OF PERJURY THAT:

THE ENTITY'S EXISTENCE. The complete and correct name of the governmental entity is Fort Collins, Colorado, Downtown Development Authority ("Entity"). The Entity is a governmental entity which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws and regulations of the State of Colorado. The Entity has the full power and authority to own its properties and to transact the business and activities in which it is presently engaged or presently proposes to engage. The Entity maintains an office at 19 Old Town Square, Suite #230, Fort Collins, CO 80524. The Entity shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of the Entity and any other governmental or quasi-governmental authority or court applicable to the Entity and the Entity's business activities.

CERTIFICATES ADOPTED. At a meeting of the appropriate governing body of the Entity, duly called and held on _____, at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Certificate were adopted.

OFFICIAL. The following named person is an Official of Fort Collins, Colorado, Downtown Development Authority:

<u>NAMES</u>	<u>TITLES</u>	<u>AUTHORIZED</u>	<u>ACTUAL SIGNATURES</u>
Matthew J. Robenalt	Executive Director	Y X	

ACTIONS AUTHORIZED. The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Entity. Specifically, but without limitation, the authorized person is authorized, empowered, and directed to do the following for and on behalf of the Entity:

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Entity and Lender, such sum or sums of money as in his or her judgment should be borrowed, without limitation.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of the Entity's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Entity's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Grant Security. To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Entity or in which the Entity now or hereafter may have an interest, including without limitation all of the Entity's real property and all of the Entity's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Entity to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

Execute Security Documents. To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such liens and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the liens and encumbrances.

Subordination. To subordinate, in all respects, any and all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from any person or entity to the Entity to all present and future indebtedness, obligations, liabilities, claims, rights, and demands of any kind which may be owed, now or hereafter, from such person or entity to Lender ("Subordinated Indebtedness"), together with subordination by the Entity of any and all security interests of any kind, whether now existing or hereafter acquired, securing payment or performance of the Subordinated Indebtedness; all on such subordination terms as may be agreed upon between the Entity's Officials and Lender and in such amounts as in his or her judgment should be subordinated.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Entity or in which the Entity may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Entity's account with Lender, or to cause such other disposition of the proceeds derived therefrom as he or she may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, including agreements waiving the right to a trial by jury, as the Official may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Certificate.

ASSUMED BUSINESS NAMES. The Entity has filed or recorded all documents or filings required by law relating to all assumed business names used by the Entity. Excluding the name of the Entity, the following is a complete list of all assumed business names under which the Entity does business: None.

NOTICES TO LENDER. The Entity will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in the Entity's name; (B) change in the Entity's assumed business name(s); (C) change in the structure of the Entity; (D) change in the authorized signer(s); (E) change in the Entity's principal office address; (F) change in the Entity's principal residence; or (G) change in any other aspect of the Entity that directly or indirectly relates to any agreements between the Entity and Lender.

ELECTRONIC COPIES. Lender may copy, electronically or otherwise, and thereafter destroy, the originals of this Agreement and/or Related Documents in the regular course of Lender's business. All such copies produced from an electronic form or by any other reliable means (i.e., photographic image or facsimile) shall in all respects be considered equivalent to an original, and Borrower hereby waives any rights or objections to the use of such copies.

CERTIFICATION CONCERNING OFFICIALS AND CERTIFICATES. The Official named above is duly elected, appointed, or employed by or for the Entity, as the case may be, and occupies the position set opposite his or her respective name. This Certificate now stands of record on the books of the Entity, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Certificate and performed prior to the passage of this Certificate are hereby ratified and approved. This Certificate shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Entity's agreements or commitments in effect at the time notice is given.

IN TESTIMONY WHEREOF, I have hereunto set my hand and attest that the signature set opposite the name listed above is his or her genuine signature.

I have read all the provisions of this Certificate, and I personally and on behalf of the Entity certify that all statements and representations made in this Certificate are true and correct. This Governmental Certificate is dated February 5, 2025.

GOVERNMENTAL CERTIFICATE
(Continued)

Page 2

CERTIFIED TO AND ATTESTED BY:

X _____
Secretary, Fort Collins, Colorado, Downtown
Development Authority

STATE OF COLORADO

)

) SS

COUNTY OF _____

)

Signed and sworn to (or affirmed) before me on this _____ day of _____, 20_____, by _____ as
of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

NOTE: If the Official signing this Certificate is designated by the foregoing document as one of the officials authorized to act on the Entity's behalf, it is advisable to have this Certificate signed by at least one non-authorized official of the Entity.

LegalPro, Ver. 24.4.20.030 Copr. Finestra USA Corporation 1997, 2025. All Rights Reserved. - CO 1-SEPPLUC22.FG TR-328184 PR-1028

EXHIBIT B

THIRD INTERGOVERNMENTAL AGREEMENT GOVERNING A LINE OF CREDIT FOR FINANCING DOWNTOWN DEVELOPMENT AUTHORITY PROJECTS AND PROGRAMS

This INTERGOVERNMENTAL AGREEMENT ("IGA") is entered into this ____ day of _____, 2025, by and between the FORT COLLINS, COLORADO DOWNTOWN DEVELOPMENT AUTHORITY, a body corporate and politic (the "DDA") and the CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation (the "City").

WITNESSETH:

WHEREAS, the DDA has been created pursuant to the provisions of Title 31, Article 25, part 8, Colorado Revised Statutes, and Chapter 2, Article IV, Division 1 of the City Code (the "DDA Statute"); and

WHEREAS, the DDA Statute has declared that the organization of downtown development authorities will serve a public use; promote the health, safety, prosperity, security, and general welfare of the inhabitants thereof and of the people of this state; will halt or prevent deterioration of property values or structures within central business districts; halt or prevent the growth of blighted areas within such district, and assist municipalities in the development and redevelopment of downtowns and in the overall planning to restore or provide for the continuance of the health thereof; and

WHEREAS, the DDA provides an invaluable service to the City by promoting the health, safety, prosperity, security and general welfare of those living and working within its boundaries; and

WHEREAS, pursuant to C.R.S. §31-25-808(1)(f), the DDA is empowered to enter into contracts with governmental agencies and public bodies in furtherance of the statutory mission of the DDA; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council of the City, by ordinance or resolution, to enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, the primary means of financing DDA projects and programs is through the use of property tax increment collected within the DDA boundaries, and C.R.S. §31-25-807(3)(a)(II) requires that the City or DDA incur some form of debt in order to finance such projects and programs using property tax increment revenues collected within the DDA boundaries; and

WHEREAS, such property tax increment revenues, once remitted to the City by Larimer County, Colorado, are deposited into an account held by the City (the “DDA Debt Service Fund”); and

WHEREAS, on October 15, 2012, the parties entered in that certain agreement entitled “Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs” which established a line of credit to finance certain DDA projects and programs and defined the process for use of such line of credit (the “2012 IGA”); and

WHEREAS, the 2012 IGA had a term of six (6) years and expired on December 31, 2018; and

WHEREAS, on _____, 2018, the parties entered into in that certain agreement entitled “Second Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs” which extended the term of the line of credit established under the 2012 IGA and increased the per-draw limit under the line of credit to \$5,000,000 (the “2018 IGA”); and

WHEREAS, the 2018 IGA had a term of six (6) years and expired on December 31, 2024; and

WHEREAS, under both the 2012 IGA and the 2018 IGA, the line of credit was established between the City and First National Bank of Omaha (“First National Bank”) through execution of a line of credit agreement and promissory note, consistent with the DDA Statute, which at the time required that the City incur the debt necessary to finance DDA projects and programs using property tax increment revenues under C.R.S. § 31-25-807(3)(a)(II); and

WHEREAS, effective August 7, 2023, C.R.S. § 31-25-807(3)(a)(II) was amended to provide that a city, pursuant to an intergovernmental agreement with a downtown development authority, approved by ordinance of the city, may delegate to the downtown development authority the power to incur loans or indebtedness or obtain advances and to pledge tax increment money for the payment of any loans, advances, or indebtedness; and

WHEREAS, the City, under this IGA, desires to delegate to the DDA the authority to incur the indebtedness evidenced by the line of credit agreement and promissory note described in Section 2 below, which will allow for the shifting of certain administrative burdens related to the financing of DDA operations from the City to the DDA, which is beneficial to the City and which the DDA is willing and able to perform; and

WHEREAS, the parties desire to enter into this IGA for the purpose of replacing the line of credit established under the 2012 IGA and the 2018 IGA, for a term of six (6) years, on the same general terms and conditions contained in the 2012 IGA and the 2018 IGA, except as described above and as depicted on Exhibit B (“Exhibit B” being defined and described in Section 3.4 below); and

WHEREAS, a line of credit established by the DDA with a financial institution, as authorized by the City pursuant to this IGA, meets the requirements of C.R.S. §31-25-807(3)(a)(II), as amended, and the costs and interest associated with such a line of credit are much lower than would be the case with other types of financing; and

WHEREAS, it is in the best interests of both the DDA and the City to reduce financing costs of DDA projects and programs in order to preserve the maximum amount of property tax increment revenues for DDA projects and programs within its boundaries.

NOW, THEREFORE, in consideration of the mutual covenants and promises of the parties as hereafter provided and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. TERM.

The term of this IGA shall commence upon execution by the parties and continue through December 31, 2030 ("Term"), unless earlier terminated by mutual agreement.

2. LINE OF CREDIT.

Attached hereto as **Exhibit A**, and incorporated herein by reference, is a copy of the Promissory Note and Agreement (the "LOC Agreement") between the DDA and First National Bank establishing an annual revolving line of credit, renewable each fiscal year of the Term for the benefit of the DDA, and which, in addition to other terms and conditions for its use, provides for a maximum per-draw limit of Five Million Dollars (\$5,000,000) (the "Line of Credit").

3. REQUIREMENTS FOR DRAWS ON LINE OF CREDIT.

Any draw on the Line of Credit by the DDA during the Term shall be in accordance with all of the following requirements:

3.1 The DDA Board shall annually adopt a resolution approving its budget and shall adopt a resolution recommending the City Council of the City appropriate DDA monies to fund the DDA budget; and

3.2 The City Council of the City shall annually approve the DDA budget and by ordinance appropriate funds therefor, including funds for debt service for the Line of Credit and expenditure of the Line of Credit proceeds, as applicable; and

3.3 Any draw on the Line of Credit shall be used only to pay the costs of DDA projects and programs approved in the annual DDA budget and for which funds have been appropriated by the City; and

3.4 The sequence of steps for drawing on the line of credit shall be as depicted in the flowchart contained in **Exhibit B**, attached hereto and incorporated herein by reference; and

3.5 At least fourteen (14) days prior to any draw on the Line of Credit, the DDA's Executive Director shall determine and report to the City's Chief Financial Officer the current level of total debt that has at that time been issued under the existing voter authorization for DDA debt and further shall verify and report to the City's Chief Financial Officer that there are sufficient tax increment monies in the DDA's Debt Service Fund to replenish the Line of Credit in the amount of the draw and the interest cost. The DDA's Executive Director shall supply the City's Chief Financial Officer with documentation supporting such determinations and reporting, with examples of the documentation to be supplied being depicted in **Exhibits C-1 through C-5**, attached hereto and incorporated herein by reference. The DDA shall also notify the City's Chief Financial Officer of the date on which the DDA intends to make a draw request. The City's Chief Financial Officer shall review such information and documentation reported, and shall promptly notify the DDA of any errors or deficiencies identified; and

3.6 The DDA shall have the authority to request any draw on the Line of Credit consistent with the LOC Agreement and this IGA; provided, however, that the DDA shall make no draw on the Line of Credit in excess of available debt authorization or available tax increment monies. The DDA shall notify the City's Chief Financial Officer of any draw request no later than twenty-four (24) hours after making any such request; and

3.7 At the time of a draw request by the DDA, the City's Chief Financial Officer shall initiate such action as is necessary to repay the draw using funds from the DDA's Debt Service Fund within seven (7) business days of the DDA's receipt of the draw, such that the Line of Credit is fully replenished to its Five Million Dollars (\$5,000,000) limit of available credit within seven (7) business days of receipt of each such draw; and

3.8 Upon receipt from First National Bank, the DDA shall transfer the proceeds from the related Line of Credit draw into the City-held DDA Financing Activity Fund, and the City's Chief Financial Officer shall cause such funds to be available to the DDA.

4. EARLY TERMINATION

In the event that for any reason the Line of Credit is terminated, the parties agree that they will work together in good faith to secure another line of credit that meets the purposes of this IGA, subject to such City Council and DDA Board approval as may be required. In such event, any such new letter of credit shall be subject to the provisions of, but shall not require an amendment to, this IGA. The parties acknowledge that the tax increment funds that comprise the DDA's Debt Service Fund are held in a First National Bank account owned by the City and that, under the section of the LOC Agreement entitled "Conditions Precedent to an Advance", the City must continue to hold such funds in a First National Bank account in order for the Line of Credit to remain in effect. In recognition thereof, the City agrees to notify the DDA, as soon as is practicable, of any decision to change banking providers, to allow the parties sufficient time to negotiate a replacement for the Line of Credit with the City's new banking provider.

5. NOTICE.

All notices to be given to parties hereunder shall be in writing and shall be sent by certified mail to the addresses specified below:

DDA: Downtown Development Authority
Attn: Executive Director
19 Old Town Square, Suite 230
Fort Collins, CO 80524

With a copy to: Joshua C. Liley
Liley Law, LLC
2627 Redwing Road, Suite 342
Fort Collins, CO 80526

CITY: City of Fort Collins
Attn: Chief Financial Officer
215 North Manson Street
Fort Collins, CO 80524

With a copy to: City of Fort Collins
Attn: City Attorney
300 LaPorte Avenue
Fort Collins, CO 80521

6. THIRD PARTY BENEFICIARIES.

This IGA shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.

7. GOVERNING LAW/SEVERABILITY.

The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this IGA. In the event any provision of this IGA shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this IGA.

IN WITNESS WHEREOF, the parties have executed this IGA the day and year first above written.

CITY OF FORT COLLINS, COLORADO,
a Colorado municipal corporation

By: _____
Kelly DiMartino, City Manager

APPROVED AS TO FORM:

Dianne Criswell, Senior Assistant City Attorney

ATTEST:

Delynn Coldiron, City Clerk

THE FORT COLLINS, COLORADO,
DOWNTOWN DEVELOPMENT
AUTHORITY, a body corporate and politic

By: _____
David Lingle, Chair

ATTEST:

Cheryl Zimlich, Secretary

EXHIBIT A

SEE LOAN DOCUMENTS ATTACHED TO RESOLUTION

EXHIBIT B

DDA/City Line of Credit Flowchart

A) Step 1 - DDA verifies cash available in Debt Service Fund
(Responsible party: DDA)

B) Step 2 & 3 - DDA initiate loan transfers with Bank and repayment from City. DDA provides documentation as verification:

- Cash Flow Statement
- Tax Warrant from LarCo Assessor
- Payment Schedule(s)
- List of Projects/Programs to be funded with loan

(Responsible party: DDA)

C) Step 4 - City repayment of LOC Loan
(Responsible party: City)

D) Step 5 & 6 - DDA receives proceeds from bank, transfers proceeds to DDA Financing Activity Fund
(Responsible party: DDA)

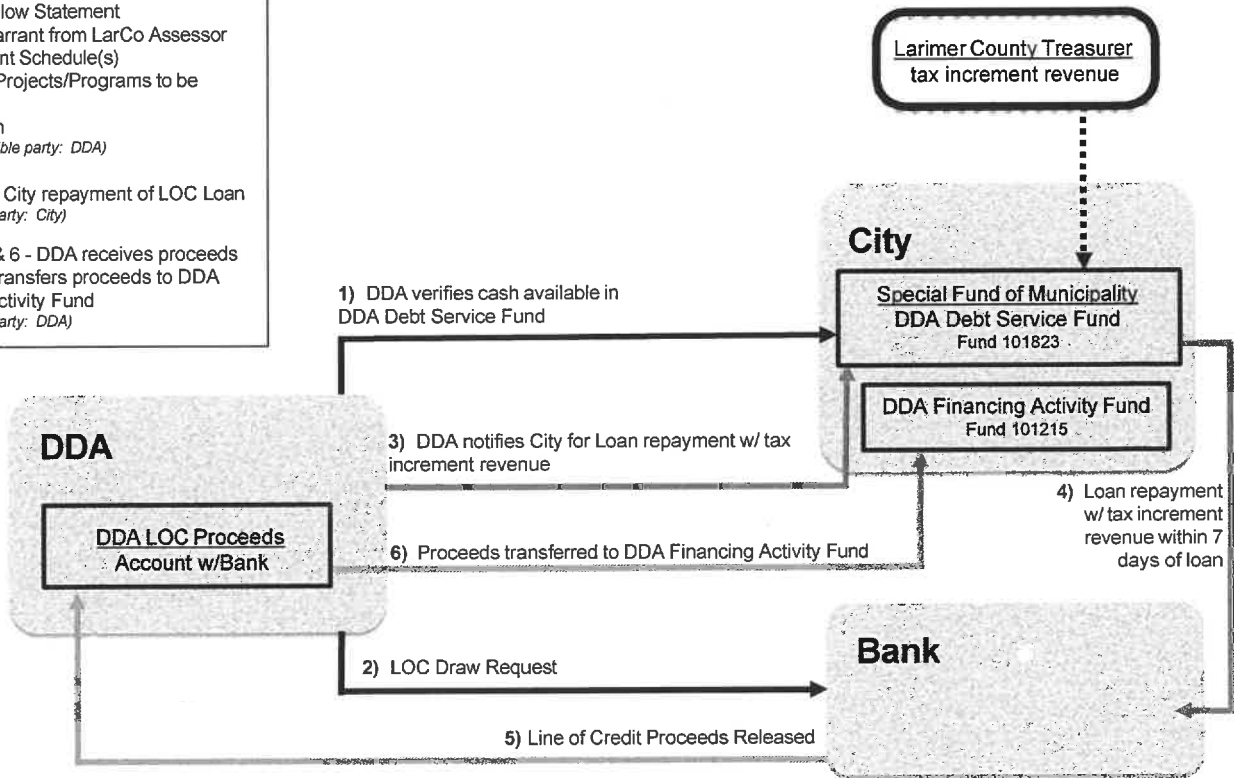


EXHIBIT C - 1

Downtown Development Authority Tax Increment Cash Flow Statement

	A	B	C	D	E	F	G	H	I	J	K
1			Sep 2023 for FY24	Mar 2024 for FY24	Sep 2024 for FY25						
2		Actuals	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
3	Budget Year	2023	2024	2024	2025	2026	2027	2028	2029	2030	2031
4	FUND SOURCES										
5	Debt Service Accounting/ACFR Fund Balance	243,968	263,723	187,110	257,335						
6	Less: Unrealized Gain/Add: Unrealized Loss (Budget Year Only)			57,774	-						
7	TOTAL DEBT SERVICE CASH FUND BALANCE	243,968	263,723	244,884	257,335	254,854	233,569	270,615	307,691	357,315	406,987
8	Business Marketing and Communications Program & Gift Card Program Carryover			161,601							
9	Capital Asset General Maintenance 2023 Carryover			174,307							
10	Capital Asset Reserves 2023			384,583							
11	TOTAL BMC, CAPITAL ASSET GENERAL MAINTENANCE & RESERVES 2023	504,158		720,491							
12	REVENUES										
13	Tax Increment	6,240,806	8,416,289	8,074,540	8,115,031	8,105,517	8,605,869	9,133,490	9,689,867	10,276,566	10,895,240
14	Plus: Woodward Tax Increment	591,248	591,248	591,248	591,248	1,075,254	1,075,254	1,075,254	1,075,254	1,075,254	1,075,254
15	Interest Revenue	52,075	0	0	0	0	0	0	0	0	0
16	TOTAL REVENUES	6,884,129	9,007,537	8,665,788	8,706,279	9,180,771	9,681,123	10,208,744	10,765,121	11,351,820	11,970,494
17	COMMITTED EXPENDITURES										
18	Woodward Bond Issue Debt	431,611	431,611	431,611	431,611	731,173	731,173	731,173	731,173	731,173	731,173
19	Parking Garage IGA (Old Firehouse Parking Structure)	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000	300,000
20	Housing Catalyst/FC DDA LLC Loan (Oak 140)	121,869	121,869	121,869	121,869	121,869					
21	Total Multi Year Reimbursements After Savings + Collections	534,254	617,431	617,264	665,760	798,524	743,119	598,042	408,918	400,859	344,082
22	TOTAL COMMITMENTS	1,387,734	1,470,911	1,470,744	1,519,240	1,951,566	1,774,292	1,629,215	1,440,091	1,432,032	1,375,255
23	PM FEES & BMC/GC & MAINTENANCE FUNDS										
24	Project Management Fees	257,719	54,826	64,826	134,411	Developed Annually					
25	DDA 5 Mill Property Tax TIF Revenue to O&M		402,056	397,699	400,030	Developed Annually					
26	Business Marketing and Communications Program & Gift Card Program	350,200	107,000	318,743	328,305	338,154	348,299	358,748	369,510	380,596	392,014
27	Capital Asset General Maintenance	563,659	942,589	832,771	802,086	1,157,930	1,245,402	1,415,092	1,522,588	1,731,464	1,863,644
28	Capital Asset Reserve	306,505	444,691	449,191	395,571	419,362	523,805	486,306	637,396	514,689	510,357
29	Capital Asset Replacement Annual Program Contribution	141,695	189,300	262,900	211,200	Developed Annually					
30	TOTAL PM FEES, BUSINESS MARKETING/GC, & MAINTENANCE FUNDS	1,619,778	2,140,462	2,326,130	2,271,603	1,915,447	2,117,506	2,260,146	2,529,495	2,628,749	2,766,014
31	UNCOMMITTED DISCRETIONARY FUNDS	4,437,633	5,396,033	5,578,956	4,917,919	5,335,043	5,752,280	6,282,307	6,745,912	7,243,967	7,942,478
32	FUND BALANCE	187,110	263,854	257,335	254,854	233,569	270,615	307,691	357,315	406,987	293,734

EXHIBIT C - 1

	A	B	C	D	E	F	G	H	I	J	K
		Actuals 2023	Sep 2023 for FY24 Forecast 2024	Mar 2024 for FY24 Forecast 2024	Sep 2024 for FY25 Forecast 2025	Forecast 2026	Forecast 2027	Forecast 2028	Forecast 2029	Forecast 2030	Forecast 2031
1											
2											
3	Budget Year										
	FUND BALANCE ALLOCATIONS										
	Reserves										
29	Multi-year Reimbursements (5.5% of next year)	33,950	46,400	46,400	43,919	40,872	32,892	22,490	22,047	18,925	-
30	Committed - Half of Next Year Commitments	210,935	210,935	210,935	210,935	150,000	150,000	150,000	150,000	150,000	0
31	Reserves Total	244,884	257,335	257,335	254,853	190,872	182,892	172,490	172,047	168,925	0
32	Balance - Uncommitted for following year			0	0	42,698	87,722	135,201	185,268	238,069	293,734
33	Cash Fund Balance	244,884	257,335	257,335	254,854	233,569	270,615	307,690	357,315	406,988	293,734
34	Adjustment for previous year										
35	Unrealized gain/(loss) for budget year	(57,774)									
36	Accounting/ACFR Fund Balance	187,110									
NOTES:											
Woodward Bond		\$6,050,000 bond (2013) - Current rate of 1.65% reset each September 26th anniversary; Principal Bal = \$2,899,150.99 as of 1/1/2024									
Tax Increment Revenue		Budget Year 2025: August Certification from Larimer County Assessor's Office until final December Certification is released. Forecast Years 2026 through 2031: Historical growth average of 5.45% in Assessed Value									
Legend		Projected Property Tax Revenue			Projected Approval of Continuation of LOC			Projected Addition of New Alleys			

2024 TIF Tax Warrant**EXHIBIT C-2**

12/20/2024

FORT COLLINS DOWNTOWN DEV. AUTH
Authority # 058

Base 112,926,987
Increment 159,883,441
Total Assessed 272,810,428

<i>Auth</i>	<i>Authority Name</i>	<i>Area %</i>	<i>Share Back%</i>	<i>Effective Increment *</i>	<i>Effective Base *</i>	<i>Total Assessed</i>	<i>TIF Levy</i>	<i>Total Revenue</i>	<i>Entity Revenue</i>	<i>TIF Revenue</i>
006	POUDRE R-1 SCHOOL DISTRICT	100.000000%	50	79,941,720	192,868,708	272,810,428	57.37	15,651,134	11,064,878	4,586,256
028	LARIMER COUNTY	100.000000%	50	79,941,720	192,868,708	272,810,428	22.461	6,127,595	4,332,024	1,795,571
032	CITY OF FORT COLLINS	100.000000%	0	159,883,441	112,926,987	272,810,428	9.797	2,672,724	1,106,346	1,566,378
054	HEALTH DISTRICT OF NORTHERN LARIMER CNTY	100.000000%	50	79,941,720	192,868,708	272,810,428	2.167	591,180	417,946	173,234
058	FORT COLLINS DOWNTOWN DEVELOPMENT AUTH	100.000000%	50	79,941,720	192,868,708	272,810,428	5	1,364,052	964,343	399,709
059	FORT COLLINS G.I.D. NO. 1	50.440043%	0	80,645,276	56,960,421	137,605,697	4.924	677,570	280,473	397,097
064	LARIMER COUNTY PEST CONTROL	84.637462%	50	67,660,643	163,239,179	230,899,822	0.142	32,788	23,180	9,608
095	BOXELDER SANITATION DISTRICT	5.113900%	50	4,088,140	9,863,112	13,951,252	0	0	0	0
110	EAST LARIMER COUNTY WATER DISTRICT	19.070858%	50	15,245,572	36,781,718	52,027,290	0	0	0	0
112	POUDRE RIVER PUBLIC LIBRARY DISTRICT	100.000000%	50	79,941,720	192,868,708	272,810,428	3.015	822,523	581,499	241,024
117	NORTHERN COLORADO WATER CONS DISTRICT	100.000000%	50	79,941,720	192,868,708	272,810,428	1	272,810	192,868	79,942

\$9,248,819
Total TIF Rev

* Base and increment values certified to taxing entities

EXHIBIT C-3

Woodward Loan																	
2013		6,050,000															
2014		-															
Reimbursement Amount		6,050,000		Start Date		1-Sep-13											
				Matures		1-Sep-31											
				Years		18											
						</											

EXHIBIT C-4

Item 9.

<u>Year</u>		<u>Contribution</u>	<u>Interest</u>	<u>Total</u>
Dec 1	2019	\$300,000.00	\$0.00	\$300,000.00
Dec 1	2020	300,000.00	0.00	300,000.00
Dec 1	2021	300,000.00	0.00	300,000.00
Dec 1	2022	300,000.00	0.00	300,000.00
Dec 1	2023	300,000.00	0.00	300,000.00
Dec 1	2024	300,000.00	0.00	300,000.00
Dec 1	2025	300,000.00	0.00	300,000.00
Dec 1	2026	300,000.00	0.00	300,000.00
Dec 1	2027	300,000.00	0.00	300,000.00
Dec 1	2028	300,000.00	0.00	300,000.00
Dec 1	2029	300,000.00	0.00	300,000.00
Dec 1	2030	300,000.00	0.00	300,000.00
Dec 1	2031	300,000.00	0.00	300,000.00
		\$3,900,000.00	\$0.00	\$3,900,000.00

EXAMPLE

EXHIBIT C-5

Item 9.

Downtown Development Authority 2024 Line of Credit Draws

Draw #1: 5/28/2024

Projects/Programs to be Funded:

Alley Capital General Maintenance	258,076.00
Alley Enhancements 2024-2025 (E Myrtle to Mulberry, Chesnut to Pine)	1,100,000.00
Equipment One-time Purchase	215,000.00
Façade Grant Program	26,531.00
FCDDA Loan	121,869.00
Holiday Lights	35,000.00
Interactive Light Display in Old Town Square	93,000.00
Multi-year reimbursement	617,264.00
Old Firehouse Alley Garage IGA	300,000.00
Old Town Square General Maintenance	200,000.00
Old Town Square Capital Reserve/Replacement	92,960.00
Surveillance Camera Operations	4,295.00
Warehouse	70,300.00
Project Management Fees	64,826.00
5 Mill Property Tax TIF Revenue	397,699.00
2024 Projects and Programs Reserve aka Uncommitted Discretionary Funds	1,403,180.00
Total Line of Credit Draw #1 for 2024	5,000,000.00

Final Draft Draw #2: 12/26/2024

2024 Projects and Programs Reserve aka Uncommitted Discretionary Funds	1,490,504.00
Alley Enhancements 2024-2025 (E Myrtle to Mulberry, Chesnut to Pine)	1,550,000.00
Total Line of Credit Draw #2 for 2024	3,040,504.00
Total Line of Credit Draws 2024	8,040,504.00



Council Finance Committee Hybrid Meeting
CIC Room / Zoom
November 6, 2024
4:00 – 5:30 pm

Council Attendees: Mayor Arndt, Emily Francis, Kelly Ohlson

Staff: Kelly DiMartino, Tyler Marr, Travis Storin, Denzel Maxwell, Teresa Roche,
Jenny Lopez Filkins, Ginny Sawyer, Terri Runyan, Max Valadez, Joe Wimmer,

Nina Bodenhamer, Drew Brooks, Monica Martinez,
Kaley Zeisel, Brad Buckman, Dana Hornkohl, Dean Klingner, Victoria Shaw, Jill
Wuertz, Kai Kleer, Patti Millo
Randy Bailey, Adam Halvorson, Trevor Nash, Garrison Dam, Jordan Granath,
Logan Bailor,
Renee Reeves, Dave Lenz, Jen Poznanovic, Jo Cech, Zack Mozer Carolyn Koontz
Matt Robenalt, Kristy Klenk

Other: Kevin Jones, Chamber

Meeting called to order at 4:00 pm

Approval of minutes from the September 5, 2024, and October 3, 2024 Council Finance Committee meetings.
Motion made to approve by Kelly Ohlson and seconded by Emily Francis. Approved by roll call.

A. DDA Line of Credit Renewal

Matt Robenalt, Executive Director, Downtown Development Authority
Kristy Klenk, Finance & HR Manager, Downtown Development Authority
Adam Halvorson, Sr. Analyst, Treasury, City of Fort Collins

Downtown Development Authority (“DDA”) Line of Credit (“LOC”) Finance for 2025-2030

EXECUTIVE SUMMARY

The current LOC established in 2012 and renewed in 2018 by the City on behalf of the DDA is scheduled to expire at the end of 2024. The City and DDA began taking steps earlier this year to renew this debt instrument with First National Bank for another six-year term, as it will be needed by the DDA to execute its projects and programs in budget year 2025.

GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council Finance recommend bringing an IGA forward to accommodate the renewal of the bank authorized Line of Credit to be used by the DDA and satisfy compliance with C.R.S. §31-25-807(3)(a)(II)?

BACKGROUND/DISCUSSION

Background

The DDA Act (C.R.S. 31-25-801, as amended) has inherent processes that require the City and the DDA to work collaboratively to achieve the purpose of the legislation. Among these expected collaborations is the process for financing DDA activities. In 2012, Council adopted Ordinance No. 089, 2012 and the City and DDA established a line of credit (LOC) with First National Bank to satisfy the statutory requirement to generate proceeds from debt to be used by the DDA to execute its projects and programs and implement the DDA's Plan of Development. The tax increment revenues created each year by the private investment that has occurred downtown is used to pay off the debt.

In 2018, Council adopted Ordinance NO. 066, 2018 to renew the LOC for another six-year term from 2019 – 2024. The current LOC is scheduled to expire at the end of 2024. The DDA and City began taking steps earlier this year to renew this debt instrument with First National Bank for another six-year term, as it will be needed by the DDA to execute its projects and programs beginning in budget year 2025.

Additionally, in 2012, Council approved Resolution 2012-081 and the DDA and City created an intergovernmental agreement ("IGA") that established the process by which the two organizations would:

- initiate requests for a draw from the LOC
- verify tax increment revenue cash available to repay the debt
- account for the loan proceeds released from the LOC, and
- execute repayment with tax increment within 7 days of the initial LOC draw

The Second IGA Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs was approved by City Council by Resolution 2018-046 to reflect the terms of the renewed LOC in 2018.

What is New for 2024?

In 2023, SB23-175 was signed into law, and this amendment to the DDA Act provides a new hybridized option for meeting the statutory requirements for financing debt of downtown development authorities. This amendment makes it possible for development authorities to obtain their own debt, and have it paid off with tax increment revenues provided there is an IGA between the municipality and development authority authorizing this arrangement. Prior to the amendment, the statute required that all debt issued for the benefit of the development authority be exclusively the debt of the municipality.

Many of the downtown development authorities in the State use the same line of credit financing approach as the Fort Collins DDA and City of Fort Collins. Because the approach has some steps that amount to busy-work for municipal finance staff, there was wide support to create an option to transfer much of the administrative burden to development authorities by allowing them to obtain their own debt, which is what SB23-175 now offers.

Since this was a new concept enacted into the DDA Act, the DDA and City Finance staff have conferred with appropriate legal counsel, and based on that began working together to discuss a new line of credit that will be obtained by the DDA from a bank, and also the process steps that would be embodied in an IGA to achieve compliance with the DDA Act and clearly define procedural steps between the City, DDA and bank. A flow chart defining these procedural steps is provided in the last slide of **Attachment 1 Slide Presentation**.

It is planned that the intergovernmental agreement, and the line of credit loan promissory note from First National Bank of Omaha will be presented to the DDA Board in February 2025 for approval, and the intergovernmental agreement then advanced to the City Council for approval shortly thereafter. This schedule for adoption is several months ahead of when the 2025 tax increment revenues are released by the County Treasurer that would be used to pay off draws on the DDA's new line of credit, and this timing is supportive of the DDA's cashflow timing needs for projects it will be funding in 2025.

Benefits and Impacts of the LOC

When the DDA and City began using the LOC financing approach in 2012, it provided benefits and positive impacts over the much more expensive forms of financing such as issuance of traditional revenue bonds or private-placement financing with banks and other investors. Using the LOC approach to finance DDA projects and programs results in a significantly shorter period of time in which the debt incurs interest. This means that more funding is available to invest directly into projects and programs in the downtown, and less is spent on finance fees and interest expenses.

DDA staff analyzed the savings from this approach used between 2012-2024 against that of the other forms of traditional financing used by the City and DDA in the past. The financial savings is significant. Since 2012, the LOC total interest and financing fees for \$46,671,468 of principal debt was \$17,098. In contrast, the total interest and finance fees for the City/DDA financing approach that traditionally used certificates of participation and private placement bonds for \$15,279,063 of principal debt was \$3,412,065.

Other benefits and positive impacts using the LOC include:

- Strong expression of fiduciary stewardship of public funds
- Recognition that investment of tax increment funds, derived from property tax assessments of overlapping tax entities, creates positive growth in assessed value and thereby increased the value of the property tax base for all overlapping entities. (82% of the DDA tax increment comes from tax entities other than the City such as Larimer County and Poudre School District)
- Funding partnerships of the DDA undertaken with the City and private sector have no cost of capital charges assessed to the projects
- Every draw made on the LOC is paid off within seven (7) days, which means no effect at the end of the calendar year on the City's fund balance or City Comprehensive Annual Financial Report

Next Steps & Key Dates

The DDA has met with First National Bank of Omaha and is coordinating with the bank to provide the promissory note and final term sheet.

The following key dates outline the remaining steps in the schedule to implement the LOC renewal:

DDA Board – Approval of IGA & LOC Promissory Note 2/13/2025

City Council – Approval of IGA 3/4/2025

Discussion / Next Steps;

Mayor Arndt; yes - Makes complete sense – don't know why there would be any objections.

Kelly Ohlson; would love to see a list of different projects for each year; Capital Asset Maintenance obligations, multi-year – round dollars, not details

November 20, 2024

TO: Adam Halvorson, City of Fort Collins Sr. Analyst, Treasury
FROM: Matt Robenalt, Executive Director Fort Collins DDA
Kristy Klenk, Finance & HR Manager, Fort Collins DDA

RE: Recommendation to the Council Finance Committee on November 6, 2024 to bring an IGA forward to City Council to accommodate the renewal of the bank authorized Line of Credit to be used by the Downtown Development Authority (DDA)

Based upon a question prompted by Slide #2 of the DDA presentation (attached), Councilmember Ohlson requested information on the types of expenditures made with proceeds from the DDA line of credit. Staff has provided the past expenditures from 2021 to 2023 as a response, see attached.

Purpose of why we are here:

DDA and City Finance are preparing for DDA Board and City Council authorization to renew a revolving Line of Credit:

- established in 2012 with local bank
- renewed in 2018, expires 2024
- renewal term - six (6) years
- per draw limit continues at \$5,000,000

Estimated Funding Requirements by Year	2025	2026	2027	2028	2029	2030	Total
Firehouse Alley Parking Garage IGA	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$300,000	\$1,800,000
Housing Catalyst Loan for Oak 140	121,869	121,869					243,738
Capital Asset Maintenance Obligations	1,408,857	1,869,686	2,105,587	2,280,306	2,592,594	2,742,178	12,999,208
Multi-year Reimbursement for Public/Private Partnerships (DDA approved projects only)	665,760	614,079	558,674	413,597	224,473	216,414	2,692,997
Multi-year Capital Improvement Plan and Projects	5,790,810	5,317,984	5,603,355	5,576,136	5,443,013	5,304,168	33,035,466
Total	\$8,287,296	\$8,223,618	\$8,567,616	\$8,570,039	\$8,560,080	\$8,562,760	\$50,771,409

Line of Credit is to fund DDA projects and programs approved by the DDA Board and consistent with C.R.S. §31-25-807(3)(a)(II) and the mission of the organization

Downtown Development Authority
Line of Credit Annual Expenditures for Projects & Programs
2021-2023

Description	2021	2022	2023
Capital Asset Maintenance Obligations			
Old Town Square General Maintenance			
Parks/General Maintenance	128,500	134,000	132,600
Property & Liability Insurance	5,700	5,800	6,500
Snow Removal	16,400	28,000	11,000
Utilities	21,600	23,800	24,400
Old Town Square Bathrooms (rent, cleaning and security)	14,200	15,600	27,500
Miscellaneous/General Maintenance	19,600	10,700	7,600
Old Town Square General Maintenance Total	206,000	217,900	209,600
Alley General Maintenance			
Parks/General Maintenance	158,700	193,000	219,000
Property & Liability Insurance	4,400	5,700	12,000
Snow Removal	10,300	23,300	21,000
Utilities	5,900	7,200	8,500
Camera internet and firewall	13,400	21,500	23,300
Alley Trash Enclosure Leases	1,200	5,000	6,000
Miscellaneous/General Maintenance	10,700	10,200	9,900
Alley General Maintenance Total	204,600	265,900	299,700
Old Town Square Capital Reserve Replacement & Repairs			
Old Town Square Capital Reserve Replacement	55,800	78,500	73,000
Old Town Square Working Plan	17,200	50,000	69,000
Old Town Square Capital Reserve Replacement & Repairs Total	73,000	128,500	142,000
Alley Capital Reserve Replacement & Repairs			
Alley Capital Reserve Replacement	142,200	190,606	234,200
Alley Working Plan	27,500	51,300	47,100
Alley Capital Reserve Replacement & Repairs Total	169,700	241,906	281,300
Multi-year Reimbursement for Public/Private Partnerships			
Woodward	159,637	159,637	159,637
331 Meldrum (Otterbox Canyon Place)	112,537		
310 N Mason (Old Town Flats)	35,847	35,847	35,842
311 Willow (Mill House)	19,244		
220 Remington (Scholz Dental)	4,154	4,154	4,153
242 Linden (Galvanize)	22,959	22,959	22,959
302 S College (Uncommon)	69,373	68,402	68,402
359 Linden (Ginger and Baker)	38,696	34,254	35,641
215 Mathews	19,469	19,469	19,469
320 Maple	15,986	33,434	33,434
244 N College (Exchange)	45,247	32,560	35,215
250 Jefferson (Union)	21,277	16,126	16,727
401 Linden (Confluence)	47,463	61,727	63,118
221 E Oak (L'Avenir)			13,360
Multi-year Reimbursement for Public/Private Partnerships Total	611,889	488,569	507,957

Downtown Development Authority
Line of Credit Annual Expenditures for Projects & Programs
2021-2023

Description	2021	2022	2023
Multi-year Capital Improvement Plan and Projects			
Alley Enhancements 2020-2021 (W Oak & Tenney Ct N)	2,727,000	154,800	
Alley Enhancements 2022-2023 (Harper Goff, E Myrtle, W Olive)		218,500	4,054,000
Alley Trash Enclosure Lease Payments	2,200	2,600	1,700
Business Marketing & Communications Program	244,000	423,000	400,000
Downtown River District Improvements - Willow Street			145,000
Holiday Lights Partnership	35,000	35,000	35,000
Legislation Lobbyist		13,400	6,600
Oak 140 Pre-Development	448,000		
Oak 140 Construction	3,770,000	2,019,000	353,000
Oak 140 FCDDA Loan Payment		121,800	121,800
Oak 140 Operations			9,700
Old Firehouse Alley Parking Structure IGA	300,000	300,000	300,000
Old Town Square Programming (Art for the Heart, Adirondack Chair Painting, Skate Rink)	31,100	40,700	63,000
Old Town Parking Structure		29,400	
Opera Galleria	3,000	400	450
Project Management Fees	129,000	162,000	258,000
Sculpture on Loan Program	12,800	16,700	16,100
Street Outreach Team	15,000	15,000	40,000
Surveillance Camera Partnerships & Operations	5,000	12,600	5,100
Survey of Underdeveloped Properties			33,000
The Hand That Feeds Sculpture (Sugar Beet Park)	45,000		
Vendor Carts for Old Town Square			13,200
Warehouse 720 Vine Drive Operating and Capital Reserve Replacement/Repairs	31,000	46,100	62,600
Multi-year Capital Improvement Plan and Projects Total	7,798,100	3,611,000	5,918,250

Multi-year Capital Improvement Plan and Projects (not yet expended)	As of 2024
Crime Prevention Through Environmental Design (CPTED)	5,300
DDA Land Bank	3,000,000
Downtown Bike Racks	6,600
Downtown River District Improvements	158,000
Downtown Wayfinding	40,000
Equipment One-Time Purchase (mini street sweeper & mini bucket lift)	215,000
Façade Grant Program	340,000
Gateway Entrances	55,000
Interactive Light Display in Old Town Square	93,000
Nighttime Economy Economic Impact Study	35,000
Old Town Parking Structure	175,000
Parking Implementation Plan Scope	65,000
Projects & Programs 2024 Reserves	2,700,000
Tree Canopy	8,000
Urban Micro-Space Design Plan	113,000
Multi-year Capital Improvement Plan and Projects (not yet expended) Total	7,008,900

File Attachments for Item:

10. Resolution 2025-050 Authorizing the Mayor to Execute a License Agreement with BNSF Railway Company for Railroad Crossing Signal Equipment within the Public Right-of-Way for North Timberline Road.

The purpose of this item is to authorize the execution of a License Agreement (the "License Agreement") for Railroad Signal Equipment covering 600 square feet (the "License Area") located within the boundaries of North Timberline Road at the intersection of Timberline and Vine for BNSF Railway Company to install and operate railroad crossing signal equipment, controls, and related infrastructure.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Jonathan Piefer, Senior Real Estate Specialist
Mark Laken, Civil Engineer II

SUBJECT

Resolution 2025-050 Authorizing the Mayor to Execute a License Agreement with BNSF Railway Company for Railroad Crossing Signal Equipment within the Public Right-of-Way for North Timberline Road.

EXECUTIVE SUMMARY

The purpose of this item is to authorize the execution of a License Agreement (the "License Agreement") for Railroad Signal Equipment covering 600 square feet (the "License Area") located within the boundaries of North Timberline Road at the intersection of Timberline and Vine for BNSF Railway Company to install and operate railroad crossing signal equipment, controls, and related infrastructure.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The City entered into a Grade Crossing Construction and Maintenance Agreement (the "C&M Agreement") dated August 14, 2023, with BNSF Railway Company ("BNSF") to improve the existing Timberline Road at-grade crossing of the railroad right-of-way (the "Project"). The C&M Agreement was authorized by the parties and approved by the Colorado Public Utilities Commission and the City and BNSF have executed it.

The Project will improve public safety and vehicular travel at this crossing. The Project was initiated by the City and will be financed through state and federal funding sources. However, BNSF will be responsible for performing any work on its own railroad equipment and fixtures, including the crossing signal equipment, controls, and related infrastructure (the "Crossing Signal"), and such work includes the initial installation and all maintenance responsibilities relating to the Crossing Signal.

During the review of the construction plans for the Project, the City discovered that the Crossing Signal would be located, in part, within City right-of-way, rather than entirely within properties owned by BNSF. Accordingly, BNSF requested formal documentation from the City permitting the installation and maintenance of the Crossing Signal. Given the cost of the Crossing Signal, including the potential cost of removal of the Crossing Signal if a permit were to expire without renewal, BNSF was unwilling to rely on the standard Encroachment Permit and requested a formal easement from the City. Given the long term plans for this intersection (an overpass that will obviate the need for this Crossing Signal), City staff decided that an easement was not appropriate and that a license agreement was the proper mechanism to

authorize the Crossing Signal, and the parties subsequently negotiated and approved the terms of the License Agreement.

City staff is seeking Council approval of the License Agreement under the Fort Collins Charter, Article XI, Section 10 pertaining to Revocable permits, because the terms fall outside of City Code Section 23-116, which authorizes the City Manager to execute permits and licenses subject to certain conditions. Specifically, the License Agreement involves the installation of fixtures and improvements that could require use of the property for more than five years (falls outside of Sec. 23-116(a)(1)) and that could be considered permanent (falls outside of Sec. 23-116(a)(2)). The Fort Collins Charter, Article XI, Section 10 provides, "The Council may grant a permit at any time for the use or occupation of any street, alley, or public place. Such permit shall be revocable by the Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit."

There is no compensation required from BNSF for the License Agreement, because the City requested the relocation of the Crossing Signal as part of the Project.

CITY FINANCIAL IMPACTS

There are no material financial impacts to the City.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution 2025-050
2. Exhibit A to Resolution
3. Vicinity Map
4. Grade Crossing Construction and Maintenance Agreement

RESOLUTION 2025-050
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE A LICENSE AGREEMENT
WITH BNSF RAILWAY COMPANY FOR RAILROAD CROSSING SIGNAL
EQUIPMENT WITHIN THE PUBLIC RIGHT-OF-WAY FOR NORTH
TIMBERLINE ROAD

A. The purpose of this item is to authorize the Mayor to execute a License Agreement (the "License Agreement") with BNSF Railway Company ("BNSF") for railroad crossing signal equipment, controls, and related infrastructure (the "Crossing Signal") covering 600 square feet (the "License Area") located within the boundaries of North Timberline Road at the intersection of Timberline and Vine.

B. To aid vehicular travel and public safety, the City is undertaking a project to improve the existing at-grade railroad crossing of the railroad right-of-way at the intersection of Vine Drive and Timberline Road (the "Project").

C. BNSF owns and operates the line of railroad at this Vine Drive and Timberline Road railroad crossing. As part of the Project improvements, BNSF plans to install the Crossing Signal and will be responsible for performing any work on its own railroad equipment and fixtures.

D. August 14, 2023, the City and BNSF entered into a Grade Crossing Construction and Maintenance Agreement (the "C&M Agreement") for the Project as authorized by the Colorado Public Utilities Commission in proceeding number 23A-0114R.

E. Review of construction plans for the Project revealed that the Crossing Signal would be located, in part, within City right-of-way, rather than entirely within properties owned by BNSF.

F. City staff and BNSF have negotiated and hereby propose the License Agreement for the City to authorize BNSF to install and maintain the Crossing Signal within the City right-of-way.

G. The Fort Collins Charter, Article XI, Section 10 provides that the City Council may grant a permit at any time for the use or occupation of any street, alley, or public place and that such permit shall be revocable by the Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit.

H. The City Council finds and determines that the License Agreement is in the best interests of the City, that it will aid in advancing the public's health, safety, and welfare by facilitating the Project, and that the Mayor be authorized to execute the License Amendment between the City and BNSF.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Council authorizes the Mayor to execute, on behalf of the City, the License Agreement with BNSF, in substantially the form attached hereto as Exhibit A, with additional or modified terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Heather N. Jarvis

LICENSE AGREEMENT FOR RAILROAD SIGNAL EQUIPMENT

This License Agreement (the “License”) is entered into on _____, by and between the **CITY OF FORT COLLINS**, a Colorado municipal corporation, whose address is 300 LaPorte Avenue, Fort Collins, CO 80521 (“Licensor” or “City”) and **BNSF RAILWAY COMPANY**, a Delaware corporation, whose address is 2650 Lou Menk Drive, Fort Worth, TX 76131 (“Licensee” or “BNSF”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Licensor is the owner of real property in Fort Collins, Larimer County, Colorado, being that portion of the sixty foot (60’) right-of-way for North Timberline Road located south of the southern boundary of Licensee’s property, being more particularly shown in Exhibit A, attached hereto and incorporated herein (“Property”); and

WHEREAS, the Licensee is the owner and operator of a line of railroad in and through the City of Fort Collins, State of Colorado; and

WHEREAS, on August 14, 2023, the Licensor and Licensee entered into a Construction and Maintenance (“C&M”) Agreement related to the acquisition and installation of railroad crossings signals and activation equipment within the Licensee’s right of way; and

WHEREAS, the Licensee is the owner and operator of supplemental safety measures including but not limited to: crossing signal equipment and crossing signal control house (e.g. gates, flashers, a radar system, and a signal bungalow) (defined as “Railroad Signal Equipment”); and

WHEREAS, the Licensor finds that the Licensee’s use for the Property, subject to the limitations listed herein, is in the best interests of the Licensor, would not impair or impede the current use, and would not impact the integrity of existing infrastructure located on, about, or under the Property and Licensed Area (as defined herein); and

WHEREAS, under the Fort Collins Charter, Article XI, Section 10, the City Council may grant a permit at any time for the use or occupation of any street, alley, or public place, and such permit shall be revocable by the Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit; and

WHEREAS, the Licensor is willing to grant a license to the Licensee under the terms, conditions, and limitations as specified herein and subject to the C&M Agreement, which is incorporated herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained in this License, in light of the foregoing Recitals, which the Parties hereby adopt as facts, and subject to the

covenants, conditions, and limitations hereinafter set out, Licensor and Licensee agree as follows:

1. Grant of License. Subject to the terms and conditions set forth herein, the Licensor hereby grants to Licensee a license to construct, operate, and maintain Railroad Signal Equipment, in the areas shown on Exhibit A as “Premises,” being six hundred (600) square feet, more or less, of the Property (the “Licensed Area”). The License granted herein is subject to all existing utility easements and public improvements, if any, located on, over, under, or across the Property. The License granted herein is subject to facilitating the regular flow of traffic unobstructed by gates or the crossing arm except as required for passage of trains. Installation of the Railroad Signal Equipment is described in plans (the “Plans”), attached hereto and incorporated herein as Exhibit B, that have been prepared by the Licensee and reviewed and approved by the Licensor and the Federal Railroad Administration before Licensee’s entry onto the Licensed Area. The complete plan set for the Railroad Signal Equipment is Exhibit B to this License, but, for purposes of recordation and execution, only the cover page is attached hereto. Exhibit B in its entirety with this License is on file with the City of Fort Collins Engineering Department.
2. Consideration. This License is granted in consideration of the mutual promises set forth herein and other valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge.
3. Term. The License shall remain in place so long as the Railroad Signal Equipment remains installed. This License may be terminated at any time solely at the discretion of either Party, based on and subject to Fort Collins Charter, Article XI, Section 10, by providing written notice of termination to Licensee at least ninety (90) days before the anticipated date of such termination.
4. No Interest In Land. Licensee understands, acknowledges, and agrees that this License does not create an interest or estate in Licensee’s favor in the Licensed Area or Property. The Licensor retains all legal interest within the Property and Licensed Area. This License merely grants the Licensee the privilege of entering upon the Licensed Area to conduct activities in accordance with this License.
5. Limitation in Scope. The License granted to the Licensee is limited in scope and the work performed shall be as provided for in the Plans approved by Licensor. Licensee may permit Licensee’s employees, business invitees, contractors, subcontractors, and agents to use the Licensed Area in accordance with the terms and conditions stated herein.
6. Terms and Conditions.
 - a. Except as otherwise approved by Licensor, Licensee must work entirely within the Licensed Area boundary. If Licensee desires to make additional uses of the Licensed Area or desires to make use of additional property owned by Licensor outside the Licensed Area, Licensee must request approval from Licensor at least ten (10) days in advance of intended use, and Licensee shall not begin any additional uses until receiving Licensor’s approval in writing, which shall be granted by the acting City Engineer or appropriate designee.

- b. Any and all access on, over, under, across and to the Licensed Area shall be along existing access roads and only under dry conditions, unless the Licensor provides written consent for alternative access.
- c. Licensee shall not grade or otherwise improve, modify, or destroy existing improvements within the City right-of-way, unless otherwise noted in the approved Plans.
- d. Licensee shall also be responsible for proper disposal of all waste materials and shall provide litter and sanitation control and properly manage any waste fluids and toxic substances caused by, related to, or arising out of, Licensee's exercise of the rights under this License.
- e. The width and scope of any disturbance shall be kept to an absolute minimum within the Licensed Area. Absolutely no disturbance is allowed outside the uses permitted herein, including storage, maintenance of, and operation of construction vehicles, equipment and/or materials within the Licensed Area or upon the Property.
- f. Licensee shall accurately delineate the areas it shall travel and impact before any construction. Licensee agrees that all flagging and markers will be removed after construction is completed, but not before Licensor's post-construction inspection and approval of site reclamation.

7. Maintenance.

- a. Licensee shall assume full responsibility, and at Licensee's sole expense, for maintaining the Licensed Area and any Railroad Signal Equipment within the Licensed Area and any improvements and personal property the Licensee has placed or will place within the Licensed Area, in accordance with all applicable ordinances, codes, and regulations.
- b. Licensee shall be liable and responsible for all damage to or destruction of the Property, Licensed Area, or any public improvements, infrastructure, and natural features located thereon, caused by, related to, or arising out of, Licensee's exercise of the rights under this License. If that Licensee's use of the Licensed Area causes any damage or destruction, Licensee will remediate the damage to a condition substantially similar to its condition at the signing of this License and to Licensor's satisfaction, unless Licensor and Licensee agree otherwise in writing. Licensor may exercise immediate reasonable enforcement, restoration, and conservation actions when such actions are warranted for the protection and preservation of the Licensed Area or Property, or a portion thereof.
- c. If that Licensee situates any improvements on or affixes them to the aforementioned Licensed Area, Licensee shall keep said improvements in good and workmanlike repair, and shall maintain the improvements with regularity and reasonable means,

and in reasonable manner.

8. Licensors Use. The Licensor reserves the right to use the Licensed Area for purposes consistent with the rights and privileges herein granted to Licensee and which will not interfere with or endanger any of Licensee's improvements therein or use thereof. The Parties shall work in good faith to minimize any potential interference between Licensee and ongoing use of the Licensed Area and Property, or any portion thereof by the Licensor and/or its agents or assigns.

9. No Mechanic's Liens. Nothing contained herein shall authorize Licensee, or any person or entity acting through, with or on behalf of Licensee, to subject the Property, Licensed Area, or any portion thereof, to mechanic's liens. If any such lien shall be filed against the Property, Licensed Area, or any portion thereof, and Licensee has caused such lien, Licensee shall cause the lien to be discharged. If such lien is not discharged within twenty (20) days after receipt of written notice of the lien by the Licensee, Licensor, at its option, and at the expense of the Licensee, may enter into, defend, prosecute or pursue any effort or action (whether or not litigation is involved) that Licensor deems necessary to defend the Property, Licensed Area, or any portion thereof, from and against such lien.

10. Indemnity. Licensee shall hold harmless and indemnify the Licensor and its employees, agents, contractors, and elected and appointed officials for any and all liability, liens, or other costs and/or losses arising from Licensee's use of the License Area. This indemnity shall include all costs, attorney fees, expenses and liabilities incurred in connection with any such potential claims, the investigation thereof or the defense of any action or proceedings brought thereon, and any judgments, orders, decrees, or liens, resulting therefrom. By requiring this right to indemnification, Licensor in no way waives or intends to waive the limitations on liability that are provided to it under the Colorado Governmental Immunity Act, C.R.S., Sections 24-10-101, *et seq.*, as currently enacted or subsequently amended.

11. Legal Compliance. All of Licensee's actions while using the Licensed Area must be in compliance with applicable federal, state, and local laws and regulations and it shall be Licensee's responsibility to obtain whatever applicable permits, permissions, and/or approvals that are necessary for the uses permitted herein.

12. Enforcement and Restoration. Licensor may exercise immediate reasonable enforcement, restoration and conservation actions when such actions are warranted for the protection and preservation of the Property and Licensed Area. Should an activity be undertaken on the Licensed Area or Property, or any portion thereof, to which the parties have not agreed, Licensor may require Licensee to immediately cease and desist from such activity. In such case, if the unauthorized activity was performed by Licensee, its employees, agents, guests and invitees, the cost of any restoration of the Licensed Area, Property, or any portion thereof, shall be borne by Licensee.

13. Insurance Requirements: The Licensee is allowed to self-insure its liabilities associated under this agreement. Instead of providing a certificate of insurance, Licensee can provide a letter of self-insurance. The Licensee shall provide the letter to the City's Risk Manager at this address:

Risk Manager

City of Fort Collins
215 N. Mason
Fort Collins, CO 80524

14. Removal or Relocation of Railroad Signal Equipment. Any rearrangement, relocation, or alteration of the Railroad Signal Equipment shall be according to Article IV(9)(H) of the C&M Agreement, and subject to specifically applicable and lawful Public Utility Commission rules.
15. Notices. Except as otherwise provided herein, any notice provided pursuant to this License shall be in writing and sent to the following addresses, unless a Party gives written notice of a change:

To the Licensor:

City Engineer
City of Fort Collins
281 N. College
Fort Collins, CO 80524

With copies to:

City Attorney
City of Fort Collins
300 Laporte Ave., Bldg A
City of Fort Collins, CO 80521

City Manager
City of Fort Collins
300 Laporte Ave., Bldg A
City of Fort Collins, CO 80521

To the Licensee:

BNSF Railway Company
Attn: Corporate Real Estate
2650 Lou Menk Drive, MOB-2
Fort Worth, TX 76131

With a copy to:

JLL Rail Practice Group
Attn: Facility Lease Administration
2650 Lou Menk Drive, MOB-2
Fort Worth, TX 76131

16. Complete Agreement. The Parties agree that this License embodies the entire understanding and agreement of the Parties with respect to the issues referenced herein, and that this License shall extend to, and be binding upon, the Parties and their respective employees, agents, contractors, heirs, personal representatives, successors and assigns. This License is personal to Licensee and may not be assigned without the Licensor's advance written consent.

17. Governance. This License shall, in all respects, be governed, construed, applied and enforced in accordance with the laws of the State of Colorado. The Larimer County District Court shall be the proper venue for all disputes. If the City subsequently agrees in writing that the matter may be heard in federal court, venue will be in US District Court for the District of Colorado in Denver. If any provision of this License is held invalid or unenforceable by any court of competent jurisdiction, that holding shall not invalidate or render unenforceable any other provision of this License.

18. Counterparts. This License may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Electronic signatures shall be acceptable to and binding upon all Parties.

19. Meaning of “Licensor.” Where this Agreement requires approval from Licensor or notice to Licensor, it means the City Engineer. Where this Agreement gives Licensor a right, either the City or its agents may invoke that right.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed this License as of the day and year first written above.

LICENSOR:

THE CITY OF FORT COLLINS

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

LICENSEE:

BNSF RAILWAY COMPANY

SIGNATURE

PRINTED NAME

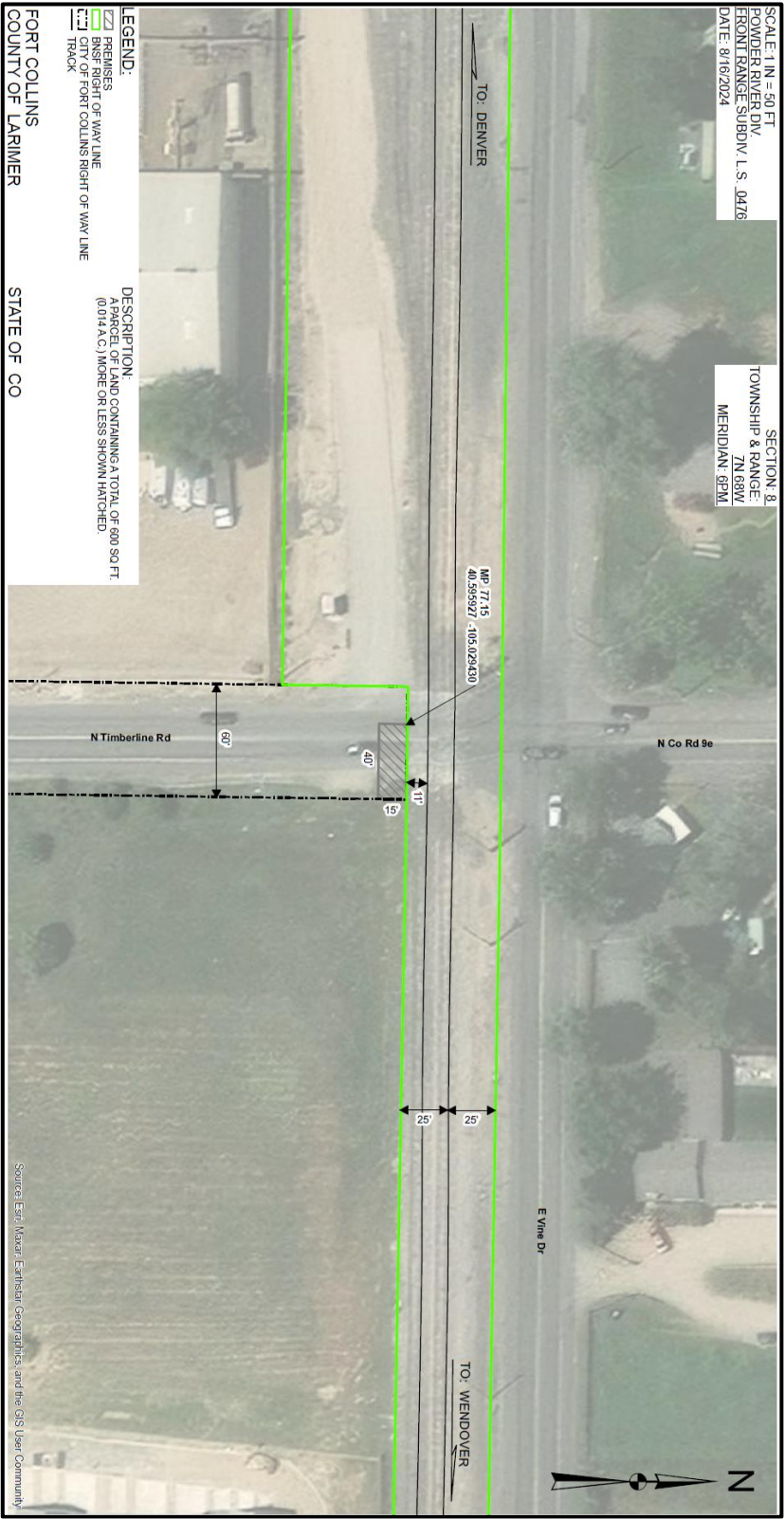
TITLE

ATTEST:

PRINTED NAME

TITLE

EXHIBIT A
Property and Licensed Area



CONSTRUCTION PLANS FOR
TIMBERLINE & VINE SIGNAL IMPROVEMENTS
FORT COLLINS, COLORADO
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
TOWN OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO

VICINITY MAP

CITY OF FORT COLLINS BENCHMARK

PROJECT DATUM: NAVD 85
BENCHMARK #92-3
LOCATED ON TIMBERLINE RD. AT LARIMER-WELLD IRRIGATION DITCH,
ON THE SOUTH END OF THE EAST PARAPET WALL.
ELEVATION=4598.87

CALL 2-BUSINESS DAYS IN ADVANCE
BEFORE YOU DYE, GRAB, OR EXHAUST
FOR THE MARKING OF UNDERGROUND
UTILITY.

FOR BID PLANS

<u>INDEX OF SHEETS</u>	<u>DESCRIPTION OF SHEETS</u>	<u>SHEET NO.</u>
------------------------	------------------------------	------------------

1	COVER SHEET
2	GENERAL NOTES
3	GENERAL TYPICAL
4	DEMOLITION PLAN - VINE
5	ROADWAY PLAN & PROFILE - TIMBERLINE
6	ROADWAY PLAN & PROFILE - VINE
7	GRADING PLAN - TIMBERLINE
8	GRADING PLAN - VINE
9	SIGNING & STRIPING PLAN - TIMBERLINE
10	SIGNING & STRIPING PLAN - VINE
11, 12	SIGNAL PLAN

UTILITY CONTACTS:

CITY OF FORT COLLINS
700 WOOD STREET
FORT COLLINS, COLORADO 80522

WALTER BEVER & STORMWATER
PH. 970.416.8418

LIGHT & POWER
LARK LUNNIN
PH. 970.416.8724

NATURAL GAS
XCEL ENERGY
1000 UNIVERSITY BLVD
FORT COLLINS, COLORADO 80525
CONTACT: STEPHANIE ROSE
PH. 970.225.7688

TELEPHONE SERVICE
CENTURY LINK
3702 ATLANTA DR. SUITE 106
FORT COLLINS, COLORADO 80525
CONTACT: JIMMY JOHNSON
PH. 970.480.7501

CABLE TV SERVICE
COMCAST
CONTACT: DON KEMPANIN
PH. 970.484.7166

TIMBERLINE AND VINE SIGNAL IMPROVEMENTS

COVER SHEET

PREPARED FOR
City of
Fort Collins





Contract Number: BF-20195193

GRADE CROSSING CONSTRUCTION AND MAINTENANCE AGREEMENT

BNSF File No.: BF-20195193
Mile Post 77.16
Line Segment 476
U.S. DOT Number 244647X
Front Range Subdivision

This Agreement ("**Agreement**"), is executed to be effective as of [8/14/2023] ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**BNSF**") and the **CITY OF FORT COLLINS**, a political subdivision of the State of Colorado ("**Agency**").

RECITALS

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Fort Collins, State of Colorado; and

WHEREAS, in the interest of aiding vehicular travel and public safety, the Agency is undertaking a project to improve the existing Timberline Road at-grade crossing, located at BNSF Line Segment **476** and Milepost **77.16**, and designated by D.O.T. No. **244647X**, by installing railroad crossing signals and activation equipment within the existing roadway easement across the BNSF right-of-way as indicated on the Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Agency is paying for the acquisition and installation of crossing signal equipment at Timberline Road with State and Federal funds pursuant to 23 U.S.C. § 130;" and

WHEREAS, BNSF agrees to purchase and install, at Agency's sole expense, the crossing signal equipment described in the scope of work herein, and upon the terms and conditions set forth below.

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

ARTICLE I) SCOPE OF WORK

1) The term "**Project**" as used herein includes any and all work related to the reconstruction/construction of Timberline Road by Agency and installation of crossing



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signals/activation equipment at U.S. D.O.T No. 244647X, (hereinafter referred to as the "**Crossing**") by BNSF, more particularly described on the Exhibit A, including, but not limited to, any and all changes to telephone, telegraph, signal and electrical lines and appurtenances, temporary and permanent track work, fencing, grading, alterations to or new construction of drainage facilities, preliminary and construction engineering and contract preparation.

- 2) Nothing herein shall constitute a multiple fiscal year debt or financial obligation of Agency pursuant to Colorado Constitution, Article X, Section 20. Agency's obligations under this Agreement are subject to annual appropriation by the Agency's City Council, provided that Agency represents and warrants that the Agency's obligation for the cost of construction of the Project as provided herein has either already been approved for expenditure as part of the current or pending appropriation(s) or is funded by third party sources, including grants, and not subject to appropriation. Any failure of a City Council annually to appropriate adequate monies to finance the City's continuing obligations in subsequent fiscal years under the Easement or this Agreement shall terminate the Easement, this Agreement, and the Agency and BNSF's obligations thereunder at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to BNSF of any failure to appropriate such adequate monies. The parties understand and agree that in the event this Agreement is terminated pursuant to the provisions of this Section, both parties shall be relieved of any obligations arising out of this Agreement that would be inconsistent with the termination of this Agreement. Each party reserves its rights, and acknowledges that the other party's rights also are reserved, to seek relief from the Colorado Public Utilities Commission for any installation, construction, or maintenance obligations arising out of a Commission decision that would be inconsistent with the termination of this Agreement hereunder.
- 3) Agency is a governmental entity subject to the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.* ("CORA"). Any agreements are subject to public disclosure by Agency pursuant to CORA, the City Charter, and the Code of the City of Fort Collins. Agency shall immediately notify BNSF if it receives any request pursuant to the CORA that may implicate any part of this Agreement, with a copy of the written request for information.

ARTICLE II) RAILROAD OBLIGATIONS

In consideration of the covenants of Agency set forth herein and the faithful performance thereof, BNSF agrees as follows:

- 1) Upon Agency's payment to BNSF of an administrative fee in the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500), together with the Temporary Construction License Fee in the sum of Zero and No/100 Dollars (\$0), BNSF hereby grants to Agency, its



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successors and assigns, upon and subject to the terms and conditions set forth in this Agreement, a temporary non-exclusive license (hereinafter called, "Temporary Construction License") to enter upon and use the portion of BNSF's right-of-way as is necessary to install railroad crossing signals and activation equipment, widen, and thereafter maintain, the Crossing as described further on Exhibit A-1, excepting and reserving BNSF's rights, and the rights of any others who have obtained, or may obtain, permission or authority from BNSF, to do the following:

- A. Operate, maintain, renew and/or relocate any and all existing railroad track or tracks, wires, pipelines and other facilities of like character upon, over or under the surface of said right-of-way;
- B. Construct, operate, maintain, renew and/or relocate upon said right-of-way, without limitation, such facilities as the BNSF may from time to time deem appropriate;
- C. Otherwise use or operate the right-of-way as BNSF may from time to time deem appropriate.

The term of the Temporary Construction License begins on the Effective Date and ends on the earlier of (i) substantial completion of the Crossing, or (ii) eighteen (18) months following the Effective Date. The Temporary Construction License and related rights given by BNSF to Agency in this provision are without warranty of title of any kind, express or implied, and no covenant of warranty of title will be implied from the use of any word or words herein contained. The Temporary Construction License is for construction of the Crossing only and shall not be used by Agency for any other purpose. Agency acknowledges and agrees that Agency shall not have the right, under the Temporary Construction License, to use the Crossing for any other purpose than construction. In the event Agency is evicted by anyone owning, or claiming title to or any interest in said right-of-way, BNSF will not be liable to Agency for any damages, losses or any expenses of any nature whatsoever. The granting of similar rights to others, subsequent to the date of this Agreement, will not impair or interfere with the rights granted to Agency herein.

Upon Agency's payment to BNSF of the additional sum of five thousand and No/100 Dollars (\$5,000), such payment to be made within thirty (30) days of issuing the Notice to Proceed pursuant to Article III, Section 16 of this Agreement, and provided further that Agency is in compliance with the term and conditions of this Agreement, BNSF will grant to Agency, its successors and assigns, an easement (hereinafter called, the "Easement") to enter upon and use that portion of BNSF's right-of-way as is necessary to use and maintain the Crossing, substantially in the form of Exhibit B attached to this Agreement. If Agency fails to pay BNSF within the thirty-day time period set forth in the preceding sentence, BNSF may stop construction of the Project until full payment is received by BNSF.



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- 2)** BNSF will furnish all labor, materials, tools, and equipment for railroad work required for the construction of the Project, such railroad work and the estimated cost thereof being as shown on Exhibit D attached hereto and made a part hereof. In the event construction on the Project has not commenced within six (6) months following the Effective Date, BNSF may, in its sole and absolute discretion, revise the cost estimates set forth in said Exhibit D. In such event, the revised cost estimates will become a part of this Agreement as though originally set forth herein. Any item of work incidental to the items listed on Exhibit D not specifically mentioned therein may be included as a part of this Agreement upon written approval of Agency, which approval will not be unreasonably withheld. Construction of the Project must include the following railroad work by BNSF:
- A.** Procurement of materials, equipment and supplies necessary for the railroad work;
 - B.** Preliminary engineering, design, and contract preparation;
 - C.** Furnishing of flagging services during construction of the Project as required and set forth in further detail on Exhibit C, attached to this Agreement and made a part hereof;
 - D.** Furnishing engineering and inspection as required in connection with the construction of the Project;
 - E.** Installation of Crossing Signal Equipment and Crossing Signal Control House as shown on Exhibit A
 - F.** Making such changes in the alignment, location and elevation of its telephone, telegraph, signal and/or wire lines and appurtenances along, over or under the tracks, both temporary and permanent, as may become necessary by reason of the construction of the Project.
- 3)** BNSF will do all railroad work set forth in Article II, Section 2 above on an actual cost basis, when BNSF, in its sole discretion, determines it is required by its labor agreements to perform such work with its own employees working under applicable collective bargaining agreements.
- 4)** Agency agrees to reimburse BNSF for work of an emergency nature caused by Agency or Agency's contractor in connection with the Project which BNSF deems is reasonably necessary for the immediate restoration of railroad operations, or for the protection of persons or BNSF property. Such work may be performed by BNSF without prior approval of Agency and Agency agrees to fully reimburse BNSF for all such emergency work.



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- 5) BNSF may charge Agency for insurance expenses, including self-insurance expenses, when such expenses cover the cost of Employer's Liability (including, without limitation, liability under the Federal Employer's Liability Act) in connection with the construction of the Project. Such charges will be considered part of the actual cost of the Project, regardless of the nature or amount of ultimate liability for injury, loss or death to BNSF's employees, if any.
- 6) During the construction of the Project, BNSF will send Agency progressive invoices detailing the costs of the railroad work performed by BNSF under this Agreement. Agency must reimburse BNSF for completed force-account work within thirty (30) days of the date of the invoice for such work. Upon completion of the Project, as identified by Agency in writing to BNSF, BNSF will send Agency a detailed invoice of final costs, segregated as to labor and materials for each item in the recapitulation shown on Exhibit D. Pursuant to this section and Article IV, Section 7 herein, Agency must pay the final invoice within ninety (90) days of the date of the final invoice. BNSF will assess a finance charge of .033% per day (12% per annum) on any unpaid sums or other charges due under this Agreement which are past its credit terms. The finance charge continues to accrue daily until the date payment is received by BNSF, not the date payment is made or the date postmarked on the payment. Finance charges will be assessed on delinquent sums and other charges as of the end of the month and will be reduced by amounts in dispute and any unposted payments received by the month's end. Finance charges will be noted on invoices sent to Agency under this section

ARTICLE III) AGENCY OBLIGATIONS

In consideration of the covenants of BNSF set forth herein and the faithful performance thereof, Agency agrees as follows:

- 1) Agency must furnish to BNSF plans and specifications for the Project. Said plans (reduced size 11" x 17"), showing the plan and profile of the roadway work on BNSF right-of-way and marked as Exhibit A, attached hereto and made a part hereof, must be submitted to BNSF for the development of railroad cost estimates.
- 2) Agency must make any required application and obtain all required permits and approvals for the construction of the Project.
- 3) Agency must acquire all rights of way necessary for the construction of the Project.
- 4) Agency must make any and all arrangements, in compliance with BNSF's Utility Accommodation Manual <https://www.bnsf.com/bnsf-resources/pdf/about-bnsf/utility.pdf>, for the installation or relocation of wire lines, pipe lines and other facilities owned by private



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persons, companies, corporations, political subdivisions or public utilities other than BNSF which may be necessary for the construction of the Project.

- 5) Agency must construct the Project as shown on the attached Exhibit A and do all work ("Agency's Work") provided for in the plans and specifications for the Project, except railroad work that will be performed by BNSF hereunder. Agency must furnish all labor, materials, tools and equipment for the performance of Agency's Work. The principal elements of Agency's Work are as follows:
- A. Design and Reconstruction/Construction of Timberline Road;
 - B. Installation of a pavement marking stop bar in accordance with the Manual on Uniform Traffic Control Devices (hereinafter called, "MUTCD");
 - C. Installation of advance warning signs in accordance with the MUTCD;
 - D. Perform all necessary grading and paving, including backfill of excavations and restoration of disturbed vegetation on BNSF's right-of-way;
 - E. Provide suitable drainage, both temporary and permanent;
 - F. Provide all barricades, lights, flagmen or traffic control devices necessary for preventing vehicular traffic from using a portion of the Crossing, during the installation of the Crossing Signal Equipment;
 - G. Construct asphalt/concrete roadway surface on approaches to each track; and
 - H. Job site cleanup including removal of all construction materials, concrete debris, surplus soil, refuse, contaminated soils, asphalt debris, litter and other waste materials to the satisfaction of BNSF.
- 6) The Agency will approve the location of the signals and signal bungalow prior to the installation by BNSF.
- 7) The Agency must have advanced railroad crossing signs and standard pavement markings in place at the crossing shown on Exhibit A (if the same are required by the MUTCD) prior to the acceptance of this Project by the Agency.
- 8) The Agency must give BNSF's Manager Public Projects written notice to proceed ("**Notice to Proceed**") with the railroad portion of the work after receipt of necessary funds for the Project. BNSF will not begin the railroad work (including, without limitation, procurement of supplies, equipment or materials) until written Notice to Proceed is received from Agency.



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- 9) The Agency's Work must be performed by Agency or Agency's contractor in a manner that will not endanger or interfere with the safe and timely operations of BNSF and its facilities. BNSF shall notify Agency prior to or immediately if any work is endangering or interfering with the safe and timely operations of BNSF and its facilities.
- 10) For any future inspection or maintenance, either routine or otherwise, performed by subcontractors on behalf of the Agency, Agency shall require the subcontractors to comply with the provisions of the attached Exhibit C and execute the agreement attached hereto as Exhibit C-1. Prior to performing any future maintenance with its own personnel, Agency shall: comply with all of BNSF's applicable safety rules and regulations; require any Agency employee performing maintenance to complete the safety training program at the BNSF's Internet Website "www.contractororientation.com"; notify BNSF when, pursuant to the requirements of Exhibit C, a flagger is required to be present; procure, and have approved by BNSF's Risk Management Department, Railroad Protective Liability insurance.
- 11) Agency must require its contractor(s) to notify BNSF's Roadmaster at least thirty (30) calendar days prior to requesting a BNSF flagman in accordance with the requirements of Exhibit C attached hereto. Additionally, Agency must require its contractor(s) to notify BNSF's Manager of Public Projects thirty (30) calendar days prior to commencing work on BNSF property or near BNSF tracks.
- 12) Agency must include the following provisions in any contract with its contractor(s) performing work on said Project:
- A. The Contractor is placed on notice that fiber optic, communication and other cable lines and systems (collectively, the "Lines") owned by various telecommunications companies may be buried on BNSF's property or right-of-way. The locations of these Lines have been included on the plans based on information from the telecommunications companies. The contractor will be responsible for contacting BNSF and the telecommunications companies and notifying them of any work that may damage these Lines or facilities and/or interfere with their service. The contractor must also mark all Lines shown on the plans or marked in the field in order to verify their locations. The contractor must also use all reasonable methods when working in the BNSF right-of-way or on BNSF property to determine if any other Lines (fiber optic, cable, communication or otherwise) may exist.
 - B. Failure to mark or identify these Lines will be sufficient cause for BNSF's engineering representative Rafer Nichols at 303-480-6586 to stop construction at no cost to the Agency or BNSF until these items are completed.



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- C. The Contractor will be responsible for the rearrangement of any facilities or Lines determined to interfere with the construction. The Contractor must cooperate fully with any telecommunications company(ies) in performing such rearrangements.
- D. To the extent allowed by Colorado law, in addition to the liability terms contained elsewhere in this Agreement, the Contractor hereby indemnifies, defends and holds harmless BNSF for, from and against all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Contractor, its subcontractors, agents and/or employees that cause or in any way or degree contribute to (1) any damage to or destruction of any Lines by Contractor, and/or its subcontractors, agents and/or employees, on BNSF's property or within BNSF's right-of-way, (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on BNSF's property or within BNSF's right-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue by, or loss of service by a customer or user of such telecommunication company(ies). **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY, DEATH, CAUSE OF ACTION OR CLAIM WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.**

13) Agency must require compliance with the obligations set forth in this agreement, including Exhibit C and Exhibit C-1, and incorporate in each prime contract for construction of the Project, or the specifications therefor (i) the provisions set forth in Article III and IV; and (ii) the provisions set forth in Exhibit C and Exhibit C-1, attached hereto and by reference made a part hereof.

14) Except as otherwise provided below in this Section 14 all construction work performed hereunder by Agency for the Project will be pursuant to a contract or contracts to be let by Agency, and all such contracts must include the following:

- A. All work performed under such contract or contracts within the limits of BNSF's right-of-way must be performed in a good and workmanlike manner in accordance with plans and specifications approved by BNSF;
- B. Changes or modifications during construction that affect safety or BNSF operations must be subject to BNSF's approval;



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- C. No work will be commenced within BNSF's right-of-way until each of the prime contractors employed in connection with said work have (i) executed and delivered to BNSF an agreement in the form of Exhibit C-1, and (ii) delivered to and secured BNSF's approval of the required insurance; and
 - D. If it is in Agency's best interest, Agency may direct that the construction of the Project be done by day labor under the direction and control of Agency, or if at any time, in the opinion of Agency, the contractor has failed to prosecute with diligence the work specified in and by the terms of said contract, Agency may terminate its contract with the contractor and take control over the work and proceed to complete the same by day labor or by employing another contractor(s) provided, however, that any contractor(s) replacing the original contractor(s) must comply with the obligations in favor of BNSF set forth above and, provided further, that if such construction is performed by day labor, Agency will, at its expense, procure and maintain on behalf of BNSF the insurance required by Exhibit C-1.
 - E. To facilitate scheduling for the Project, Agency shall have its contractor give BNSF's Roadmaster 90 days advance notice of the proposed times and dates for work windows. BNSF and Agency's contractor will establish mutually agreeable work windows for the Project. BNSF has the right at any time to revise or change the work windows, due to train operations or service obligations. BNSF will make reasonable efforts to provide advance notice of revisions and changes to work windows, when practicable. BNSF will not be responsible for any additional costs and expenses resulting from a change in work windows. Additional costs and expenses resulting from a change in work windows shall be accounted for in the contractor's expenses for the Project.
- 15) Agency must advise the appropriate BNSF Manager Public Projects, in writing, of the completion date of the Project within thirty (30) days after such completion date. Additionally, Agency must notify BNSF's Manager Public Projects, in writing, of the date on which Agency and/or its Contractor will meet with BNSF for the purpose of making final inspection of the Project.**
- 16) TO THE FULLEST EXTENT PERMITTED BY COLORADO LAW, AGENCY HEREBY RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS BNSF, ITS AFFILIATED COMPANIES, PARTNERS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES AND AGENTS FOR, FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS AND ATTORNEYS' FEES) OF ANY NATURE, KIND OR DESCRIPTION OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, THE EMPLOYEES OF THE PARTIES HERETO) OR ENTITY DIRECTLY OR INDIRECTLY ARISING OUT OF,**



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RESULTING FROM OR RELATED TO (IN WHOLE OR IN PART) (I) THE USE, OCCUPANCY OR PRESENCE OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (II) THE PERFORMANCE, OR FAILURE TO PERFORM BY THE AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS, ITS WORK OR ANY OBLIGATION UNDER THIS AGREEMENT, (III) THE SOLE OR CONTRIBUTING ACTS OR OMISSIONS OF AGENCY, ITS CONTRACTORS, SUBCONTRACTORS, EMPLOYEES, OR AGENTS IN, ON, OR ABOUT THE CONSTRUCTION SITE, (IV) AGENCY'S BREACH OF THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT GRANTED TO AGENCY PURSUANT TO ARTICLE II OF THIS AGREEMENT, (V) ANY RIGHTS OR INTERESTS GRANTED TO AGENCY PURSUANT TO THE TEMPORARY CONSTRUCTION LICENSE OR EASEMENT DISCUSSED IN ARTICLE II OF THIS AGREEMENT, (VI) AGENCY'S OCCUPATION AND USE OF BNSF'S PROPERTY OR RIGHT-OF-WAY, INCLUDING, WITHOUT LIMITATION, SUBSEQUENT MAINTENANCE OF THE CROSSING BY AGENCY, OR (VII) AN ACT OR OMISSION OF AGENCY OR ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES OR CONTRACTORS OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE THEY CONTROL OR EXERCISE CONTROL OVER. THE LIABILITY ASSUMED BY AGENCY WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DAMAGE, DESTRUCTION, INJURY OR DEATH WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF BNSF, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE OF BNSF.

ARTICLE IV - JOINT OBLIGATIONS

IN CONSIDERATION of the premises, the parties hereto mutually agree to the following:

- 1) All work contemplated in this Agreement must be performed in a good and workmanlike manner and each portion must be promptly commenced by the party obligated hereunder to perform the same and thereafter diligently prosecuted to conclusion in its logical order and sequence. Furthermore, any changes or modifications during construction which affect BNSF will be subject to BNSF's written acceptance from BNSF's Manager Public Projects for Colorado prior to the commencement of any such changes or modifications.
- 2) The work hereunder must be done in accordance with the Exhibit A and the detailed plans and specifications approved by BNSF.
- 3) Agency must require its contractor(s) to reasonably adhere to the Project's construction schedule for all Project work. The parties hereto mutually agree that BNSF's failure to complete the railroad work in accordance with the construction schedule due to inclement weather or unforeseen railroad emergencies will not constitute a breach of this Agreement by BNSF and will not subject BNSF to any liability. Regardless of the requirements of the



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construction schedule, BNSF reserves the right to reallocate the labor forces assigned to complete the railroad work in the event of an emergency to provide for the immediate restoration of railroad operations of either BNSF or its related railroads, or to protect persons or property on or near any BNSF owned property. BNSF will provide notice to the Agency of such reallocation as soon as practicable. BNSF will not be liable for any additional costs or expenses resulting from any such reallocation of its labor forces. The parties mutually agree that any reallocation of labor forces by BNSF pursuant to this provision and any direct or indirect consequences or costs resulting from any such reallocation will not constitute a breach of this Agreement by BNSF.

- 4) BNSF will have the right to stop construction work on the Project if any of the following events take place: (i) Agency (or any of its contractors) performs the Project work in a manner contrary to the plans and specifications approved by BNSF; (ii) Agency (or any of its contractors), prosecutes the Project work in a manner that is hazardous to BNSF property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Agency fails to pay BNSF for the Temporary Construction License or the Easement pursuant to Article II, Section 1 of this Agreement. The work stoppage will continue until all necessary actions are taken by Agency or its contractor to rectify the situation to the satisfaction of BNSF's Division Engineer or until proof of additional insurance has been delivered to and accepted by BNSF. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, BNSF may terminate the Temporary Construction License or the Easement. Prior to such termination, BNSF will provide notice to the Agency and a reasonable period to cure of no less than thirty (30) days. Any such work stoppage under this provision will not give rise to any liability on the part of BNSF. BNSF's right to stop the work is in addition to any other rights BNSF may have including, but not limited to, actions or suits for damages or lost profits. In the event that BNSF desires to stop construction work on the Project, BNSF agrees to immediately notify the following individual in writing:

Fort Collins City Attorney's Office
300 LaPorte Ave.
Fort Collins, CO 80521

Mark Laken
Civil Engineer 2
Engineering Department
City of Fort Collins
128 N College Ave
970-222-3546 mobile
mlaken@fcgov.com



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- 5) Agency must supervise and inspect the operations of all Agency contractors to ensure compliance with the plans and specifications approved by BNSF, the terms of this Agreement and all safety requirements of BNSF. If BNSF determines that proper supervision and inspection are not being performed by Agency personnel at any time during construction of the Project, BNSF has the right to stop construction (within or adjacent to its operating right-of-way). Construction of the Project will not proceed until Agency corrects the situation to BNSF's reasonable satisfaction, which shall not be withheld unreasonably. If BNSF determines the situation is not being corrected in an expeditious manner, BNSF will immediately notify the Agency for appropriate corrective action.
- 6) Pursuant to this section and Article II, Section 5 herein, Agency must, reimburse BNSF in full for the **actual costs** of all work performed by BNSF under this Agreement (including taxes, such as applicable sales and use taxes, business and occupation taxes, and similar taxes), less BNSF's Share as set forth in Article IV, Section 6 herein. BNSF's Share must be paid upon completion of the Project. BNSF shall provide supporting documentation for all costs invoiced to Agency.
- 7) All expenses detailed in statements sent to Agency pursuant to Article II, Section 56 herein will comply with the terms and provisions of the Title 23 U.S. Code, Title 23 Code of Federal Regulations, and the Federal-Aid Policy Guide, U.S. Department of Transportation, as amended from time to time, which manual is hereby incorporated into and made a part of this Agreement by reference. The parties mutually agree that BNSF's preliminary engineering, design, and contract preparation costs described in Article II, Section 2 herein are part of the costs of the Project even though such work may have preceded the date of this Agreement. Upon request or governmental audit, BNSF shall provide supporting documentation establishing the incurrent or payment by BNSF of all costs invoiced to Agency.
- 8) The construction of the Project will not commence until Agency gives BNSF's Manager Public Projects thirty (30) days prior written notice of such commencement. The commencement notice will reference BNSF's file number and D.O.T. Crossing No. 244647X and must state the time that construction activities will begin.
- 9) In addition to the terms and conditions set forth elsewhere in this Agreement, BNSF and the Agency agree to the following terms upon completion of construction of the Project:
 - A. Agency will own and be fully responsible for repairs, maintenance, future construction or reconstruction of the Timberline Road roadway.
 - B. Agency will maintain the elevation of the Timberline Road roadway approaches to match the elevation on the railroad track crossing surfaces and to be no more than



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three (3) inches above or six (6) inches below top-of-rail elevation at a distance measured thirty (30) feet from the nearest rail.

- C. Agency will maintain the advanced railroad crossing warning signs and pavement markings and agrees, to the extent allowed under Colorado law, to hold harmless and indemnify BNSF for any claims, damages or losses, in whole or in part, caused by or due to the Agency's failure to maintain the advanced warning signs and markings or other requirements of the MUTCD.
- D. Agency will do nothing and permit nothing to be done in the maintenance of the Timberline Road roadway, which will interfere with or endanger facilities of BNSF.
- E. It is expressly understood by Agency and BNSF that any right to install utilities will be governed by a separate permit or license agreement between the parties hereto.
- F. BNSF will, at its sole cost and expense, operate and maintain the Crossing Signal Equipment and Crossing Signal Control House.
- G. Notwithstanding the preceding provision, if any regulations, ordinances, acts, rules or other laws subsequently passed or amended by the Agency or any other governmental or legislative authority increase the Agency's portion of maintenance cost under this Agreement, BNSF will receive the benefit of any such regulations, ordinances, acts, rules or other laws and the Agency's increased portion of maintenance costs will be incorporated into and made a part of this Agreement.
- H. If a railway or highway improvement project necessitates rearrangement, relocation, or alteration of the Crossing Signal Equipment, Crossing Signal House, or a new crossing surface, the costs for such rearrangement, relocation or alteration will be the responsibility of the party requesting such changes.
- I. If any of the Crossing Signal Equipment is partially or wholly destroyed, then such repair and/or replacement costs must be distributed among the parties as follows:
 - i) In the event the BNSF's sole negligence destroys or damages the Crossing Signal Equipment and/or the Crossing Signal House, BNSF must, at its sole cost and expense, replace or repair such Crossing Signal Equipment and/or Crossing Signal House.
 - ii) In the event the Crossing Signal Equipment is damaged or destroyed by any other cause, Agency must reimburse BNSF for the costs to replace or repair such Crossing Signal Equipment and/or Crossing Signal House.



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- J. If the Crossing Signal Equipment and/or Crossing Signal House installed hereunder cannot, through age, be maintained, or by virtue of its obsolescence, requires replacement, the cost of installation of the new crossing signal equipment and/or new crossing signal house will be negotiated by the parties hereto on the basis of the current Federal Aid Railroad Signal Program participation and applicable Agency at the time of such replacement is warranted.
- 10) In accordance with the requirements of Article II, Section 9, above, Agency must notify and obtain prior authorization from BNSF's Manager of Public Projects before entering BNSF's right-of-way for **Inspection and Maintenance** purposes and the BNSF Manager of Public Projects will determine if flagging is required. If the construction work hereunder is contracted, Agency must require its prime contractor(s) to comply with the obligations set forth in Exhibit C and Exhibit C-1, as the same may be revised from time to time. Agency will be responsible for its contractor(s) compliance with such obligations.
- 11) Any books, papers, records and accounts of the parties hereto relating to the work hereunder or the costs or expenses for labor and material connected with the construction will at all reasonable times be open to inspection and audit by the agents and authorized representatives of the parties hereto, as well as the State of Colorado and the Federal Highway Administration, for a period of three (3) years from the date of the final BNSF invoice under this Agreement.
- 12) The covenants and provisions of this Agreement are binding upon and inure to the benefit of the successors and assigns of the parties hereto. Notwithstanding the preceding sentence, neither party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other party.
- 13) In the event construction of the Project does not commence within 24 months of the Effective Date, this Agreement will become null and void.
- 14) Neither termination nor expiration of this Agreement will release either party from any liability or obligation under this Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration.
- 15) To the maximum extent possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is prohibited by, or held to be invalid under, applicable law, such provision will be ineffective solely to the extent of such prohibition or invalidity and the remainder of the provision will be enforceable.



Contract Number: BF-20195193

- 16)** This Agreement (including exhibits and other documents, manuals, etc. incorporated herein) is the full and complete agreement between BNSF and Agency with respect to the subject matter herein and supersedes any and all other prior agreements between the parties hereto.
- 17)** Any notice provided for herein or concerning this Agreement must be in writing and will be deemed sufficiently given when sent by certified mail, return receipt requested, to the parties at the following addresses:

BNSF: BNSF's Manager Public Projects
Rafer Nichols
3700 Globeville Rd.
Denver, CO 80216

Agency: Mark Laken
Civil Engineer 2
Engineering Department
City of Fort Collins
128 N College Ave
970-222-3546 mobile
mlaken@fcgov.com

SIGNATURE PAGE FOLLOWS



Contract Number: BF-20195193

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by its duly qualified and authorized officials as of the day and year first above written.

BNSF RAILWAY COMPANY

DocuSigned by:
 By: French Thompson
 59FD36B1D39249F...
 Printed Name: French Thompson
 Title: General Director Public Infra.

**AGENCY
CITY OF FORT COLLINS**

WITNESS:
 DocuSigned by:
Rita R. Knoll
 934E243B639B429...
 Rita R Knoll
 Chief Deputy City Clerk

DocuSigned by: Jeni Arndt DocuSigned by: Kelly DiMartino
 20F788A88621436... 0B86D5871D89400...
 By: Jeni Arndt Kelly DiMartino
 Printed Name: Jeni Arndt Kelly DiMartino
 Title: Mayor City Manager

APPROVED AS TO FORM:
 DocuSigned by:
Heather Jarvis
 8CBE2C1200F9418...
 Heather Jarvis
 Assistant City Attorney II

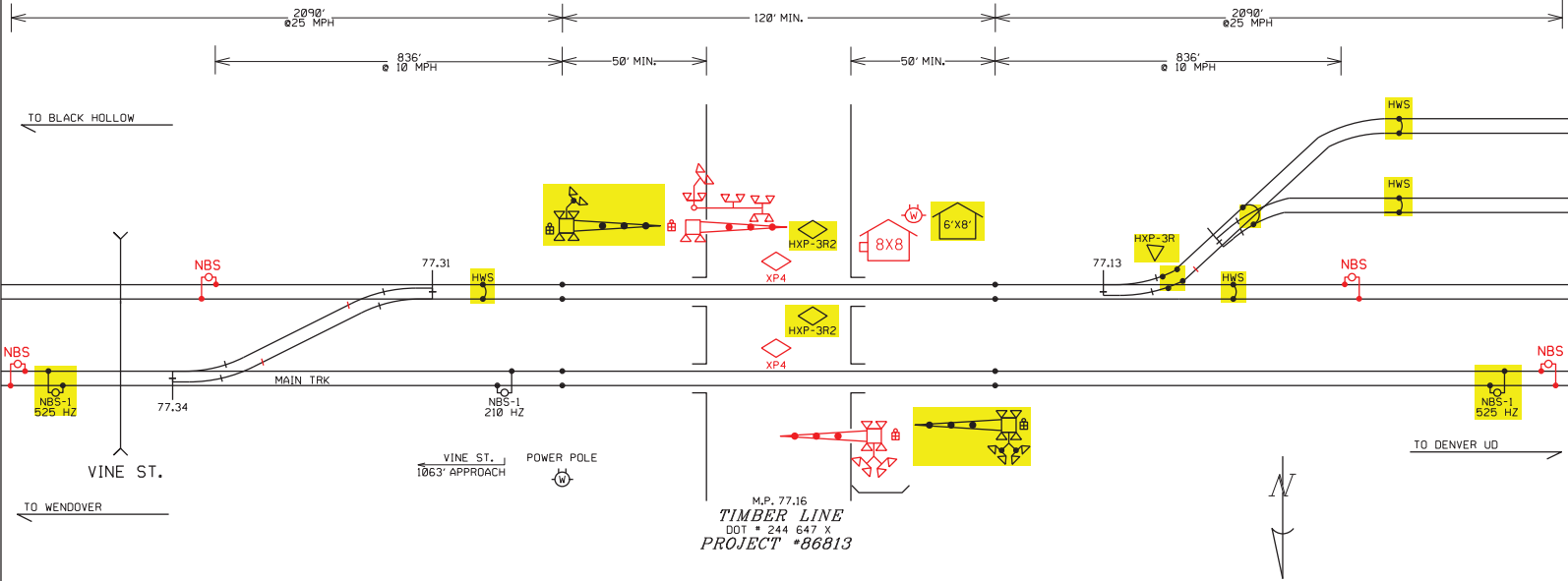


Contract Number: BF-20195193

Exhibit A
Plans

DocuSign Envelope ID: 9F44B4C3-C295-4930-965E-0EB68943051E

COPYRIGHT 2022 BNSF RAILWAY COMPANY. ALL RIGHTS RESERVED.

The Burlington Northern & Santa Fe Railway Company

INSTALL: CANTILEVER & IJ'S
 REPLACE: FLASHERS, GATES, BUNGALOW,
 & SIDE LIGHTS
 CONTROL DEVICES: CONSTANT WARNING
 SALVAGE: NONE

RED = IN YELLOW = OUT

PRELIMINARY- Times Subject to Change

Minimum Warning Time- 20 seconds
 Buffer Time- 10 seconds
 Wide or Angled Crossing- 1 second
 Advanced Preemption Time- 22 seconds
 Equipment Response Time- 4 seconds

Total Warning Time- 57 seconds

	INSTRUMENT HOUSE
	BELL
	METER
	CROSSING CONTROL CONNECTIONS
	BIDIRECTIONAL CROSSING CONTROL
	UNIDIRECTIONAL CROSSING CONTROL
	COUPLER OR TERMINATION
	GUARD RAIL

Warning device placement:

Clearance to C.L. Track = Min. 12'

Edge of Road to C.L. Foundation:

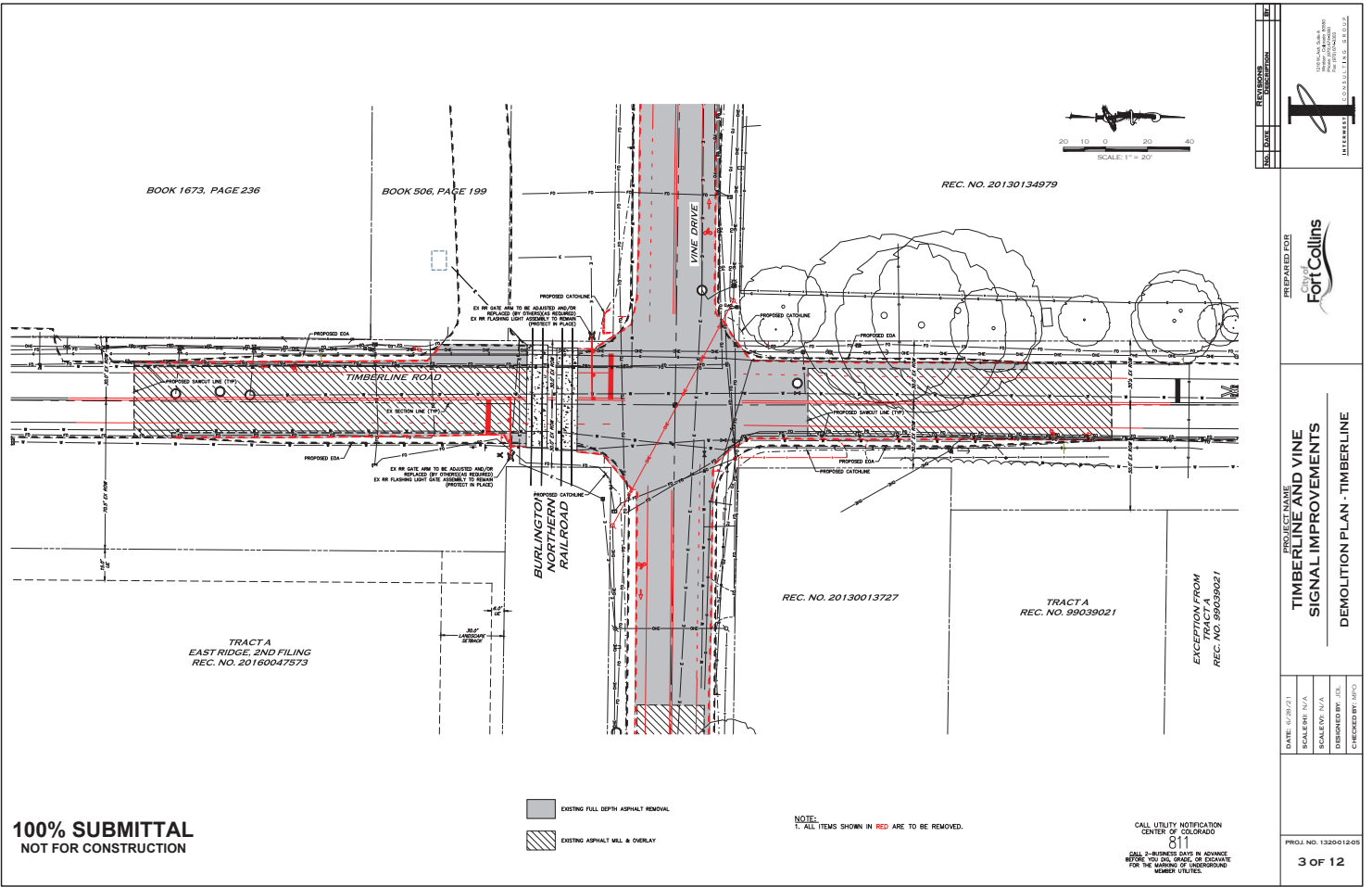
Min. 5'3" with curb,
 Min. 9'3" without curb,
 Max. 12'

House Clearance:
 25' Min. to Near Rail
 30' Min. to Edge of Road
 ALL LIGHTS TO BE LED

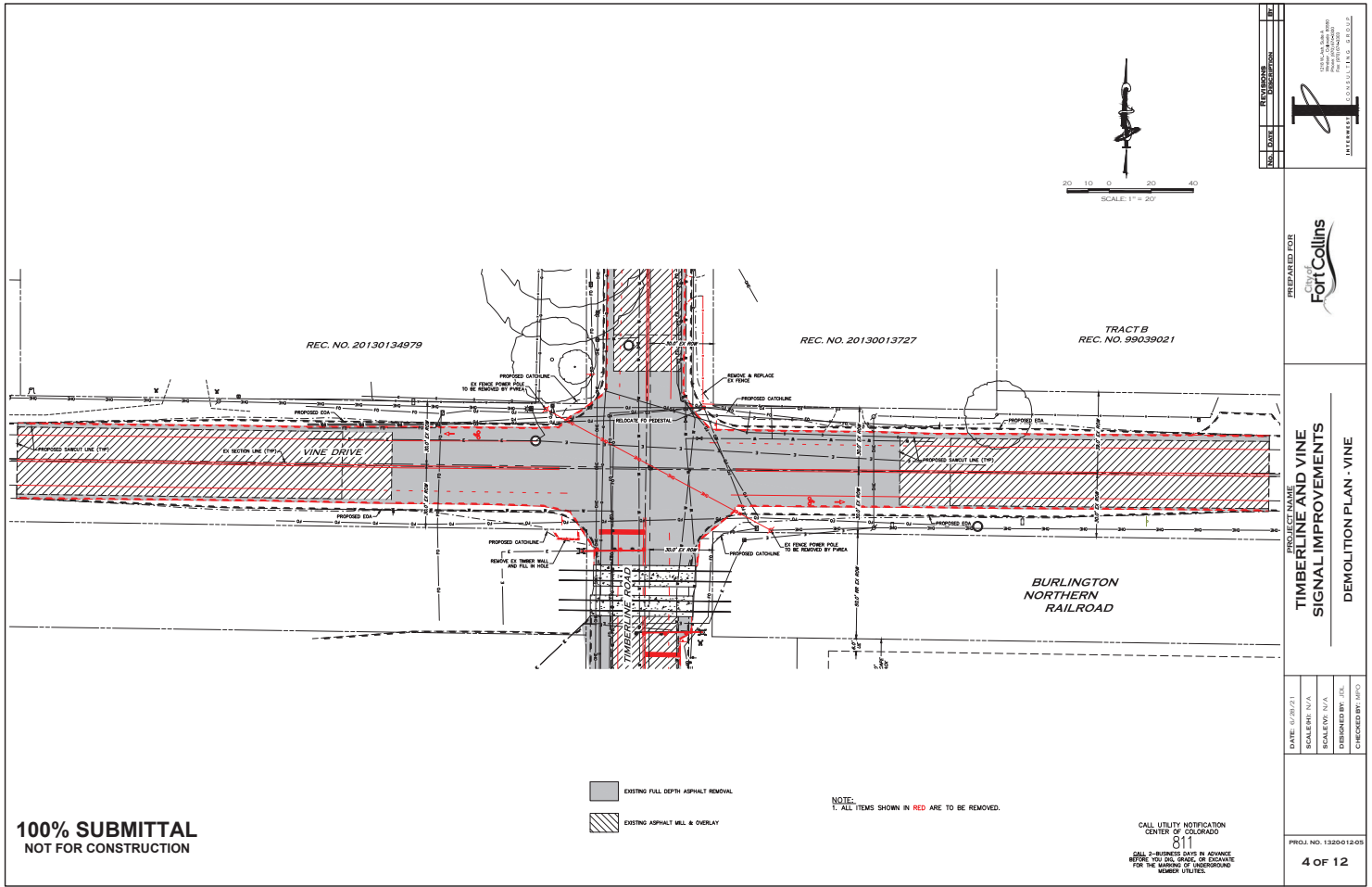
BNSF RAILWAY CO.

LOCATION: FORT COLLINS, CO
 STREET: TIMBERLINE
 LS: 0476
 M.P. 77.16
 DOT # 244 647 X
 DIVISION: POWDER RIVER
 SUBDIVISION: FRONT RANGE
 KANSAS CITY
 NO SCALE
 DATE: 03/04/2022
 FILE: 86813-STATESKETCH-.dgn
 JFK

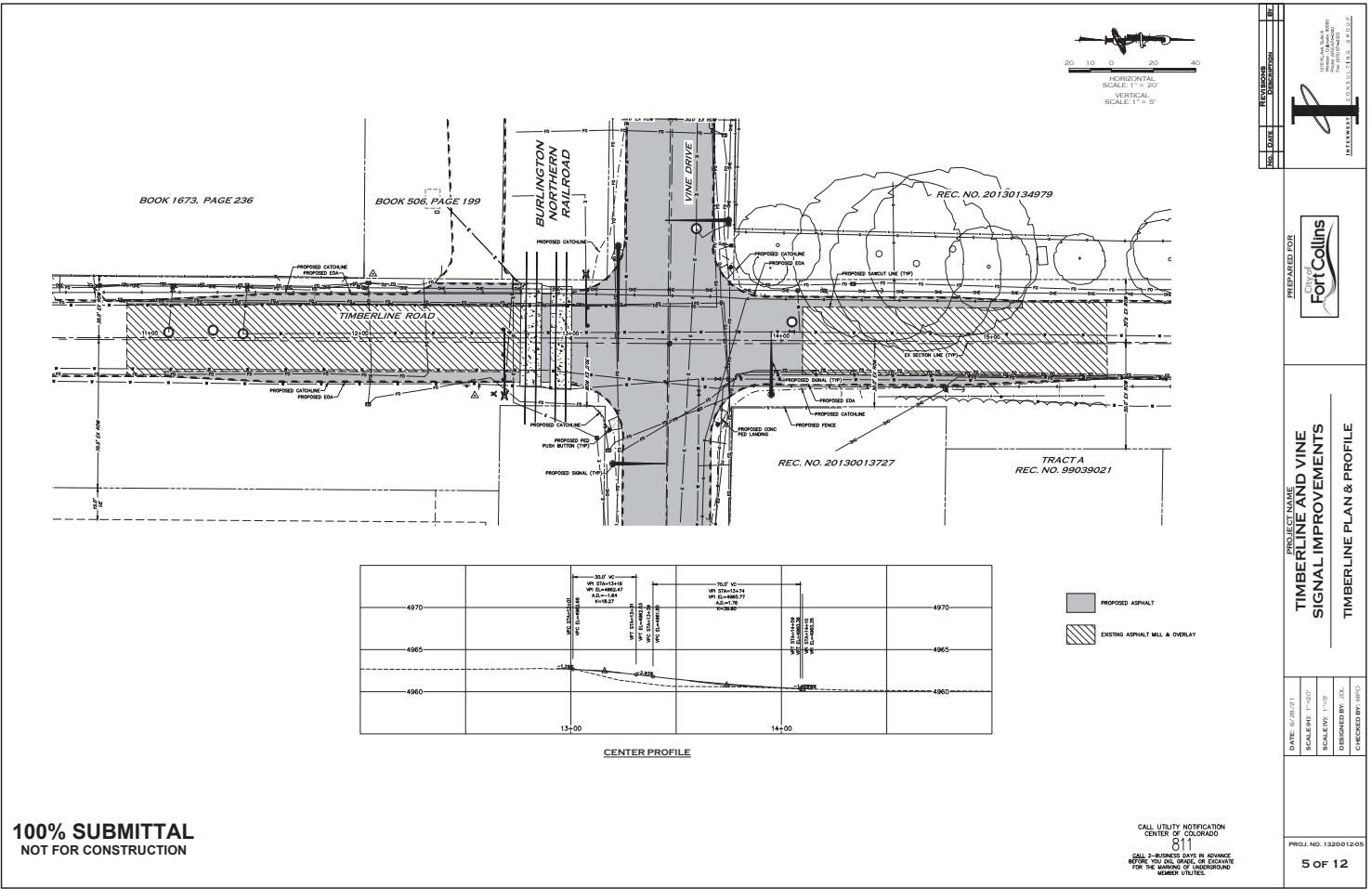
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DocuSign Envelope ID: 9F46AC3-C865-405D-B05C-023898A0010C



DocuSign Envelope ID: 9F46AC3-C865-405D-B05D-02888A0010C



100% SUBMITTAL
NOT FOR CONSTRUCTION

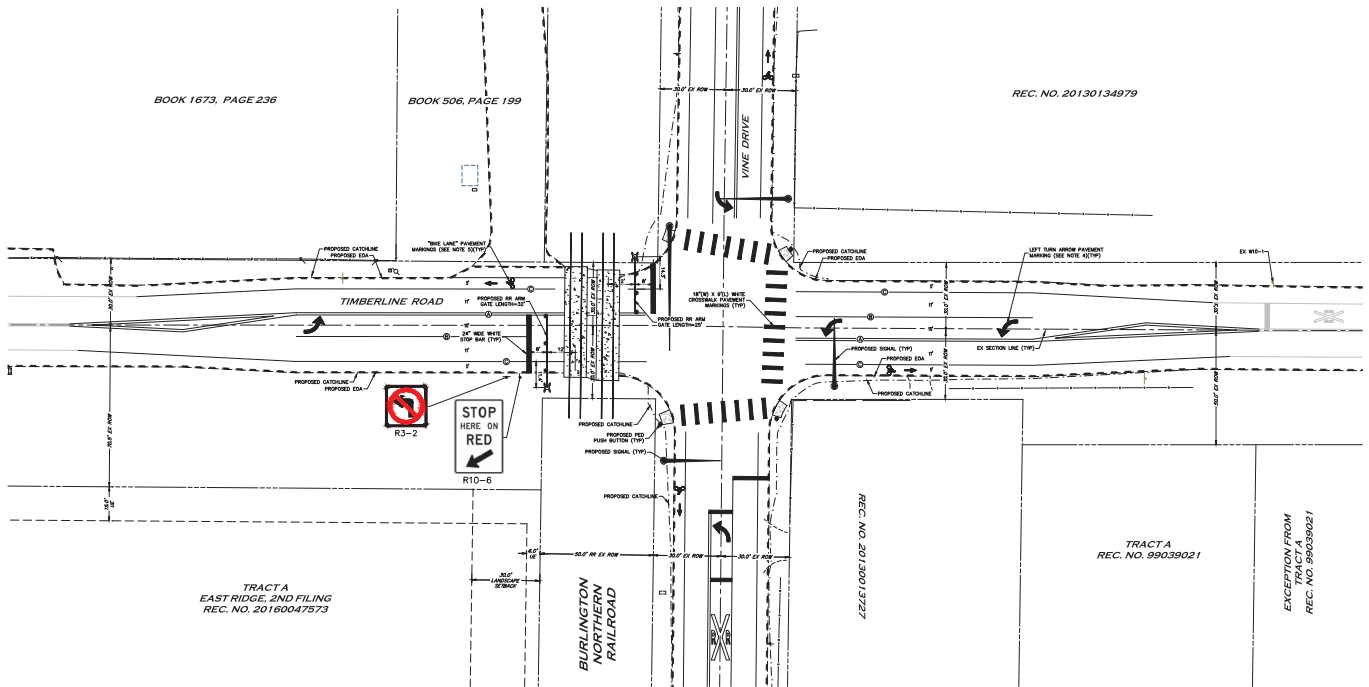
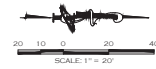


NOTES

1. ALL LONGITUDINAL PAVEMENT MARKINGS TO BE DONE IN LATEX PAVEMENT MARKING PAINT.
2. ALL TRANSVERSE PAVEMENT MARKINGS AND SYMBOLS TO BE DONE IN PREFORMED THERMOPLASTIC.
3. TRANSVERSE SPACING FOR STRIPING USE FROM CENTER OF STRIPE TO CENTER OF STRIPE OR CENTER OF STRIPE TO FORMLINE OF CURVE.
4. ALL SPACING AND MARKING TO BE DONE IN ACCORDANCE WITH CITY OF FORT COLLINS AND/OR MUTCD STANDARDS.
5. THERMOPLASTIC ARROWS SHALL BE 12" ELONGATED PINK.
6. THERMOPLASTIC BKE STENCILS SHALL BE 4'-0" W/ 4" ARROW.
7. ALL SIGNS PLACED IN HANDSCAPE SHALL HAVE A BLEND INSTALLED.

STRIPING LEGEND

- ① 4" SOLID DOUBLE YELLOW
- ② 8" SOLID WHITE CHANNELLING
- ③ 4" SOLID WHITE



100% SUBMITTAL
NOT FOR CONSTRUCTION

CALL UTILITY NOTIFICATION
CENTER OF COLORADO
811
CALL 3-BUSINESS DAYS IN ADVANCE
BEFORE ANY DIRT, GRADE, OR EXCAVATE
FOR THE MARKING OF UNDERGROUND
UTILITIES.

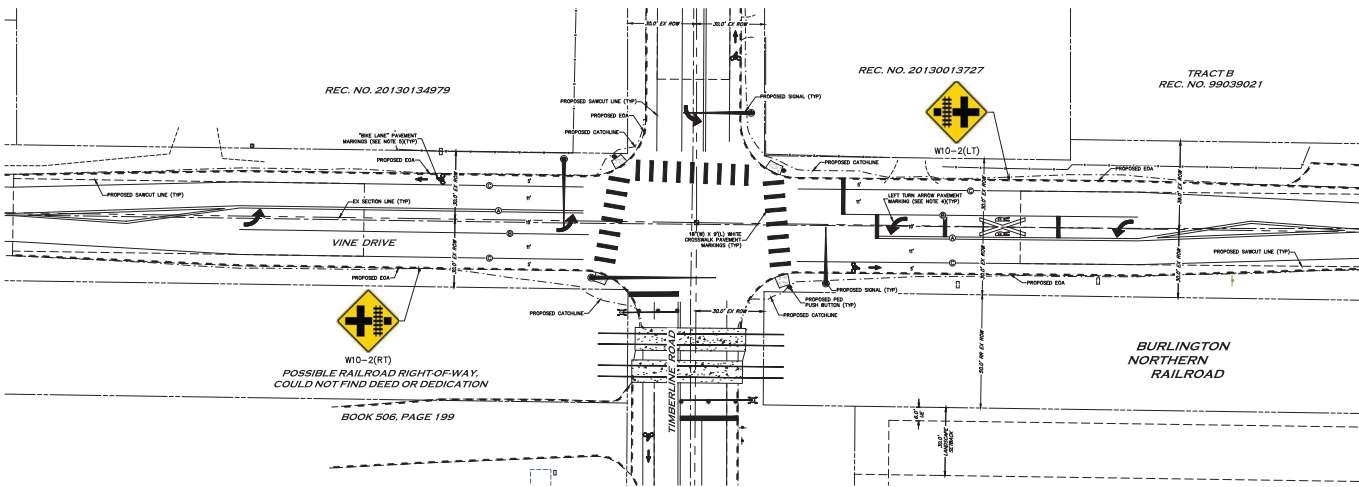
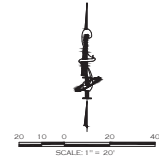
DATE: 6/26/21		SCALE: 1" = 20'		CHECKED BY: MFO	
DATE: 6/26/21		SCALE: 1" = 20'		CHECKED BY: MFO	
<p>PROJECT NAME: TIMBERLINE AND VINE SIGNAL IMPROVEMENTS</p> <p>SIGNING & STRIPING PLAN - TIMBERLINE</p>					
<p>PREPARED FOR: Fort Collins</p>					
<p>EXCEPTION FROM REC. NO. 59039021</p>					
<p>PROJ. NO. 1320012-05</p>					
<p>9 OF 12</p>					

NOTES

1. ALL LONGITUDINAL PAVEMENT MARKINGS TO BE DONE IN LATEX PAVEMENT MARKING PAINT. ALL TRANSVERSE PAVEMENT MARKINGS AND SYMBOLS TO BE DONE IN PREPARED THERMOPLASTIC.
2. DIMENSIONS SHOWN FOR STRIPING LINE FROM CENTER OF STRIPE TO CENTER OF STRIPE OR CENTER OF STRIPE TO FLOWLINE OF CURVE.
3. ALL SIGNING AND MARKING TO BE DONE IN ACCORDANCE WITH CITY OF FORT COLLINS AND/OR MUTED STANDARDS.
4. THERMOPLASTIC ARROWS SHALL BE 12" ELONGATED PHA.
5. THERMOPLASTIC BIKE STENCILS SHALL BE 6"-8" W/ 4" ARROW.
6. ALL SIGNS PLACED IN HANDSCAPE SHALL HAVE A SLEEVE INSTALLED.

STRIPING LEGEND

- ② 4" SOLID DOUBLE YELLOW
- ② 6" SOLID WHITE CHANNELLING
- 4" SOLID WHITE



PREPARED FOR
City of Fort Collins

PROJECT NAME
**TIMBERLINE AND VINE
SIGNAL IMPROVEMENTS
SIGNING & STRIPING PLAN - VINE**

DATE: 6/29/21
SCALE: 1/4" = 1'-0"
SCALE: 1/4" = 1'-0"
DESIGNED BY: JCL
CHECKED BY: MPO

CALL UTILITY NOTIFICATION
CENTER OF COLORADO
811
CALL 3-BUSINESS DAYS IN ADVANCE
MATERIALS: 10% OIL BRACK, 90% EXCAVATE
FOR THE MARKING OF UNDERGROUND
UTILITIES.

PROJ. NO. 1320012-05
10 OF 12

**EASEMENT AGREEMENT
FOR TIMBERLINE ROAD At-Grade Crossing
(C&M Agreement)**

THIS EASEMENT AGREEMENT FOR TIMBERLINE ROAD AT-GRADE CROSSING ("Easement Agreement") is made and entered into as of the _____ day of _____ 20__ ("**Effective Date**"), by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), and the **CITY OF FORT COLLINS**, a political subdivision of the State of Colorado ("**Grantee**").

A. Grantor owns or controls certain real property situated at or near the vicinity of Fort Collins, County of Larimer, State of Colorado, at Mile Post 77.16, as described or depicted on **Exhibit "A"** attached hereto and made a part hereof (the "**Premises**").

B. Grantor and Grantee have entered into that certain Construction and Maintenance Agreement dated as of _____ concerning improvements on or near the Premises (the "**C&M Agreement**").

C. Grantee has requested that Grantor grant to Grantee an easement over the Premises for the Easement Purpose (as defined below).

D. Grantor has agreed to grant Grantee such easement, subject to the terms and conditions set forth in this Easement and in the C&M Agreement incorporated herein as if fully set forth in this instrument which terms shall be in full force and effect for purposes of this Easement even if the C&M Agreement is, for whatever reason, no longer in effect.

NOW, THEREFORE, for and in consideration of the foregoing recitals which are incorporated herein, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1 Granting of Easement.

1.1 Easement Purpose. The "**Easement Purpose**" shall be for the purposes set forth in the C&M Agreement. Any improvements to be constructed in connection with the Easement Purpose are referred to herein as "**Improvements**" and shall be constructed, located, configured and maintained by Grantee in strict accordance with the terms of this Easement Agreement and the C&M Agreement.

1.2 Grant. Grantor does hereby grant unto Grantee a non-exclusive easement ("**Easement**") over the Premises for the Easement Purpose and for no other purpose. The Easement is granted subject to any and all restrictions, covenants, easements, licenses, permits, leases and other encumbrances of whatsoever nature whether or not of record, if any, relating to the Premises and subject to all with all applicable federal, state and local laws, regulations, ordinances, restrictions, covenants and court or administrative decisions and orders, including Environmental Laws (defined below) and zoning laws (collectively, "**Laws**"). Grantee may not make any alterations or improvements or perform any maintenance or repair activities within the Premises except in accordance with the terms and conditions of the C&M Agreement.

1.3 Reservations by Grantor. Grantor excepts and reserves the right, to be exercised by Grantor and any other parties who may obtain written permission or authority from Grantor:

- (a) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any existing pipe, power, communication, cable, or utility lines and appurtenances and other facilities or structures of like character (collectively, "**Lines**") upon, over, under or across the Premises;
- (b) to install, construct, maintain, renew, repair, replace, use, operate, change, modify and relocate any tracks or additional facilities or structures upon, over, under or across the Premises; and

- (c) to use the Premises in any manner as the Grantor in its sole discretion deems appropriate, provided Grantor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Grantee for the Easement Purpose.

Section 2 **Term of Easement**. The term of the Easement, unless sooner terminated under provisions of this Easement Agreement, shall be perpetual.

Section 3 **No Warranty of Any Conditions of the Premises**. Grantee acknowledges that Grantor has made no representation whatsoever to Grantee concerning the state or condition of the Premises, or any personal property located thereon, or the nature or extent of Grantor's ownership interest in the Premises. Grantee has not relied on any statement or declaration of Grantor, oral or in writing, as an inducement to entering into this Easement Agreement, other than as set forth herein. GRANTOR HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY SUCH PROPERTY, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTOR SHALL NOT BE RESPONSIBLE TO GRANTEE OR ANY OF GRANTEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PROPERTY PRESENT ON OR CONSTITUTING THE PREMISES, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES. GRANTEE ACCEPTS ALL RIGHTS GRANTED UNDER THIS EASEMENT AGREEMENT IN THE PREMISES IN AN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON GRANTOR'S RIGHTS, INTERESTS AND TITLE TO THE PREMISES. Grantee has inspected or will inspect the Premises and enters upon Grantor's rail corridor and property with knowledge of its physical condition and the danger inherent in Grantor's rail operations on or near the Premises. Grantee acknowledges that this Easement Agreement does not contain any implied warranties that Grantee or Grantee's Contractors (as hereinafter defined) can successfully construct or operate the Improvements.

Section 4 **Nature of Grantor's Interest in the Premises**. GRANTOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND GRANTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. In case of the eviction of Grantee by anyone owning or claiming title to or any interest in the Premises, or by the abandonment by Grantor of the affected rail corridor, Grantor shall not be liable to refund Grantee any compensation paid hereunder.

Section 5 **Improvements**. Grantee shall take, in a timely manner, all actions necessary and proper to the lawful establishment, construction, operation, and maintenance of the Improvements, including such actions as may be necessary to obtain any required permits, approvals or authorizations from applicable governmental authorities. Any and all cuts and fills, excavations or embankments necessary in the construction, maintenance, or future alteration of the Improvements shall be made and maintained in such manner, form and extent as will provide adequate drainage of and from the adjoining lands and premises of the Grantor; and wherever any such fill or embankment shall or may obstruct the natural and pre-existing drainage from such lands and premises of the Grantor, the Grantee shall construct and maintain such culverts or drains as may be requisite to preserve such natural and pre-existing drainage, and shall also wherever necessary, construct extensions of existing drains, culverts or ditches through or along the premises of the Grantor, such extensions to be of adequate sectional dimensions to preserve the present flowage of drainage or other waters, and of materials and workmanship equally as good as those now existing. In the event any construction, repair, maintenance, work or other use of the Premises by Grantee will affect any Lines, fences, buildings, improvements or other facilities (collectively, "**Other Improvements**"), Grantee will be responsible at Grantee's sole risk to locate and make any adjustments necessary to such Other Improvements. Grantee must contact the owner(s) of the Other Improvements notifying them of any work that may damage these Other Improvements and/or interfere with their service and obtain the owner's written approval prior to so affecting the Other Improvements. Grantee must mark all Other Improvements on the Plans and Specifications and mark such Other Improvements in the field in order to verify their locations. Grantee must also use all reasonable methods when working on or near Grantor property to determine if any Other Improvements (fiber optic, cable, communication or otherwise) may exist. The Grantee agrees to keep the above-described premises free and clear from combustible materials and to cut and remove or cause to be cut and removed at its sole expense all weeds and vegetation on said premises, said work of cutting and removal to

be done at such times and with such frequency as to comply with Grantee and local laws and regulations and abate any and all hazard of fire.

Section 6 Taxes and Recording Fees. Grantee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed upon the Improvements by any governmental or quasi-governmental body or any Taxes levied or assessed against Grantor or the Premises that are attributable to the Improvements. Grantee agrees to purchase, affix and cancel any and all documentary stamps in the amount prescribed by statute, and to pay any and all required transfer taxes, excise taxes and any and all fees incidental to recordation of the Memorandum of Easement. In the event of Grantee's failure to do so, if Grantor shall become obligated to do so, Grantee shall be liable for all costs, expenses and judgments to or against Grantor, including all of Grantor's legal fees and expenses.

Section 7 Environmental.

7.1 Compliance with Environmental Laws. Grantee shall strictly comply with all federal, state and local environmental Laws in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Toxic Substances Control Act (collectively referred to as the "**Environmental Laws**"). Grantee shall not maintain a "treatment," "storage," "transfer" or "disposal" facility, or "underground storage tank," as those terms are defined by Environmental Laws, on the Premises. Grantee shall not handle, transport, release or suffer the release of "hazardous waste" or "hazardous substances", as "hazardous waste" and "hazardous substances" may now or in the future be defined by any Environmental Laws.

7.2 Notice of Release. Grantee shall give Grantor immediate notice to Grantor's Resource Operations Center at (800) 832-5452 of any release of hazardous substances on or from the Premises, violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Grantee's use of the Premises. Grantee shall use its best efforts to promptly respond to any release on or from the Premises. Grantee also shall give Grantor immediate notice of all measures undertaken on behalf of Grantee to investigate, remediate, respond to or otherwise cure such release or violation.

7.3 Remediation of Release. In the event that Grantor has notice from Grantee or otherwise of a release or violation of Environmental Laws which occurred or may occur during the term of this Easement Agreement, Grantor may require Grantee, at Grantee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises. If during the construction or subsequent maintenance of the Improvements, soils or other materials considered to be environmentally contaminated are exposed, Grantee will remove and safely dispose of said contaminated soils. Determination of soils contamination and applicable disposal procedures thereof, will be made only by an agency having the capacity and authority to make such a determination.

7.4 Preventative Measures. Grantee shall promptly report to Grantor in writing any conditions or activities upon the Premises known to Grantee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons or property arising out of such conditions or activities; provided, however, that Grantee's reporting to Grantor shall not relieve Grantee of any obligation whatsoever imposed on it by this Easement Agreement. Grantee shall promptly respond to Grantor's request for information regarding said conditions or activities.

7.5 Evidence of Compliance. Grantee agrees periodically to furnish Grantor with proof satisfactory to Grantor that Grantee is in compliance with this **Section 7**. Should Grantee not comply fully with the above-stated obligations of this **Section 7**, notwithstanding anything contained in any other provision hereof, Grantor may, at its option, terminate this Easement Agreement by serving thirty (30) days' notice of termination upon Grantee. Upon termination, Grantee shall remove the Improvements and restore the Premises as provided in **Section 9**.

Section 8 Default and Termination.

8.1 Grantor's Performance Rights. If at any time Grantee, or Grantee's Contractors, fails to properly

perform its obligations under this Easement Agreement, Grantor, in its sole discretion, may: (i) seek specific performance of the unperformed obligations, or (ii) at Grantee's sole cost, may arrange for the performance of such work as Grantor deems necessary for the safety of its rail operations, activities and property, or to avoid or remove any interference with the activities or property of Grantor, or anyone or anything present on the rail corridor or property with the authority or permission of Grantor. Grantee shall promptly reimburse Grantor for all costs of work performed on Grantee's behalf upon receipt of an invoice for such costs. Grantor's failure to perform any obligations of Grantee or Grantee's Contractors shall not alter the liability allocation set forth in this Easement Agreement.

8.2 Abandonment. Grantor may, at its option, terminate this Easement Agreement by serving thirty (30) days' notice in writing upon Grantee if Grantee should abandon or cease to use the Premises for the Easement Purpose. Any waiver by Grantor of any default or defaults shall not constitute a waiver of the right to terminate this Easement Agreement for any subsequent default or defaults, nor shall any such waiver in any way affect Grantor's ability to enforce any section of this Easement Agreement.

8.3 Effect of Termination or Expiration. Neither termination nor expiration will release Grantee from any liability or obligation under this Easement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date the Premises are restored as required by **Section 9**.

8.4 Non-exclusive Remedies. The remedies set forth in this **Section 8** shall be in addition to, and not in limitation of, any other remedies that Grantor may have under the C&M Agreement, at law or in equity.

Section 9 Surrender of Premises.

9.1 Removal of Improvements and Restoration. Upon termination of this Easement Agreement, whether by abandonment of the Easement or by the exercise of Grantor's termination rights hereunder, Grantee shall, at its sole cost and expense, immediately perform the following:

- (a) remove all or such portion of Grantee's Improvements and all appurtenances thereto from the Premises, as Grantor directs at Grantor's sole discretion;
- (b) repair and restore any damage to the Premises arising from, growing out of, or connected with Grantee's use of the Premises;
- (c) remedy any unsafe conditions on the Premises created or aggravated by Grantee; and
- (d) leave the Premises in the condition which existed as of the Effective Date.

9.2 Limited License for Entry. If this Easement Agreement is terminated, Grantor may direct Grantee to undertake one or more of the actions set forth above, at Grantee's sole cost, in which case Grantee shall have a limited license to enter upon the Premises to the extent necessary to undertake the actions directed by Grantor. The terms of this limited license include all of Grantee's obligations under this Easement Agreement. Termination will not release Grantee from any liability or obligation under this Easement Agreement, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Grantee's Improvements are removed and the Premises are restored to the condition that existed as of the Effective Date. If Grantee fails to surrender the Premises to Grantor upon any termination of the Easement, all liabilities and obligations of Grantee hereunder shall continue in effect until the Premises are surrendered.

Section 10 Liens. Grantee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Grantee on the Premises or attributable to Taxes that are the responsibility of Grantee pursuant to **Section 6**. Grantor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by Law to prevent the attachment of any such liens to any portion of the Premises; provided, however, that failure of Grantor to take any such action shall not relieve Grantee of any obligation or liability under this **Section 10** or any other section of this Easement Agreement.

Section 11 Tax Exchange. Grantor may assign its rights (but not its obligations) under this Easement Agreement to Goldfinch Exchange Company LLC, an exchange intermediary, in order for Grantor to effect an exchange under Section 1031 of the Internal Revenue Code. In such event, Grantor shall provide Grantee with a Notice of Assignment, attached as Exhibit C, and Grantee shall execute an acknowledgement of receipt of such notice. Grantor shall bear all expenses associated with the use of Goldfinch or necessary to qualify this transaction as a tax-deferred exchange and except as otherwise provided herein, shall protect, reimburse, indemnify, and hold harmless Grantee from any and all reasonable and necessary additional costs, expenses, attorney fees, and liabilities which Grantee may incur as a result of Grantor's use of Goldfinch or the qualification of this transaction as a tax-deferred transaction.

Section 12 Notices. Any notice required or permitted to be given hereunder by one party to the other shall be delivered in the manner set forth in the C&M Agreement. Notices to Grantor under this Easement shall be delivered to the following address: BNSF Railway Company, Real Estate Department, 2500 Lou Menk Drive, Ft. Worth, TX 76131, Attn: Permits, or such other address as Grantor may from time to time direct by notice to Grantee.

Section 13 Recordation. It is understood and agreed that this Easement Agreement shall not be in recordable form and shall not be placed on public record and any such recording shall be a breach of this Easement Agreement. Grantor and Grantee shall execute a Memorandum of Easement in the form attached hereto as Exhibit "B" (the "**Memorandum of Easement**") subject to changes required, if any, to conform such form to local recording requirements. The Memorandum of Easement shall be recorded in the real estate records in the county where the Premises are located. If a Memorandum of Easement is not executed by the parties and recorded as described above within 90 days of the Effective Date, Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee.

Section 14 Miscellaneous.

14.1 All questions concerning the interpretation or application of provisions of this Easement Agreement shall be decided according to the substantive Laws of the State of **[Colorado]** without regard to conflicts of law provisions.

14.2 In the event that Grantee consists of two or more parties, all the covenants and agreements of Grantee herein contained shall be the joint and several covenants and agreements of such parties. This instrument and all of the terms, covenants and provisions hereof shall inure to the benefit of and be binding upon each of the parties hereto and their respective legal representatives, successors and assigns and shall run with and be binding upon the Premises.

14.3 If any action at law or in equity is necessary to enforce or interpret the terms of this Easement Agreement, the prevailing party or parties shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party or parties may be entitled.

14.4 If any provision of this Easement Agreement is held to be illegal, invalid or unenforceable under present or future Laws, such provision will be fully severable and this Easement Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this Easement Agreement a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

14.5 This Easement Agreement and the C&M Agreement, which is incorporated herein, is the full and complete agreement between Grantor and Grantee with respect to all matters relating to Grantee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Grantee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Grantee or Grantee's obligation to defend and hold Grantor harmless in any prior written agreement between the parties.

14.6 Time is of the essence for the performance of this Easement Agreement.

Section 15. Administrative Fee. Grantee acknowledges that a material consideration for this agreement, without which it would not be made, is the agreement between Grantee and Grantor, that the Grantee shall pay upon return of this Easement Agreement signed by Grantee to Grantor's Broker a processing fee in the amount of \$2,500.00 over and above the agreed upon acquisition price. Said fee shall be made payable to BNSF Railway Company by a separate check.

Witness the execution of this Easement Agreement as of the date first set forth above.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

GRANTEE:

CITY OF FORT COLLINS, a political subdivision of the State of Colorado

By: _____
Name: _____
Title: _____



Contract Number: BF-20195193

EXHIBIT "A"

Premises

DocuSign Envelope ID: 9F44B4C3-C295-4930-965E-0EB68943051E

EXHIBIT "A"

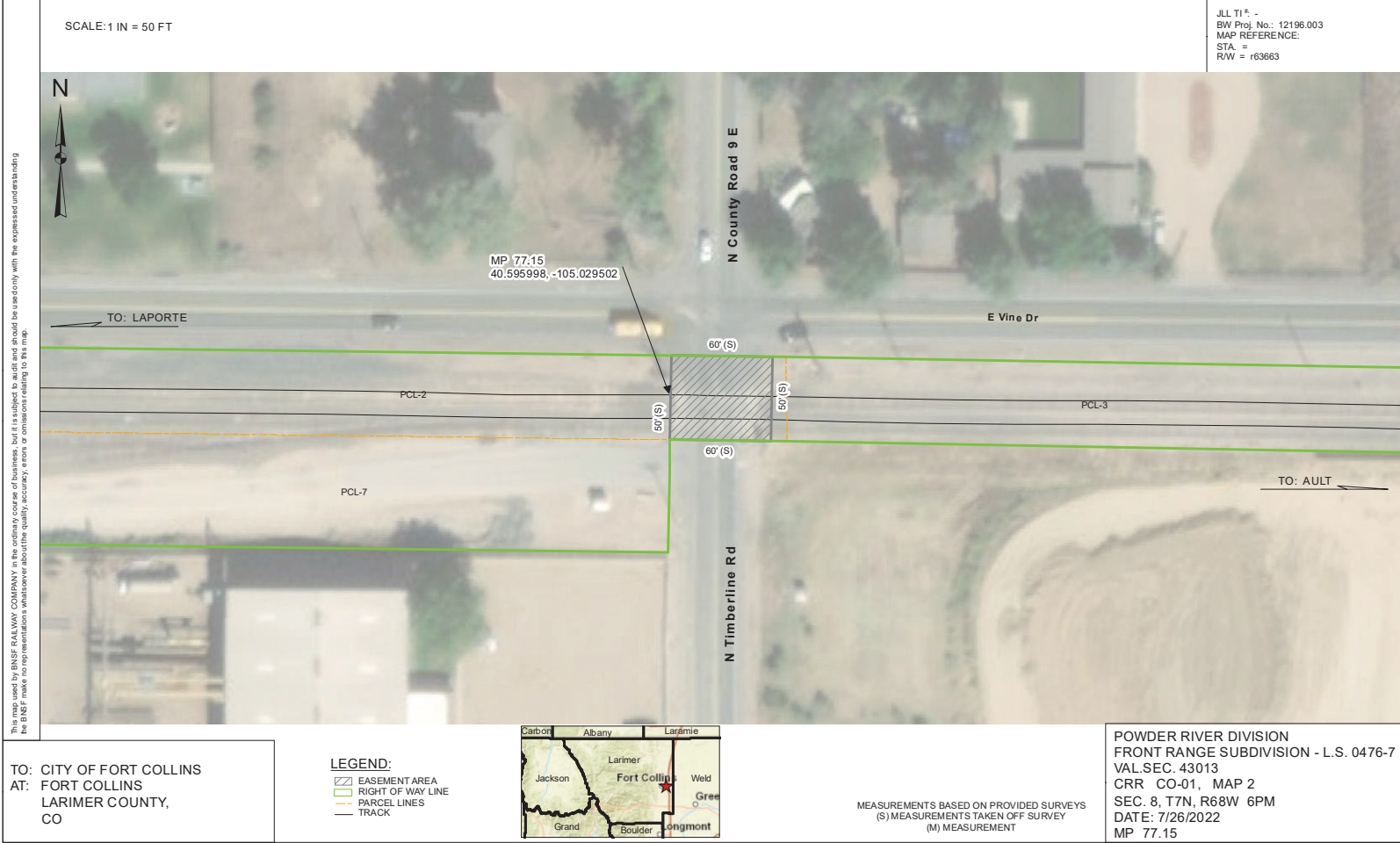


EXHIBIT "B"**MEMORANDUM OF EASEMENT**

THIS MEMORANDUM OF EASEMENT is hereby executed this _____ day of _____, 20__, by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Grantor**"), whose address for purposes of this instrument is 2500 Lou Menk Drive, Fort Worth, Texas 76131, and the **CITY OF FORT COLLINS**, a political subdivision of the State of Colorado ("**Grantee**"), whose address for purposes of this instrument is _____, which terms "Grantor" and "Grantee" shall include, wherever the context permits or requires, singular or plural, and the heirs, legal representatives, successors and assigns of the respective parties:

WITNESSETH:

WHEREAS, Grantor owns or controls certain real property situated in Larimer County, Colorado, as described on **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Premises**");

WHEREAS, Grantor and Grantee entered into an Easement Agreement, dated _____, 20__ (the "**Easement Agreement**") which set forth, among other things, the terms of an easement granted by Grantor to Grantee over and across the Premises (the "**Easement**"); and

WHEREAS, Grantor and Grantee desire to memorialize the terms and conditions of the Easement Agreement of record.

For valuable consideration the receipt and sufficiency of which are hereby acknowledged, Grantor does grant unto Grantee and Grantee does hereby accept from Grantor the Easement over and across the Premises.

The term of the Easement, unless sooner terminated under provisions of the Easement Agreement, shall be perpetual.

All the terms, conditions, provisions and covenants of the Easement Agreement are incorporated herein by this reference for all purposes as though written out at length herein, and both the Easement Agreement and this Memorandum of Easement shall be deemed to constitute a single instrument or document. This Memorandum of Easement is not intended to amend, modify, supplement, or supersede any of the provisions of the Easement Agreement and, to the extent there may be any conflict or inconsistency between the Easement Agreement or this Memorandum of Easement, the Easement Agreement shall control.

END OF PAGE – SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Grantor and Grantee have executed this Memorandum of Easement to as of the date and year first above written.

GRANTOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF TARRANT §

This instrument was acknowledged before me on the _____ day of _____, 20____, by _____ (name) as _____ (title) of **BNSF RAILWAY COMPANY**, a Delaware corporation.

Notary Public

My appointment expires: _____

(Seal)

By: _____
Name: _____
Title: _____

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EXHIBIT "C"**CONTRACTOR REQUIREMENTS****4) General**

- A. The Contractor must cooperate with BNSF RAILWAY COMPANY, hereinafter referred to as "Railway" where work is over or under on or adjacent to Railway property and/or right-of-way, hereafter referred to as "Railway Property", during the construction of
-
-
-
- B. The Contractor must execute and deliver to the Railway duplicate copies of the Exhibit "C-1" Agreement, in the form attached hereto, obligating the Contractor to provide and maintain in full force and effect the insurance called for under Section 3 of said Exhibit "C-1". Questions regarding procurement of the Railroad Protective Liability Insurance should be directed to Rosa Martinez at Marsh, USA, 214-303-8519.
- C. The Contractor must plan, schedule and conduct all work activities so as not to interfere with the movement of any trains on Railway Property.
- D. The Contractor's right to enter Railway's Property is subject to the absolute right of Railway to cause the Contractor's work on Railway's Property to cease if, in the opinion of Railway, Contractor's activities create a hazard to Railway's Property, employees, and/or operations. Railway will have the right to stop construction work on the Project if any of the following events take place: (i) Contractor (or any of its subcontractors) performs the Project work in a manner contrary to the plans and specifications approved by Railway; (ii) Contractor (or any of its subcontractors), in Railway's opinion, prosecutes the Project work in a manner which is hazardous to Railway property, facilities or the safe and expeditious movement of railroad traffic; (iii) the insurance described in the attached Exhibit C-1 is canceled during the course of the Project; or (iv) Contractor fails to pay Railway for the Temporary Construction License or the Easement. The work stoppage will continue until all necessary actions are taken by Contractor or its subcontractor to rectify the situation to the satisfaction of Railway's Division Engineer or until additional insurance has been delivered to and accepted by Railway. In the event of a breach of (i) this Agreement, (ii) the Temporary Construction License, or (iii) the Easement, Railway may immediately terminate the Temporary Construction License or the Easement. Any such work stoppage under this provision will not give rise to any liability on the part of Railway. Railway's right to stop the work is in addition to any other rights Railway may have including, but not limited to, actions or suits for damages or lost profits. In the event that Railway desires to stop construction work on the Project, Railway agrees to immediately notify the following individual in writing:

With copy to:
 Fort Collins City Attorney's Office
 300 LaPorte Avenue



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Fort Collins, CO 80521

- E. The Contractor is responsible for determining and complying with all Federal, State and Local Governmental laws and regulations, including, but not limited to environmental laws and regulations (including but not limited to the Resource Conservation and Recovery Act, as amended; the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, CERCLA), and health and safety laws and regulations. The Contractor hereby indemnifies, defends and holds harmless Railway for, from and against all fines or penalties imposed or assessed by Federal, State and Local Governmental Agencies against the Railway which arise out of Contractor's work under this Agreement.
- F. The Contractor must notify **(Agency)** at () and Railway's Manager Public Projects, telephone number () at least thirty (30) calendar days before commencing any work on Railway Property. Contractor's notification to Railway must refer to Railway's file _____.
- G. For any bridge demolition and/or falsework above any tracks or any excavations located with any part of the excavations located within, whichever is greater, twenty-five (25) feet of the nearest track or intersecting a slope from the plane of the top of rail on a 2 horizontal to 1 vertical slope beginning at eleven (11) feet from centerline of the nearest track, both measured perpendicular to center line of track, the Contractor must furnish the Railway five sets of working drawings showing details of construction affecting Railway Property and tracks. The working drawing must include the proposed method of installation and removal of falsework, shoring or cribbing, not included in the contract plans and two sets of structural calculations of any falsework, shoring or cribbing. For all excavation and shoring submittal plans, the current "BNSF-UPRR Guidelines for Temporary Shoring" must be used for determining the design loading conditions to be used in shoring design, and all calculations and submittals must be in accordance with the current "BNSF-UPRR Guidelines for Temporary Shoring". All submittal drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. All calculations must take into consideration railway surcharge loading and must be designed to meet American Railway Engineering and Maintenance-of-Way Association (previously known as American Railway Engineering Association) Coopers E-80 live loading standard. All drawings and calculations must be stamped by a registered professional engineer licensed to practice in the state the project is located. The Contractor must not begin work until notified by the Railway that plans have been approved. The Contractor will be required to use lifting devices such as, cranes and/or winches to place or to remove any falsework over Railway's tracks. In no case will the Contractor be relieved of responsibility for results obtained by the implementation of said approved plans.
- H. Subject to the movement of Railway's trains, Railway will cooperate with the Contractor such that the work may be handled and performed in an efficient manner. The Contractor will have no claim whatsoever for any type of damages or for extra or additional compensation in the event his work is delayed by the Railway.

5) Contractor Safety Orientation



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- A. No employee of the Contractor, its subcontractors, agents or invitees may enter Railway Property without first having completed Railway's Engineering Contractor Safety Orientation, found on the web site www.BNSFContractor.com. The Contractor must ensure that each of its employees, subcontractors, agents or invitees completes Railway's Engineering Contractor Safety Orientation through internet sessions before any work is performed on the Project. Additionally, the Contractor must ensure that each and every one of its employees, subcontractors, agents or invitees possesses a card certifying completion of the Railway Contractor Safety Orientation before entering Railway Property. The Contractor is responsible for the cost of the Railway Contractor Safety Orientation. The Contractor must renew the Railway Contractor Safety Orientation annually. Further clarification can be found on the web site or from the Railway's Representative.

6) Railway Requirements

- A. The Contractor must take protective measures as are necessary to keep railway facilities, including track ballast, free of sand, debris, and other foreign objects and materials resulting from his operations. Any damage to railway facilities resulting from Contractor's operations will be repaired or replaced by Railway and the cost of such repairs or replacement must be paid for by the Agency.
- B. The Contractor must notify the Railway's Division Engineer _____ at (_____)_____ and provide blasting plans to the Railway for review seven (7) calendar days prior to conducting any blasting operations adjacent to or on Railway's Property.
- C. The Contractor must abide by the following temporary clearances during construction:
- 15'-0" Horizontally from centerline of nearest track
 - 21'-6" Vertically above top of rail
 - 27'-0" Vertically above top of rail for electric wires carrying less than 750 volts
 - 28'-0" Vertically above top of rail for electric wires carrying 750 volts to 15,000 volts
 - 30'-0" Vertically above top of rail for electric wires carrying 15,000 volts to 20,000 volts
 - 34'-0" Vertically above top of rail for electric wires carrying more than 20,000 volts
- D. Upon completion of construction, the following clearances shall be maintained:
- 25' Horizontally from centerline of nearest track
 - 23' 6" Vertically above top of rail
- E. Any infringement within State statutory clearances due to the Contractor's operations must be submitted to the Railway and to the **(Agency)** and must not be undertaken until approved in writing by the Railway, and until the **(Agency)** has obtained any necessary authorization from the State Regulatory Authority for the infringement. No extra compensation will be allowed in the event the Contractor's work is delayed pending Railway approval, and/or the State Regulatory Authority's approval.



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- F. In the case of impaired vertical clearance above top of rail, Railway will have the option of installing tell-tales or other protective devices Railway deems necessary for protection of Railway operations. The cost of tell-tales or protective devices will be borne by the Agency.
- G. The details of construction affecting the Railway's Property and tracks not included in the contract plans must be submitted to the Railway by (Agency) for approval before work is undertaken and this work must not be undertaken until approved by the Railway.
- H. At other than public road crossings, the Contractor must not move any equipment or materials across Railway's tracks until permission has been obtained from the Railway. The Contractor must obtain a "Temporary Construction Crossing Agreement" from the Railway prior to moving his equipment or materials across the Railways tracks. The temporary crossing must be gated and locked at all times when not required for use by the Contractor. The temporary crossing for use of the Contractor will be constructed and, at the completion of the project, removed at the expense of the Contractor.
- I. Discharge, release or spill on the Railway Property of any hazardous substances, oil, petroleum, constituents, pollutants, contaminants, or any hazardous waste is prohibited and Contractor must immediately notify the **Railway's Resource Operations Center at 1(800) 832-5452**, of any discharge, release or spills in excess of a reportable quantity. Contractor must not allow Railway Property to become a treatment, storage or transfer facility as those terms are defined in the Resource Conservation and Recovery Act or any state analogue.
- J. The Contractor upon completion of the work covered by this contract, must promptly remove from the Railway's Property all of Contractor's tools, equipment, implements and other materials, whether brought upon said property by said Contractor or any Subcontractor, employee or agent of Contractor or of any Subcontractor, and must cause Railway's Property to be left in a condition acceptable to the Railway's representative.

7) Contractor Roadway Worker on Track Safety Program and Safety Action Plan

- A. Each Contractor that will perform work within 25 feet of the centerline of a track must develop and implement a Roadway Worker Protection/On Track Safety Program and work with Railway Project Representative to develop an on track safety strategy as described in the guidelines listed in the on track safety portion of the Safety Orientation. This Program must provide Roadway Worker protection/on track training for all employees of the Contractor, its subcontractors, agents or invitees. This training is reinforced at the job site through job safety briefings. Additionally, each Contractor must develop and implement the Safety Action Plan, as provided for on the web site www.BNSFContractor.com, which will be made available to Railway prior to commencement of any work on Railway Property. During the performance of work, the Contractor must audit its work activities. The Contractor must designate an on-site Project Supervisor who will serve as the contact person for the Railway and who will maintain a copy of the Safety Action Plan, safety audits, and Material Safety Datasheets (MSDS), at the job site.



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- B.** Contractor shall have a background investigation performed on all of its employees, subcontractors and agents who will be performing any services for Railroad under this Agreement which are determined by Railroad in its sole discretion **a)** to be on Railroad's property, or **b)** that require access to Railroad Critical Infrastructure, Railroad Critical Information Systems, Railroad's Employees, Hazardous Materials on Railroad's property or is being transported by or otherwise in the custody of Railroad, or Freight in Transit involving Railroad.
- i) The required background screening shall at a minimum meet the rail industry background screening criteria defined by the e-RAILSAFE Program as outlined at www.eVerifile.com, in addition to any other applicable regulatory requirements.
 - ii) Contractor shall obtain written consent from all its employees, subcontractors or agents screened in compliance with the e-RAILSAFE Program to participate in the Program on their behalf and to release completed background information to Railroad's designee. Contractor shall be subject to periodic audit to ensure compliance.
 - iii) Contractor subject to the e-RAILSAFE Program hereunder shall not permit any of its employees, subcontractors or agents to perform services hereunder who are not first approved under e-RAILSAFE Program standards. Railroad shall have the right to deny entry onto its premises or access as described in this section above to any of Contractor's employees, subcontractors or agents who do not display the authorized identification badge issued by a background screening service meeting the standards set forth in the e-RAILSAFE Program, or who in Railroad's opinion, which may not be unreasonable, may pose a threat to the safety or security of Railroad's operations, assets or personnel.
 - iv) Contractors shall be responsible for ensuring that its employees, subcontractors and agents are United States citizens or legally working in the United States under a lawful and appropriate work VISA or other work authorization.

8) Railway Flagger Services

- A.** The Contractor must give Railway's **Roadmaster (telephone _____)** a minimum of thirty (30) calendar days advance notice when flagging services will be required so that the Roadmaster can make appropriate arrangements (i.e., bulletin the flagger's position). If flagging services are scheduled in advance by the Contractor and it is subsequently determined by the parties hereto that such services are no longer necessary, the Contractor must give the Roadmaster five (5) working days advance notice so that appropriate arrangements can be made to abolish the position pursuant to union requirements.



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B. Unless determined otherwise by Railway's Project Representative, Railway flagger will be required and furnished when Contractor's work activities are located over, under and/or within twenty-five (25) feet measured horizontally from centerline of the nearest track and when cranes or similar equipment positioned beyond 25-feet from the track centerline could foul the track in the event of tip over or other catastrophic occurrence, but not limited thereto for the following conditions:

- i) When, upon inspection by Railway's Representative, other conditions warrant.
- ii) When any excavation is performed below the bottom of tie elevation, if, in the opinion of Railway's representative, track or other Railway facilities may be subject to movement or settlement.
- iii) When work in any way interferes with the safe operation of trains at timetable speeds.
- iv) When any hazard is presented to Railway track, communications, signal, electrical, or other facilities either due to persons, material, equipment or blasting in the vicinity.
- v) Special permission must be obtained from the Railway before moving heavy or cumbersome objects or equipment which might result in making the track impassable.

C. Flagging services will be performed by qualified Railway flaggers.

- i) Flagging crew generally consists of one employee. However, additional personnel may be required to protect Railway Property and operations, if deemed necessary by the Railways Representative.
- ii) Each time a flagger is called, the minimum period for billing will be the eight (8) hour basic day.
- iii) The cost of flagger services provided by the Railway will be borne by **(Agency)**. The estimated cost for one (1) flagger is approximately between \$800.00-\$1,600.00 for an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays. The estimated cost for each flagger includes vacation allowance, paid holidays, Railway and unemployment insurance, public liability and property damage insurance, health and welfare benefits, vehicle, transportation, meals, lodging, radio, equipment, supervision and other costs incidental to performing flagging services. Negotiations for Railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase actual or estimated flagging rates. **THE FLAGGING RATE IN EFFECT AT THE TIME OF PERFORMANCE BY THE CONTRACTOR HEREUNDER WILL BE USED TO CALCULATE THE ACTUAL COSTS OF FLAGGING PURSUANT TO THIS PARAGRAPH.**
- iv) The average train traffic on this route is _____ freight trains per 24-hour period at a timetable speed _____ MPH and _____ passenger trains at a timetable speed of _____ MPH.

6) Contractor General Safety Requirements



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- A. Work in the proximity of railway track(s) is potentially hazardous where movement of trains and equipment can occur at any time and in any direction. All work performed by contractors within 25 feet of any track must be in compliance with FRA Roadway Worker Protection Regulations.
- B. Before beginning any task on Railway Property, a thorough job safety briefing must be conducted with all personnel involved with the task and repeated when the personnel or task changes. If the task is within 25 feet of any track, the job briefing must include the Railway's flagger, as applicable, and include the procedures the Contractor will use to protect its employees, subcontractors, agents or invitees from moving any equipment adjacent to or across any Railway track(s).
- C. Workers must not work within 25 feet of the centerline of any track without an on track safety strategy approved by the Railway's Project Representative. When authority is provided, every contractor employee must know: (1) who the Railway flagger is, and how to contact the flagger, (2) limits of the authority, (3) the method of communication to stop and resume work, and (4) location of the designated places of safety. Persons or equipment entering flag/work limits that were not previously job briefed, must notify the flagger immediately, and be given a job briefing when working within 25 feet of the center line of track.
- D. When Contractor employees are required to work on the Railway Property after normal working hours or on weekends, the Railway's representative in charge of the project must be notified. A minimum of two employees must be present at all times.
- E. Any employees, agents or invitees of Contractor or its subcontractors under suspicion of being under the influence of drugs or alcohol, or in the possession of same, will be removed from the Railway's Property and subsequently released to the custody of a representative of Contractor management. Future access to the Railway's Property by that employee will be denied.
- F. Any damage to Railway Property, or any hazard noticed on passing trains must be reported immediately to the Railway's representative in charge of the project. Any vehicle or machine which may come in contact with track, signal equipment, or structure (bridge) and could result in a train derailment must be reported immediately to the Railway representative in charge of the project and to the Railway's Resource Operations Center at 1(800) 832-5452. Local emergency numbers are to be obtained from the Railway representative in charge of the project prior to the start of any work and must be posted at the job site.
- G. For safety reasons, all persons are prohibited from having pocket knives, firearms or other deadly weapons in their possession while working on Railway's Property.
- H. All personnel protective equipment (PPE) used on Railway Property must meet applicable OSHA and ANSI specifications. Current Railway personnel protective equipment requirements are listed on the web site, www.BNSFContractor.com, however, a partial list of the requirements include: a) safety glasses with permanently affixed side shields (no yellow lenses); b) hard hats; c) safety shoe with: hardened toes, above-the-ankle lace-up and a defined heel; and d) high visibility retro-reflective work wear. The Railway's representative in charge of the project is to be contacted



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regarding local specifications for meeting requirements relating to hi-visibility work wear. Hearing protection, fall protection, gloves, and respirators must be worn as required by State and Federal regulations. **(NOTE – Should there be a discrepancy between the information contained on the web site and the information in this paragraph, the web site will govern.)**

- I. **THE CONTRACTOR MUST NOT PILE OR STORE ANY MATERIALS, MACHINERY OR EQUIPMENT CLOSER THAN 25'-0" TO THE CENTER LINE OF THE NEAREST RAILWAY TRACK. MATERIALS, MACHINERY OR EQUIPMENT MUST NOT BE STORED OR LEFT WITHIN 250 FEET OF ANY HIGHWAY/RAIL AT-GRADE CROSSINGS OR TEMPORARY CONSTRUCTION CROSSING, WHERE STORAGE OF THE SAME WILL OBSTRUCT THE VIEW OF A TRAIN APPROACHING THE CROSSING. PRIOR TO BEGINNING WORK, THE CONTRACTOR MUST ESTABLISH A STORAGE AREA WITH CONCURRENCE OF THE RAILWAY'S REPRESENTATIVE.**
- J. Machines or vehicles must not be left unattended with the engine running. Parked machines or equipment must be in gear with brakes set and if equipped with blade, pan or bucket, they must be lowered to the ground. All machinery and equipment left unattended on Railway's Property must be left inoperable and secured against movement. (See internet Engineering Contractor Safety Orientation program for more detailed specifications)
- K. Workers must not create and leave any conditions at the work site that would interfere with water drainage. Any work performed over water must meet all Federal, State and Local regulations.
- L. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For all power lines the minimum clearance between the lines and any part of the equipment or load must be; 200 KV or below - 15 feet; 200 to 350 KV - 20 feet; 350 to 500 KV - 25 feet; 500 to 750 KV - 35 feet; and 750 to 1000 KV - 45 feet. If capacity of the line is not known, a minimum clearance of 45 feet must be maintained. A person must be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

7) **Excavation**

- A. Before excavating, the Contractor must determine whether any underground pipe lines, electric wires, or cables, including fiber optic cable systems are present and located within the Project work area. The Contractor must determine whether excavation on Railway's Property could cause damage to buried cables resulting in delay to Railway traffic and disruption of service to users. Delays and disruptions to service may cause business interruptions involving loss of revenue and profits. Before commencing excavation, the Contractor must contact **BNSF's Project Engineer**. All underground and overhead wires will be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. **It is the Contractor's responsibility to notify any other companies that have underground utilities in the area and arrange for the location of all underground utilities before excavating.**



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- B. The Contractor must cease all work and notify the Railway immediately before continuing excavation in the area if obstructions are encountered which do not appear on drawings. If the obstruction is a utility and the owner of the utility can be identified, then the Contractor must also notify the owner immediately. If there is any doubt about the location of underground cables or lines of any kind, no work must be performed until the exact location has been determined. There will be no exceptions to these instructions.
- C. All excavations must be conducted in compliance with applicable OSHA regulations and, regardless of depth, must be shored where there is any danger to tracks, structures or personnel.
- D. Any excavations, holes or trenches on the Railway's Property must be covered, guarded and/or protected when not being worked on. When leaving work site areas at night and over weekends, the areas must be secured and left in a condition that will ensure that Railway employees and other personnel who may be working or passing through the area are protected from all hazards. All excavations must be back filled as soon as possible.

8) Hazardous Waste, Substances and Material Reporting:

- A. If Contractor discovers any hazardous waste, hazardous substance, petroleum or other deleterious material, including but not limited to any non-containerized commodity or material, on or adjacent to Railway's Property, in or near any surface water, swamp, wetlands or waterways, while performing any work under this Agreement, Contractor must immediately: (a) notify the Railway's Resource Operations Center at 1(800) 832-5452, of such discovery; (b) take safeguards necessary to protect its employees, subcontractors, agents and/or third parties; and (c) exercise due care with respect to the release, including the taking of any appropriate measure to minimize the impact of such release.

9) Personal Injury Reporting

- A. The Railway is required to report certain injuries as a part of compliance with Federal Railroad Administration (FRA) reporting requirements. Any personal injury sustained by an employee of the Contractor, subcontractor or Contractor's invitees while on the Railway's Property must be reported immediately (by phone mail if unable to contact in person) to the Railway's representative in charge of the project. The Non-Employee Personal Injury Data Collection Form contained herein is to be completed and sent by Fax to the Railway at 1(817) 352-7595 and to the Railway's Project Representative no later than the close of shift on the date of the injury.



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

(If injuries are in connection with rail equipment accident/incident, highway rail grade crossing accident or automobile accident, ensure that appropriate information is obtained, forms completed and that data entry personnel are aware that injuries relate to that specific event.)

Injured Person Type:

- ☐ Passenger on train (C) ☐ Non-employee (N)
(i.e., emp of another railroad, or, non-BNSF emp involved in vehicle accident, including company vehicles)
- ☐ Contractor/safety sensitive (F) ☐ Contractor/non-safety sensitive (G)
- ☐ Volunteer/safety sensitive (H) ☐ Volunteer/other non-safety sensitive (I)
- ☐ Non-trespasser (D) - to include highway users involved in highway rail grade crossing accidents who did not go around or through gates
- ☐ Trespasser (E) - to include highway users involved in highway rail grade crossing accidents who went around or through gates
- ☐ Non-trespasser (J) - Off railroad property

If train involved, Train ID:

Transmit attached information to Accident/Incident Reporting Center by:

Fax 1-817-352-7595 or by Phone 1-800-697-6736 or email to: Accident-Reporting.Center@BNSF.com

Officer Providing Information:

 (Name) (Employee No.) (Phone #)

**REPORT PREPARED TO COMPLY WITH FEDERAL ACCIDENT REPORTING REQUIREMENTS AND
 PROTECTED FROM DISCLOSURE PURSUANT TO 49 U.S.C. 20903 AND 83 U.S.C. 490**



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NON-EMPLOYEE PERSONAL INJURY DATA COLLECTION

Please complete this form and provide to the BNSF supervisor, who will input this information into the EHS Star system. For questions, call (817) 352-1267 or email Safety.IncidentReporting@BNSF.com.

Accident City/State: _____ Date: _____ Time: _____

County: _____ Temperature: _____ Weather: _____
(if non-BNSF location)

Name (Last/First/MI): _____

Age: _____ Gender (if available): _____

Company: _____

eRailsafe Badge Number: _____ Expiration Date: _____

BNSF Contractor Badge Number: _____ Expiration Date: _____

Injury: _____ Body Part: _____
(e.g., laceration) (e.g., hand)

Description of accident (including how accident occurred, potential cause, etc.):

Work activity in progress at time of accident: _____

Tools, machinery, or hazardous materials involved in accident: _____

Treatment:

- ☐ First Aid Only
☐ Required Medical Treatment
☐ Other Medical Treatment: __

Dr. Name: _____ Date: _____

Dr. Street Address: _____ City: _____ State: _____ Zip: _____

Hospital Name: _____

Hospital Street Address: _____ City: _____ State: _____ Zip: _____

Diagnosis: _____

THIS REPORT IS PART OF BNSF'S ACCIDENT REPORT PURSUANT TO THE ACCIDENT REPORTS STATUTE AND, AS SUCH SHALL NOT "BE ADMITTED AS EVIDENCE OR USED FOR ANY PURPOSE IN ANY SUIT OR ACTION FOR DAMAGES GROWING OUT OF ANY MATTER MENTIONED IN SAID REPORT...." 49 U.S.C. § 20903. See 49 C.F.R. § 225.7(b).



Contract Number: BF-20195193

EXHIBIT C1
EXHIBIT "C-1"

Agreement Between
BNSF RAILWAY COMPANY
and the
CONTRACTOR

Railway File: _____

Agency Project: _____

CITY OF FORT COLLINS, a/an Other (hereinafter called "Contractor"), has entered into an agreement (hereinafter called "Agreement") dated _____, 20____, **[***Drafter's Note: insert the date of the contract between the Agency and the Contractor here]** with **[Drafter's Note: insert the name of the Agency here]** for the performance of certain work in connection with the following project: _____. Performance of such work will necessarily require Contractor to enter **BNSF RAILWAY COMPANY** (hereinafter called "Railway") right of way and property (hereinafter called "Railway Property"). The Agreement provides that no work will be commenced within Railway Property until the Contractor employed in connection with said work for **City of Fort Collins, Colorado** (i) executes and delivers to Railway an Agreement in the form hereof, and (ii) provides insurance of the coverage and limits specified in such Agreement and Section 3 herein. If this Agreement is executed by a party who is not the Owner, General Partner, President or Vice President of Contractor, Contractor must furnish evidence to Railway certifying that the signatory is empowered to execute this Agreement on behalf of Contractor.

Accordingly, in consideration of Railway granting permission to Contractor to enter upon Railway Property and as an inducement for such entry, Contractor, effective on the date of the Agreement, has agreed and does hereby agree with Railway as follows:

1) RELEASE OF LIABILITY AND INDEMNITY

- A.** Contractor hereby waives, releases, indemnifies, defends and holds harmless Railway for all judgments, awards, claims, demands, and expenses (including



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attorneys' fees), for injury or death to all persons, including Railway's and Contractor's officers and employees, and for loss and damage to property belonging to any person, arising in any manner from Contractor's or any of Contractor's subcontractors' acts or omissions or any work performed on or about Railway's property or right-of-way. **THE LIABILITY ASSUMED BY CONTRACTOR WILL NOT BE AFFECTED BY THE FACT, IF IT IS A FACT, THAT THE DESTRUCTION, DAMAGE, DEATH, OR INJURY WAS OCCASIONED BY OR CONTRIBUTED TO BY THE NEGLIGENCE OF RAILWAY, ITS AGENTS, SERVANTS, EMPLOYEES OR OTHERWISE, EXCEPT TO THE EXTENT THAT SUCH CLAIMS ARE PROXIMATELY CAUSED BY THE INTENSIONAL MISCONDUCT OR GROSS NEGLIGENCE OF RAILWAY.**

- B. It is mutually negotiated between the parties that the indemnification obligation shall include all claims brought by Contractor's employees against Railway, its agents, servants, employees or otherwise, and Contractor expressly waives its immunity under the industrial insurance act (RCW Title 51) and assumes potential liability for all actions brought by its employees.**
- C. THE INDEMNIFICATION OBLIGATION ASSUMED BY CONTRACTOR INCLUDES ANY CLAIMS, SUITS OR JUDGMENTS BROUGHT AGAINST RAILWAY UNDER THE FEDERAL EMPLOYEE'S LIABILITY ACT, INCLUDING CLAIMS FOR STRICT LIABILITY UNDER THE SAFETY APPLIANCE ACT OR THE LOCOMOTIVE INSPECTION ACT, WHENEVER SO CLAIMED.**
- D. Contractor further agrees, at its expense, in the name and on behalf of Railway, that it will adjust and settle all claims made against Railway, and will, at Railway's discretion, appear and defend any suits or actions of law or in equity brought against Railway on any claim or cause of action arising or growing out of or in any manner connected with any liability assumed by Contractor under this Agreement for which Railway is liable or is alleged to be liable. Railway will give notice to Contractor, in writing, of the receipt or dependency of such claims and thereupon Contractor must proceed to adjust and handle to a conclusion such claims, and in the event of a suit being brought against Railway, Railway may forward summons and complaint or other process in connection therewith to Contractor, and Contractor, at Railway's discretion, must defend, adjust, or settle such suits and protect, indemnify, and save harmless Railway from and against all damages, judgments, decrees, attorney's fees, costs, and expenses growing out of or resulting from or incident to any such claims or suits.**



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- E. In addition to any other provision of this Agreement, in the event that all or any portion of this Article shall be deemed to be inapplicable for any reason, including without limitation as a result of a decision of an applicable court, legislative enactment or regulatory order, the parties agree that this Article shall be interpreted as requiring Contractor to indemnify Railway to the fullest extent permitted by applicable law. **THROUGH THIS AGREEMENT THE PARTIES EXPRESSLY INTEND FOR CONTRACTOR TO INDEMNIFY RAILWAY FOR RAILWAY'S ACTS OF NEGLIGENCE.**
- F. It is mutually understood and agreed that the assumption of liabilities and indemnification provided for in this Agreement survive any termination of this Agreement.

2) TERM

- A. This Agreement is effective from the date of the Agreement until (i) the completion of the project set forth herein, and (ii) full and complete payment to Railway of any and all sums or other amounts owing and due hereunder.

3) INSURANCE

Contractor shall, at its sole cost and expense, procure and maintain during the life of this Agreement the following insurance coverage:

- Commercial General Liability insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$2,000,000 each occurrence and an aggregate limit of at least \$4,000,000 but in no event less than the amount otherwise carried by the Contractor. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limit to the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations



Contract Number: BF-20195193

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- 1)** The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- 2)** Waiver of subrogation in favor of and acceptable to Railway.
- 3)** Additional insured endorsement in favor of and acceptable to Railway.
- 4)** Separation of insureds.
- 5)** The policy shall be primary and non-contributing with respect to any insurance carried by Railway.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to ***Railway*** employees.

No other endorsements limiting coverage as respects obligations under this Agreement may be included on the policy with regard to the work being performed under this agreement.

B. Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- 1)** Bodily injury and property damage
- 2)** Any and all vehicles owned, used or hired

The policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- 1)** Waiver of subrogation in favor of and acceptable to Railway.
- 2)** Additional insured endorsement in favor of and acceptable to Railway.



Contract Number: BF-20195193

- 3) Separation of insureds.
 - 4) The policy shall be primary and non-contributing with respect to any insurance carried by Railway.
- C. Workers Compensation and Employers Liability insurance including coverage for, but not limited to:
- 5) Contractor's statutory liability under the worker's compensation laws of the state(s) in which the work is to be performed. If optional under State law, the insurance must cover all employees anyway.
 - 6) Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- 7) Waiver of subrogation in favor of and acceptable to Railway.
- (8) Railroad Protective Liability insurance naming only the **Railway** as the Insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The policy Must be issued on a standard ISO form CG 00 35 12 04 and include the following:
- 1) Endorsed to include the Pollution Exclusion Amendment
 - 2) Endorsed to include the Limited Seepage and Pollution Endorsement.
 - 3) Endorsed to remove any exclusion for punitive damages.
 - 4) No other endorsements restricting coverage may be added.
 - 5) The original policy must be provided to the **Railway** prior to performing any work or services under this Agreement
 - 6) Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named



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insured and all property in any named insured' care, custody, and control arising out of the acts or omissions of the contractor named on the Declarations.

In lieu of providing a Railroad Protective Liability Policy, Licensee may participate (if available) in Railway's Blanket Railroad Protective Liability Insurance Policy.

Other Requirements:

Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.

Contractor agrees to waive its right of recovery against **Railway** for all claims and suits against **Railway**. In addition, its insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against **Railway** for all claims and suits. Contractor further waives its right of recovery, and its insurers also waive their right of subrogation against **Railway** for loss of its owned or leased property or property under Contractor's care, custody or control.

Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.

Contractor is not allowed to self-insure without the prior written consent of **Railway**. If granted by **Railway**, any self-insured retention or other financial responsibility for claims shall be covered directly by Contractor in lieu of insurance. Any and all **Railway** liabilities that would otherwise, in accordance with the provisions of this Agreement, be covered by Contractor's insurance will be covered as if Contractor elected not to include a deductible, self-insured retention or other financial responsibility for claims.

Prior to commencing services, Contractor shall furnish to **Railway** an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments. The certificate should be directed to the following address:

BNSF Railway Company
c/o CertFocus
P.O. Box 140528
Kansas City, MO 64114
Toll Free: 877-576-2378
Fax number: 817-840-7487



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Email: BNSF@certfocus.com
www.certfocus.com

Contractor shall notify **Railway** in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration.

Any insurance policy shall be written by a reputable insurance company acceptable to **Railway** or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.

If coverage is purchased on a "claims made" basis, Contractor hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this Agreement. Annually Contractor agrees to provide evidence of such coverage as required hereunder.

Contractor represents that this Agreement has been thoroughly reviewed by Contractor's insurance agent(s)/broker(s), who have been instructed by Contractor to procure the insurance coverage required by this Agreement.

Not more frequently than once every five years, **Railway** may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

If any portion of the operation is to be subcontracted by Contractor, Contractor shall require that the subcontractor shall provide and maintain insurance coverage(s) as set forth herein, naming **Railway** as an additional insured, and shall require that the subcontractor shall release, defend and indemnify **Railway** to the same extent and under the same terms and conditions as Contractor is required to release, defend and indemnify **Railway** herein.

Failure to provide evidence as required by this section shall entitle, but not require, **Railway** to terminate this Agreement immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Contractor's obligations hereunder.

The fact that insurance (including, without limitation, self-insurance) is obtained by Contractor shall not be deemed to release or diminish the liability of Contractor including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by **Railway** shall not be limited by the amount of the required insurance coverage.

In the event of a claim or lawsuit involving **Railway** arising out of this agreement, Contractor will make available any required policy covering such claim or lawsuit.



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These insurance provisions are intended to be a separate and distinct obligation on the part of the Contractor. Therefore, these provisions shall be enforceable and Contractor shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work covered hereunder is performed.

For purposes of this section, **Railway** shall mean "Burlington Northern Santa Fe LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

4) SALES AND OTHER TAXES

- A.** In the event applicable sales taxes of a state or political subdivision of a state of the United States are levied or assessed in connection with and directly related to any amounts invoiced by Contractor to Railway ("Sales Taxes"), Railway shall be responsible for paying only the Sales Taxes that Contractor separately states on the invoice or other billing documents provided to Railway; *provided, however*, that (i) nothing herein shall preclude Railway from claiming whatever Sales Tax exemptions are applicable to amounts Contractor bills Railway, (ii) Contractor shall be responsible for all sales, use, excise, consumption, services and other taxes which may accrue on all services, materials, equipment, supplies or fixtures that Contractor and its subcontractors use or consume in the performance of this Agreement, (iii) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) that Contractor fails to separately state on the invoice or other billing documents provided to Railway or fails to collect at the time of payment by Railway of invoiced amounts (except where Railway claims a Sales Tax exemption), and (iv) Contractor shall be responsible for Sales Taxes (together with any penalties, fines or interest thereon) if Contractor fails to issue separate invoices for each state in which Contractor delivers goods, provides services or, if applicable, transfers intangible rights to Railway.
- B.** Upon request, Contractor shall provide Railway satisfactory evidence that all taxes (together with any penalties, fines or interest thereon) that Contractor is responsible to pay under this Agreement have been paid. If a written claim is made against Contractor for Sales Taxes with respect to which Railway may be liable for under this Agreement, Contractor shall promptly notify Railway of such claim and provide Railway copies of all correspondence received from the taxing authority. Railway shall have the right to contest, protest, or claim a refund, in Railway's own name, any Sales Taxes paid by Railway to Contractor or for which Railway might otherwise be responsible for under this Agreement; *provided, however*, that if Railway is not permitted by law to contest any such Sales Tax in its own name, Contractor shall, if requested by Railway at Railway's sole cost



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and expense, contest in Contractor's own name the validity, applicability or amount of such Sales Tax and allow Railway to control and conduct such contest.

- C. Railway retains the right to withhold from payments made under this Agreement amounts required to be withheld under tax laws of any jurisdiction. If Contractor is claiming a withholding exemption or a reduction in the withholding rate of any jurisdiction on any payments under this Agreement, before any payments are made (and in each succeeding period or year as required by law), Contractor agrees to furnish to Railway a properly completed exemption form prescribed by such jurisdiction. Contractor shall be responsible for any taxes, interest or penalties assessed against Railway with respect to withholding taxes that Railway does not withhold from payments to Contractor.

5) EXHIBIT "C" CONTRACTOR REQUIREMENTS

- A. The Contractor must observe and comply with all provisions, obligations, requirements and limitations contained in the Agreement, and the Contractor Requirements set forth on Exhibit "C" attached to the Agreement and this Agreement, including, but not be limited to, payment of all costs incurred for any damages to Railway roadbed, tracks, and/or appurtenances thereto, resulting from use, occupancy, or presence of its employees, representatives, or agents or subcontractors on or about the construction site. Contractor shall execute a Temporary Construction Crossing Agreement or Private Crossing Agreement (<http://www.bnsf.com/communities/faqs/permits-real-estate/>), for any temporary crossing requested to aid in the construction of this Project, if approved by BNSF.

6) TRAIN DELAY

- A. Contractor is responsible for and hereby indemnifies and holds harmless Railway (including its affiliated railway companies, and its tenants) for, from and against all damages arising from any unscheduled delay to a freight or passenger train which affects Railway's ability to fully utilize its equipment and to meet customer service and contract obligations. Contractor will be billed, as further provided below, for the economic losses arising from loss of use of equipment, contractual loss of incentive pay and bonuses and contractual penalties resulting from train delays, whether caused by Contractor, or subcontractors, or by the Railway performing work under this Agreement. Railway agrees that it will not perform any act to unnecessarily cause train delay.



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- B.** For loss of use of equipment, Contractor will be billed the current freight train hour rate per train as determined from Railway's records. Any disruption to train traffic may cause delays to multiple trains at the same time for the same period.
- C.** Additionally, the parties acknowledge that passenger, U.S. mail trains and certain other grain, intermodal, coal and freight trains operate under incentive/penalty contracts between Railway and its customer(s). Under these arrangements, if Railway does not meet its contract service commitments, Railway may suffer loss of performance or incentive pay and/or be subject to penalty payments. Contractor is responsible for any train performance and incentive penalties or other contractual economic losses actually incurred by Railway which are attributable to a train delay caused by Contractor or its subcontractors.
- D.** The contractual relationship between Railway and its customers is proprietary and confidential. In the event of a train delay covered by this Agreement, Railway will share information relevant to any train delay to the extent consistent with Railway confidentiality obligations. The rate then in effect at the time of performance by the Contractor hereunder will be used to calculate the actual costs of train delay pursuant to this agreement.
- E.** Contractor and its subcontractors must give Railway's representative () () weeks advance notice of the times and dates for proposed work windows. Railway and Contractor will establish mutually agreeable work windows for the project. Railway has the right at any time to revise or change the work windows due to train operations or service obligations. Railway will not be responsible for any additional costs or expenses resulting from a change in work windows. Additional costs or expenses resulting from a change in work windows shall be accounted for in Contractor's expenses for the project.
- F.** Contractor and subcontractors must plan, schedule, coordinate and conduct all Contractor's work so as to not cause any delays to any trains.

SIGNATURE PAGE FOLLOWS



Contract Number: BF-20195193

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officer the day and year first above written.

BNSF RAILWAY COMPANY**CONTRACTOR**

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Title: Manager Public Projects

Title: _____

Date: _____

Date: _____

Accepted and effective this _____ day of 20__.

Contact Person: _____

Address: _____

City: _____

State: _____

Zip: _____

Fax: _____

Phone: _____

E-mail: _____



Contract Number: BF-20195193

EXHIBIT D
Estimate for Railroad Work

***** MAINTAIN PROPRIETARY CONFIDENTIALITY *****

BNSF RAILWAY COMPANY
FHPM ESTIMATE FOR
STATE OF COLORADO

LOCATION SSS NORTH YARD TO NSS NORTH YARD

DETAILS OF ESTIMATE

PLAN ITEM : 000343001

VERSION : 2

PURPOSE, JUSTIFICATION AND DESCRIPTION

TIMBERLINE - FORT COLLINS, CO; REPLACE CONSTANT WARNING / FLASHERS / GATES / INSTALL CANT; POWDER RIVER DIV; FRONT RANGE SUBDIV; LS 476; MP 77.16; DOT# 244647X; SEQ# 86813.

MONTHLY POWER UTILITY COST CENTER : 61872.

THE MATERIAL LIST BELOW REFLECTS TYPICAL REPRESENTATIVE PACKAGES USED FOR ESTIMATING PURPOSES ONLY.

THIS ESTIMATE IS GOOD FOR 180 DAYS. THE ESTIMATE IS SUBJECT TO CHANGE IN COST FOR LABOR, MATERIAL, AND OVERHEAD.

CONTRACTS HAVE BEEN ESTABLISHED FOR PORTIONS OF SIGNAL WORK ON THE BNSF RAILROAD.

***** SIGNAL WORK ONLY *****

THE CITY OF FORT COLLINS IS FUNDING 100% OF THIS PROJECT.

MAINTAIN PROPRIETARY CONFIDENTIALITY.

PRIMARY FUNDING SOURCE IS FHWA

** BUY AMERICA(N) APPLIES **

DESCRIPTION	QUANTITY	U/M	COST	TOTAL \$

LABOR				

ELECTRICAL LABOR F/SIGNAL EQUIPMENT	54.0	MH	2,787	
INSTALL INSULATED JOINT	28.56	MH	1,111	
PLACE FIELD WELDS - CAP	56.93	MH	2,346	
SIGNAL FIELD - REPLACE	1160.0	MH	50,307	
SIGNAL SHOP LABOR - CAP	0.01	MH	1	
PAYROLL ASSOCIATED COSTS			36,965	
DA OVERHEADS			61,374	
EQUIPMENT EXPENSES			12,575	
INSURANCE EXPENSES			9,894	
TOTAL LABOR COST			177,360	177,360

MATERIAL				

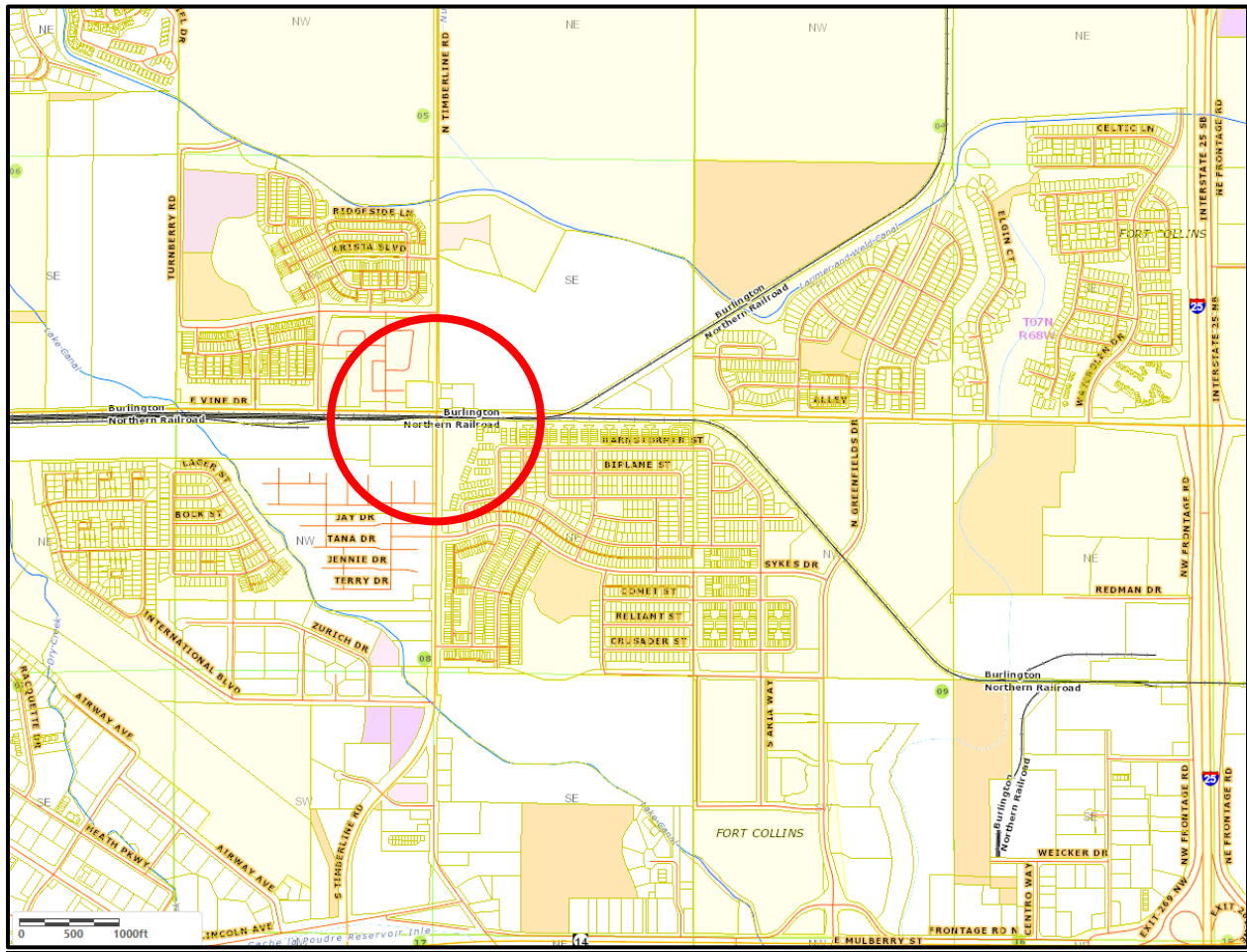
INSUL JT W/PLATES-GENERIC-40 FT-BONDED FOR	3.0	EA **	6,765	
WELDKIT, GENERIC FOR ALL RAIL WEIGHTS	6.0	KT **	459	
ADV PREEMPT PACKAGE	1.0	LS N	13,433	
ARRESTOR, MDSA-2 XS	1.0	EA N	734	
BATTERY, VGL-255	10.0	EA N	2,585	
BATTERY, VGL-350	18.0	EA N	6,077	
BELLS	2.0	EA N	412	
BUNGALOW 8X8 W/ AC	1.0	LS N	14,390	
BUNGALOW MATERIAL	1.0	LS N	9,681	
CABLE, 2C/6 TW	800.0	FT N	1,192	
CABLE, 3C/2	250.0	FT N	1,793	
CABLE, 5C/10	350.0	FT N	781	
CABLE, 5C/6	500.0	FT N	2,505	
CABLE, 7C/14	500.0	FT N	1,030	
CANTILEVER (REQUIRES QUOTE)	1.0	EA N	21,200	
CHARGERS, 12/80 (20/40/60)	2.0	EA N	2,995	
CONSTANT WARNING, XP4, 2TK	1.0	EA N	28,460	
ELECTRICAL MATERIAL	1.0	LS N	1,500	
EVENT RECORDER	1.0	EA N	5,657	
FIELD MATERIAL	1.0	LS N	9,461	
FILL DIRT	20.0	CY N	500	
FOUNDATION, CANT	1.0	EA N	3,318	
FOUNDATION, CONCRETE	2.0	EA N	547	
GATE KEEPER	2.0	EA N	2,733	
GATE MECHANISM, S-60	2.0	EA N	10,909	
LED LIGHT	20.0	EA N	4,479	
SHUNT, NBS	4.0	EA N	3,964	
SIDELIGHT, 1-WAY	1.0	EA N	849	

SIDELIGHT, 2-WAY	1.0 EA N	2,145	
SURFACE ROCK	10.0 CY N	500	
MATERIAL HANDLING		360	
ONLINE TRANSPORTATION		1	
USE TAX		10,639	
OFFLINE TRANSPORTATION		1,929	
TOTAL MATERIAL COST		173,983	173,983

OTHER			

AC POWER SERVICE	1.0 EA N	10,000	
BUNGALOW, WIRE AND TEST	1.0 LS N	12,840	
CONTRACT ENGINEERING	1.0 LS N	14,000	
CONTRACT FLAGGING/SIGNS/CONES	1.0 LS N	6,000	
DIRECTIONAL BORING	200.0 FT N	17,000	
TRAFFIC ENGINEERING STUDY	1.0 LS N	30,000	
TOTAL OTHER ITEMS COST		89,840	89,840
PROJECT SUBTOTAL			441,183
CONTINGENCIES			41,586
BILL PREPARATION FEE			4,828
GROSS PROJECT COST			487,597
LESS COST PAID BY BNSF			0
TOTAL BILLABLE COST			487,597

Vicinity Map



File Attachments for Item:

11. Resolution 2025-051 Supporting the City's Renewal as a Certified Bird City.

The purpose of this item is to renew Fort Collins' designation as a Bird City. Renewal requires a Council resolution, a public celebration of World Migratory Bird Day, and a submission of an updated application documenting the City's actions to support bird populations.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Zoë Shark, Natural Areas Community Connection & Protection Manager
Katie Donahue, Natural Areas Director

SUBJECT

Resolution 2025-051 Supporting the City's Renewal as a Certified Bird City.

EXECUTIVE SUMMARY

The purpose of this item is to renew Fort Collins' designation as a Bird City. Renewal requires a Council resolution, a public celebration of World Migratory Bird Day, and a submission of an updated application documenting the City's actions to support bird populations.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

The City received Bird City designation in 2022 as part of Council's priority to "Help Bird Species Recover." The renewal provides an opportunity to document and celebrate the community's ongoing commitment to protecting bird habitats and species.

The City is hosting a World Migratory Bird Day celebration on May 11, 2025, at Fossil Creek Reservoir Natural Area. Find details at fcgov.com/register.

The renewal application was a collaborative effort involving five City departments -- Natural Areas, Parks, Gardens on Spring Creek, Environmental Services, and Utilities, and three partner organizations: Bird Conservancy of the Rockies, Audubon Rockies, and the Northern Colorado Bird Alliance (formerly Fort Collins Audubon).

Bird City Colorado was created by and is managed by Environment for the Americas, a Boulder, Colorado-based non-profit organization that "connects diverse people to birds and nature and inspires the next generation of conservationists through education, outreach, research, and trainings" environmentamericas.org/about/mission/.

The City is interested in renewing the certification as efforts to support native birds have continued including ongoing land conservation and restoration efforts, annual World Migratory Bird Day celebrations, work to protect dark skies, partnerships with local bird conservation organizations, and ongoing educational outreach. The renewed certification documents and highlights this important work.

CITY FINANCIAL IMPACTS

The Bird City certification renewal was prepared collaboratively by community volunteers who donated their time and City staff, using existing capacity. The \$200 renewal fee will be paid by the Natural Areas Department.

World Migratory Bird Day celebratory activities are free of charge for community participants thanks to the collaboration between City of Fort Collins Natural Areas Department, Bird Conservancy of the Rockies, Audubon Rockies, Rocky Mountain Raptor Program, and Northern Colorado Bird Alliance.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The Land Conservation and Stewardship Board supported the resolution at its April 9, 2025, meeting. Board members requested clarification on the sponsoring organization, which has been included here. An excerpt of the meeting minutes is attached.

PUBLIC OUTREACH

While no specific outreach was conducted regarding the Bird City renewal, community support is reflected in participation at World Migratory Bird Day celebrations -- 279 people have attended 6 events since 2022.

ATTACHMENTS

1. Resolution 2025-051
2. Land Conservation and Stewardship Board Minutes, April 9, 2025 (excerpt)

RESOLUTION 2025-051
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUPPORTING THE CITY'S RENEWAL AS A CERTIFIED BIRD
CITY

A. Fort Collins was recognized as a Bird City in 2022 as part of City Council's priority to "Help Bird Species Recover."

B. Migratory songbirds are celebrated as symbolic harbingers of spring and play an important role in our community by controlling insect pests, pollinating plants and dispersing seeds.

C. Migratory birds and their habitats are declining, facing a growing number of threats on their migration routes and in both their summer and winter homes.

D. The Fort Collins community has invested in creating and maintaining habitats through a network of conserved natural areas and parks that provide critical habitats for birds.

E. Community members who are enthusiastic about birds, informed about the threats faced, and knowledgeable about ways to help can directly contribute to helping bird species recover.

F. Lighting can impact migration and the City of Fort Collins is already working to preserve dark skies through best practices in outdoor lighting, model lighting codes, and night sky monitoring.

G. Since 1993, World Migratory Bird Day (WMBD) has become a vehicle for focusing public attention on the nearly 350 species that travel between nesting habitats in our communities and throughout North America and their wintering grounds.

H. The City has celebrated WMBD with free public activities each May since 2022, and a community celebration of WMBD is a call to action and a required element of the Bird City certification application.

I. The City's natural areas, parks, and environmental services departments, and Gardens on Spring Creek in partnership with Audubon Rockies, Bird Conservancy of the Rockies, and Fort Collins Bird Alliance will submit an updated renewal application for Bird City certification by July 1, 2025.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council strongly supports the celebration of World Migratory Bird Day in 2025 and each year in the future.

Section 2. The City Council strongly supports the Fort Collins community's application to renew as a certified Bird City.

Section 3. The City Council strongly supports night sky protection efforts for both wildlife and people.

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025
Approving Attorney: April Silva

MINUTES

CITY OF FORT COLLINS • BOARDS AND COMMISSIONS



Land Conservation & Stewardship Board

April 9, 2025

Regular Meeting – Excerpt

Members:

Ross Cuniff, Chair

Scott Mason, Vice Chair

Denise Culver, Member

Jennifer Gooden, Member

Holger Kley, Member

Elena Lopez, Member

River Mizell, Member

Mark Sears, Member

Tom Shoemaker, Member

1. CALL TO ORDER: Meeting was called to order at 5:30 pm.

2. ROLL CALL:

LCSB: Holger Kley, Mark Sears, Tom Shoemaker, Scott Mason, Ross Cuniff, Elena Lopez, River Mizell (*Member Mizell left the meeting at 5:53 p.m.*)

Excused: Jennifer Gooden, Denise Culver

NAD Staff: Katie Donahue, Kelly Smith, Zoë Shark, Julia Feder, Tawnya Ernst, Emily Shingler, Mary Boyts, Ryan Vincent, Matt Parker

City Staff: Dave Kemp, Jill Wuertz, Nicole Poncelet-Johnson

Excerpt related to this Council Meeting Agenda Item: Resolution to Renew Bird City Certification

7. ACTION ITEMS

Bird City Certification

Zoë Shark, Natural Areas Community Connection & Protection Manager stated she was seeking Board support for the renewal of the City's Bird City certification awarded in 2022. She provided a brief background of the program, the certification requirements, and noted the 2022 City Council priority to Help Bird Species Recover. Zoë reported bird conservation in Fort Collins is a collaborative community effort that includes multiple City departments and partner agencies.

Discussion

Q. What is the name of the certifying organization?

A. Environment for the Americas, environmentamericas.org

The LCSB expressed thanks to everyone involved in the work and their support of the proposed resolution.

Member Sears made a motion to recommend the City Council approve the resolution to renew the City of Fort Collins certification as a Bird City. Member Shoemaker seconded the motion. The motion was unanimously approved 7-0.

File Attachments for Item:

12. Resolution 2025-052 Concerning the Fort Collins Urban Renewal Authority and its Tax Increment Revenue Refunding and Improvement Bonds (North College Tax Increment Urban Renewal Area), Series 2025; Declaring the City Council's Present Intent to Appropriate Funds to Replenish the Reserve Fund Securing Such Bonds, if Necessary; and Authorizing a Cooperation Agreement and Other Actions Taken in Connection Therewith.

The purpose of this item is for the Council to consider a Replenishment Resolution, which both provides a "Moral Obligation Pledge" to the Fort Collins Urban Renewal Authority (the "Authority") and approves a Cooperation Agreement between the City and Authority in connection with the revenue bond issuance approved by the URA Board at its April 24, 2025, meeting.

The Authority will be issuing additional bonds against the North College projected tax increment revenues. The bond proceeds will be used to fund the acquisition of blighted properties, support blight remediation through redevelopment of the same properties, and invest in additional public infrastructure. All proceeds will be expended by direction and with the approval of the Authority board. As part of this bond issuance, the Authority is seeking a "Moral Obligation Pledge" from the City of Fort Collins (the "City"). The pledge would result in improved bond ratings and reduced debt service costs to the Authority.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Josh Birks, Deputy Director, Sustainability Services

SUBJECT

Resolution 2025-052 Concerning the Fort Collins Urban Renewal Authority and its Tax Increment Revenue Refunding and Improvement Bonds (North College Tax Increment Urban Renewal Area), Series 2025; Declaring the City Council's Present Intent to Appropriate Funds to Replenish the Reserve Fund Securing Such Bonds, if Necessary; and Authorizing a Cooperation Agreement and Other Actions Taken in Connection Therewith.

EXECUTIVE SUMMARY

The purpose of this item is for the Council to consider a Replenishment Resolution, which both provides a "Moral Obligation Pledge" to the Fort Collins Urban Renewal Authority (the "Authority") and approves a Cooperation Agreement between the City and Authority in connection with the revenue bond issuance approved by the URA Board at its April 24, 2025, meeting.

The Authority will be issuing additional bonds against the North College projected tax increment revenues. The bond proceeds will be used to fund the acquisition of blighted properties, support blight remediation through redevelopment of the same properties, and invest in additional public infrastructure. All proceeds will be expended by direction and with the approval of the Authority board. As part of this bond issuance, the Authority is seeking a "Moral Obligation Pledge" from the City of Fort Collins (the "City"). The pledge would result in improved bond ratings and reduced debt service costs to the Authority.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

In 2018, the Authority commissioned a professional third-party analysis of opportunities for potential investment within the North College Urban Renewal Plan Area (the "Plan Area"). The analysis culminated in a report, and in 2019, the report was followed and considered by key community stakeholders. The report culminated with three categories of proposed investment and targeted allocations for each:

1. Complete, Vibrant neighborhoods (25%)
2. Community Hub (50%)
3. Infrastructure Improvements (25%)

Since 2020 and the completion of the Community Investment Plan, an assortment of opportunities, challenges, and policy objectives have emerged. The Authority has responded to these opportunities by entering into purchase and sale agreements for two blighted properties, pursuing additional blighted properties within the plan area, considering support of a proposed middle income deed restricted housing project, support of pedestrian improvements at the intersection of Jerome and Vine Drive.

CURRENT & PLANNED PROPERTY ACQUISITIONS

Beginning in late 2022, the Authority began discussions with the owner of 1636 North College Avenue (currently a vacant grocery store) regarding the potential sale of the property to the Authority. Negotiations occurred across 2023 and 2024 culminating in consideration and approval by the Authority of a Purchase and Sale Agreement (“PSA”) for \$7,636,050.

Starting in late 2024, the Authority approached the owner of 1513 North College Avenue (currently a motel call “Budget Host”) regarding the potential sale of the property. Negotiations occurred quickly, on January 23, 2025, the Authority board considered and approved a PSA for \$2.15 million.

Together, acquisition of both properties will enable the Authority to cure, mitigate, and/or prevent the spread of blight conditions within the Plan Area. The acquisition of property is one of the enumerated powers of the Authority in Colorado statutes. The cost to acquire both properties totals approximately \$9.79 million.

Authority staff are engaging with additional property owners adjacent to 1636 N. College and other nuisance properties (like 1513 N. College) regarding the potential sale of property. Collectively these properties could require an additional \$5 to \$6 million.

OTHER AUTHORITY PLANS

At this time, the Authority is considering a range of investments that could total over \$19.0 million - \$9.8 million (1636 N. College and 1513 N. College), up to an additional \$6.0 million in property acquisitions, \$3.2 million to support middle-income and deed restricted housing at 302 Conifer). Current cash on hand (approximately \$8.0 million) falls short of this amount.

FUNDING AUTHORITY ACTIVITIES

At the end of 2024, Authority staff asked its municipal advisor (*Melissa Buck with UMB Financial Services, Inc.*) to analyze several scenarios to fund the proposed activities. These scenarios included pay-as-you-go and issuing bonds. The projected cash balance, both now and in the future, will not fund the projects based on current anticipated timing (e.g., current cash-on-hand is insufficient to acquire both 1636 N. College and 1513 N. College). However, an initial analysis suggests that the projected Tax Increment Revenue (“TIF”) to be collected within the Plan Area could be leveraged into a bond issuance of approximately \$12.4 million. This combined with the current cash balance of \$8.0 million would create cash-on-hand sufficient to meet the projected cash flow needs of the Authority.

CITY’S MORAL OBLIGATION PLEDGE

The Authority is seeking a “Moral Obligation Pledge” from the City to receive a more favorable bond rating and interest rate. The moral obligation expresses the City’s intent to appropriate funds for the replenishment of the Reserve Fund or the repayment of any draws under any Reserve Fund Policy, if necessary. However, the City will not be legally obligated to make any debt service payments in the event of default by the Authority. In addition, any such payments by the City will be subject to appropriation by City Council, which the Council may elect in its sole discretion to do or not. Furthermore, the City and Authority will enter into a Cooperation Agreement to govern the terms and conditions surrounding any payments made by the City in conjunction with this replenishment resolution.

PAST MORAL OBLIGATION PLEDGES

The City has provided moral obligations pledges on all previous Authority revenue bonds. These include both the North College Series 2013 Revenue Bonds and the Prospect South Series 2019 Revenue Bonds. Since those pledges, the Authority has made on-time and full payments on each of those Bonds. Additionally, current financial forecasts indicate that the Authority will have sufficient revenue – barring any unforeseen changes in property values – to make all remaining payments.

CITY FINANCIAL IMPACTS

There are no immediate and direct financial impacts on the City. The property tax revenue in the North College Plan Area is unlikely to decline enough to trigger the use of the Reserve Fund; therefore, the need for the City to appropriate funds from the Reserve Fund may not be likely to arise.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Staff presented this item to the Council Finance Committee on April 3, 2025, the Authority Finance Committee on April 10, 2025, and the Authority Board on April 24, 2025. Each Committee and the Authority Board recommended proceeding with the issuance and sale of the proposed tax increment revenue and refunding bonds. The Authority Board adopted its Resolution 144, Series 2025, in which it made related determinations and findings, and approved the Cooperation Agreement with the City attached to this item. Additionally, the Council Finance Committee recommend forwarding the consideration of the City's "Moral Obligation Pledge" to the full council for consideration with their endorsement.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution 2025-052
2. Exhibit A to Resolution
3. Council Finance Committee Minutes, April 2, 2025 (excerpt)

RESOLUTION 2025-052
 OF THE COUNCIL OF THE CITY OF FORT COLLINS
 CONCERNING THE FORT COLLINS URBAN RENEWAL AUTHORITY AND ITS TAX
 INCREMENT REVENUE REFUNDING AND IMPROVEMENT BONDS (NORTH
 COLLEGE TAX INCREMENT URBAN RENEWAL AREA), SERIES 2025; DECLARING
 THE CITY COUNCIL'S PRESENT INTENT TO APPROPRIATE FUNDS TO
 REPLENISH THE RESERVE FUND SECURING SUCH BONDS, IF NECESSARY;
 AND AUTHORIZING A COOPERATION AGREEMENT AND OTHER ACTIONS
 TAKEN IN CONNECTION THEREWITH.

A. City Council (the "City Council") of the City of Fort Collins, Colorado (the "City") created the Fort Collins Urban Renewal Authority ("Authority") to transact business and exercise its powers as an urban renewal authority pursuant to the Colorado Urban Renewal Law, Part 1 of Article 31, Title 31 of the Colorado Revised Statutes, as amended (the "Act").

B. On December 21, 2004, City Council adopted and approved Resolution 2004-152 which authorized and approved the "North College Urban Renewal Plan" as an urban renewal plan under the Act (the "Plan") for the area described therein (the "Plan Area").

C. The Board of Commissioners of the Authority (the "Board") determined that it is advantageous and in the best interests of the Authority to acquire, demolish, renovate and construct various capital projects within the Plan Area, including, but not limited to, acquiring and renovating an abandoned grocery store and neighboring properties, acquiring, renovating, and equipping certain nuisance properties and miscellaneous capital expenditures for and in connection with the urban renewal project within the Plan Area (collectively, the "Project").

D. The Authority has previously issued and has outstanding its Fort Collins Urban Renewal Authority, Tax Increment Revenue Bonds ("North College Tax Increment Urban Renewal Area"), Series 2013 (the "Prior Bonds").

E. On April 24, 2025, the Board, by adopting Resolution No. 144, Series 2025, determined that it is advantageous and in the best interests of the Authority to refund all of the outstanding Prior Bonds, subject to market conditions being favorable and conducive to achieving meaningful debt service savings (the "Refunding"); and, further, by Resolution No. 144, Series 2025, the Board determined that it is in the best interest of the Authority and the citizens of the City that the Authority now issue tax increment revenue bonds in the maximum aggregate principal amount of \$18,000,000.00 (the "Series 2025 Bonds") for the purpose of financing the Project and the Refunding, pursuant to and in accordance with the Plan and the Act.

F. The Series 2025 Bonds will be issued under and pursuant to an Indenture of Trust (the "Indenture") between the Authority and U.S. Bank Trust Company, National Association, as trustee (the "Trustee").

G. A reserve fund (the “Reserve Fund”) will be created under the Indenture to secure the payment of the Series 2025 Bonds and such Reserve Fund is required to be maintained in an amount equal to the Reserve Fund Requirement (as defined in the Indenture).

H. The Indenture provides that the Reserve Fund may either be cash funded or that a surety bond, insurance policy or other agreement guaranteeing payment (collectively referred to herein as a “Reserve Fund Policy”) may be deposited in the Reserve Fund.

I. The City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Reserve Fund or the repayment of any draws made under any Reserve Fund Policy, if necessary, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for any such appropriation to be presented to the City Council for consideration.

J. In connection with the issuance of the Series 2025 Bonds, it is necessary and in the best interests of the City to enter into a Cooperation Agreement (the “Cooperation Agreement”) between the City and the Authority. Exhibit A, the proposed form of the Cooperation Agreement, is attached hereto and incorporated herein by reference.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. Finding of Best Interests and Public Purpose. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State and the City’s Charter, and in accordance with the foregoing recitals, that adopting this Resolution, entering into the Cooperation Agreement, and facilitating the issuance of the Series 2025 Bonds by the Authority to finance the Project and the Refunding are necessary, convenient, and in furtherance of the City’s purposes and are in the best interests of the inhabitants of the City.

Section 2. Replenishment of Reserve Fund; Declaration of Intent. To the extent that the Reserve Fund is cash funded, within 90 days after the City’s receipt of the written notice from the Trustee of a draw on the Reserve Fund, to the extent that such draw has not been replenished by another source, as provided in Section 4.06 of the Indenture (the “Written Notice”), the City shall replenish the Reserve Fund to the Reserve Fund Requirement from legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such City payment (the “City Payment”) shall be made directly to the Trustee for deposit in the Reserve Fund in immediately available funds pursuant to the instructions set forth in the Written Notice. It is the present intention and expectation of the City Council to appropriate the City Payment requested in any such Written Notice received by the City, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City

Council in any future fiscal year. The City Payments shall constitute currently appropriated expenditures of the City.

If a Reserve Fund Policy is deposited in the Reserve Fund and the City receives written notice from the Trustee that it has drawn on the Reserve Fund Policy and such draw has not been repaid by another source, the City shall repay the provider of the Reserve Fund Policy in the amount of such draw, plus any interest due thereon, from legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such payment shall be made directly to the provider of the Reserve Fund Policy. It is the present intention and expectation of the City Council to appropriate moneys to repay the provider of any Reserve Fund Policy in the event of a draw thereunder, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. Any such payments shall constitute currently appropriated expenditures of the City.

This Resolution shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Home Rule Charter or any constitutional debt limitation, including Article X, Section 20 of the Colorado Constitution. Neither this Resolution nor the issuance of the Series 2025 Bonds shall obligate or compel the City to make City Payments or to repay the provider of any Reserve Fund Policy in the event of a draw thereunder beyond those appropriated in the City Council's sole discretion.

Section 3. Direction to City Manager. To the extent that the Reserve Fund is cash funded, within five (5) Business Days following a draw on the Reserve Fund to pay the debt service requirements on the Series 2025 Bonds, to the extent any such draw is not replenished from another source, the Trustee is required under Section 4.06 of the Indenture to provide Written Notice of such draw to the City. The Written Notice shall state the amount required to be paid by the City to restore the Reserve Fund to the Reserve Fund Requirement after replenishment from all other sources available under the Indenture. The Written Notice shall also include instructions for making the City Payment. Any such Written Notice is required to be sent to the City Manager. Upon receipt of a Written Notice by the City Manager, the City Council hereby authorizes and directs the City Manager to prepare and submit to the City Council a request for an appropriation of the amount set forth in the Written Notice. Such request shall be made in sufficient time to enable the City to make the City Payment within 90 days of receipt of the Written Notice as provided in Section 1 hereof.

If a Reserve Fund Policy is deposited in the Reserve Fund and the City receives written notice from the Trustee that a draw has been made on the Reserve Fund Policy and such draw has not been repaid from another source, the City Council hereby directs the City Manager, upon receipt of such notice, to forthwith prepare and submit to the City Council a request for an appropriation in an amount sufficient to repay the provider of such Reserve Fund Policy for such draw, plus any interest due thereon.

Section 4. Repayment of Amounts Appropriated. If the City Council appropriates funds to make a payment as contemplated by Section 1 hereof, any amounts

actually transferred by the City to the Trustee in accordance with the provisions of Section 1 or transferred by the City to the provider of a Reserve Fund Policy in accordance with the provisions of Section 1, shall be treated as an advance under the Cooperation Agreement and shall be repaid by the Authority in accordance with the provisions of the Cooperation Agreement, on a basis expressly subordinate and junior to that of the Series 2025 Bonds, any Additional Bonds and any other obligations or indebtedness that is secured or payable in whole or in part by the Pledged Revenues on a parity with the Series 2025 Bonds.

Section 5. Limitation to Series 2025 Bonds. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the replenishment of the Reserve Fund originally established in the Indenture that secures the payment of the Series 2025 Bonds and shall not apply to any other reserve funds established in connection with the issuance of any other obligations.

Section 6. Approval of Cooperation Agreement. The Cooperation Agreement, in substantially the form attached hereto as Exhibit A, is in all respects approved, authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver the Cooperation Agreement, for and on behalf of the City, in substantially the form and with substantially the same content as attached hereto as Exhibit A, provided that such document may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution. The execution of the Cooperation Agreement by the Mayor shall be conclusive evidence of the approval by the City Council of such document in accordance with the terms hereof and thereof.

Section 7. Direction to Act. The City Clerk of the City (the "City Clerk") is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Resolution and to place the seal of the City on any document authorized and approved by this Resolution. The Mayor, the Mayor Pro-Tem of the City, the City Manager, the Financial Officer, the City Clerk and other appropriate officials or employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this Resolution.

Section 8. Ratification. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the City Council or the officers, employees or agents of the City directed toward the issuance of the Series 2025 Bonds by the Authority and the execution and delivery of the Cooperation Agreement are hereby ratified, approved and confirmed.

Section 9. Severability. If any section, subsection, paragraph, clause or provision of this Resolution or the documents hereby authorized and approved shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the

remaining provisions of this Resolution or such documents, the intent being that the same are severable.

Section 10. Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 11. Effectiveness. This Resolution shall take effect immediately upon its passage.

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Dianne Criswell

**COOPERATION AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND
THE FORT COLLINS URBAN RENEWAL AUTHORITY**

THIS COOPERATION AGREEMENT (this “Agreement”) is made and entered into between the CITY OF FORT COLLINS, COLORADO (the “City”) and the FORT COLLINS URBAN RENEWAL AUTHORITY (the “Authority”).

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (“C.R.S.”) (the “Urban Renewal Law”); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City Council of the City (the “City Council”) by Resolution No. 2004-152, approved and adopted on December 21, 2004, has authorized and approved the “North College Urban Renewal Plan” as an urban renewal plan under the Act (the “Plan”) for the area described therein (the “Plan Area”), and the urban renewal projects described therein (collectively, the “Project”); and

WHEREAS, the Project is being undertaken to facilitate the elimination and prevention of blighted areas and to promote redevelopment, conservation and rehabilitation of the Plan Area; and

WHEREAS, pursuant to section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Plan; and

WHEREAS, the Authority is issuing its tax increment revenue bonds (the “Series 2025 Bonds”) for the purpose of financing and/or refinancing certain urban renewal projects in the Plan Area; and

WHEREAS, the City Council has adopted a Resolution declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Fund Requirement or to repay the provider of any reserve fund insurance policy in the event of a draw thereunder (the “Replenishment Resolution”) as defined in the Indenture of Trust (the

“Indenture”), between the Authority and U.S. Bank Trust Company, National Association, as trustee (the “Trustee”); and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. LOAN. If the City Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

2. PAYMENT.

(a) All amounts payable by the Authority to the City hereunder shall constitute “Subordinate Debt” for purposes of the Indenture. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenues (as defined in the Indenture) available for the payment of Subordinate Debt in accordance with the terms of the Indenture including, in particular, Section 4.04(c) thereof.

(b) The Authority agrees to pay the City interest on the principal balance of any amounts designated as a loan hereunder at a rate to be determined based upon applicable City policies in effect at the time of any such loan.

3. FURTHER COOPERATION.

(a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues when, as and if received by the City, but which are due and owing to the Authority pursuant to the Plan.

(d) In connection with the issuance of the Series 2025 Bonds, the Authority agrees that so long as the Series 2025 Bonds are outstanding, the Authority shall submit to the City Manager by February 15 of each year a report in substantially the form set forth as Exhibit B to the Indenture. The City Manager agrees to submit such report to the City Council at its first regular meeting each year in March. Notwithstanding the foregoing, failure by the Authority to

provide the report required by this Section 3(d) of this Agreement and Section 5.13 of the Indenture or failure by the City Manager to submit such report to the City Council shall not constitute a default under this Agreement or under the Indenture.

4. SUBORDINATION. The Authority's obligation under this Agreement to repay the City for the loan referred to in Section 1 hereof is subordinate to the Authority's obligations for the repayment of the Series 2025 Bonds, any Additional Bonds and any other obligations or indebtedness that is secured or payable in whole or in part by the Pledged Revenues on a parity with the Series 2025 Bonds.

5. GENERAL PROVISIONS.

(a) Entities. Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(b) Third Parties. Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Trustee.

(c) Modifications. No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by both parties and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(d) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(e) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(f) Assignment. Except for the pledge under the Indenture, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Bank.

(g) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the ____ day of _____, 2025.

CITY OF FORT COLLINS, COLORADO

Mayor

ATTESTED:

City Clerk

FORT COLLINS URBAN RENEWAL AUTHORITY

By:_____
Chairperson, Board of Commissioners

Attest:

By:_____
Authority Secretary

EXHIBIT B to Indenture
FORM OF PROJECT FUND REQUISITION

To: U.S. Bank Trust, National Association
Denver, Colorado

Re: Fort Collins Urban Renewal Authority, Tax Increment Revenue Refunding and Improvement
Bonds (North College Tax Increment Urban Renewal Area), Series 2025

The undersigned Authority Representative hereby makes a requisition from the Project Fund held under the Indenture of Trust dated as of May ___, 2025 (the “Indenture”), between the Fort Collins Urban Renewal Authority (the “Authority”) and U.S. Bank Trust, National Association (the “Trustee”), and in support thereof states:

1. The amount to be paid or reimbursed pursuant hereto is \$_____.
2. The name and address of the person, firm, or corporation to whom payment is due or has been made is as follows:
3. Payment is due to the above person for (describe nature of the obligation).
4. The amount to be paid or reimbursed pursuant hereto shall be transmitted by the Trustee as follows (wire transfer or other transmission instructions):
5. The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Project Fund, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs. To the best knowledge of the undersigned, no Event of Default has occurred and is continuing.
6. With respect to the disbursement of funds by the Trustee from the Project Fund pursuant to this Project Fund Requisition, on behalf of the Authority, the undersigned Authority Representative or Authority Chairperson hereby: (a) certifies that the Authority has reviewed the wire instructions set forth in this Project Fund Requisition, and confirms that, to the best of the Authority’s knowledge, such wire instructions are accurate; (b) agrees that, to the extent permitted by law, the Authority will indemnify and hold harmless the Trustee from and against any and all claims, demands, losses, liabilities, and expenses sustained, including, without limitation, attorney fees, arising directly or indirectly from the Trustee’s disbursement of funds from the Project Fund in accordance with this Project Fund Requisition and the wiring instructions provided herein; and (iii) agrees that the Authority will not seek recourse from the Trustee as a result of losses incurred by the Authority arising from the Trustee’s disbursement of funds in accordance with this Project Fund Requisition.

All capitalized terms used but not defined herein shall have the definitions set forth in the Indenture.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 202_.

FORT COLLINS URBAN RENEWAL AUTHORITY

By _____
Its:



Council Finance Committee Hybrid Meeting
CIC Room / Teams
April 3, 2025
4:00 - 6:00 pm

Council Attendees: Emily Francis, Kelly Ohlson,

Staff: Kelly DiMartino, Tyler Marr, Gretchen Stanford, Carrie Daggett, Dianne Criswell, Denzel Maxwell, Teresa Roche, Chris Martinez, Terri Runyan, Kevin Wilkins, Jeff Rochford, Ginny Sawyer, Max Valadez, Sylvia Tatman-Burruss, Joe Wimmer, David Wolfe, Dana Hornkohl, Josh Birks, Andy Smith, Dean Klingner, Leeann William, Aaron Harris, Jill Wuertz, Victoria Shaw, Jennifer Poznanovic, Randy Bailey, Trevor Nash, Adam Halvorson, Renee Reeves, Barb Brock, Lawrence Pollack, Claire Turney, Jo Cech, Carolyn Koontz

Other: Caleb Weitz
Kim Medina, Chamber

Meeting called to order at 4:00 pm

Approval of minutes from the March 6, 2025, Council Finance Committee meeting.
Motion made to approve by Kelly Ohlson and seconded by Emily Francis.
Approved via roll call.

A. FY23 Audit Report – Staff Correction Plan
Randy Bailey, Controller

EXECUTIVE SUMMARY

Plante & Moran presented the Results of the 2023 Financial Statement Audit this past October. While the City received an unqualified opinion, two deficiencies were noted regarding grant expense reporting and reporting for the City's Tourism Improvement District (TID).

STAFF RECOMMENDATION

Continued investment and maturation of Grant Administration across the City. Prioritizing governance, training, and efficient compliance reporting to mitigate compliance risk, reduce overhead in tracking and reporting, and optimize benefit from this critical funding source.

Reporting for the TID has been integrated into the City ACFR and processes adjusted to increase collaboration with TID accounting support during the preparation of financial statements and annual audit.

Accounting has integrated Purchasing and IT into the process for identifying, tracking and accounting for right-to-sue lease assets and Subscription Based IT Arrangements. Additionally, the team implemented an application to more effectively manage right-to-use assets and the supporting accounting calculations and entries.

BACKGROUND / DISCUSSION

A recap of Plante & Moran's report dated June 29, 2024, is provided in summary for context.

Planned Scope and Timing of the Audit

We performed the audit according to the planned scope and timing previously communicated to you in our letter about planning matters dated May 21, 2024.

Corrected and Uncorrected Misstatements

- Professional standards require us to accumulate all known and likely misstatements identified during the audit, other than those that are trivial, and communicate them to the appropriate level of management.
- The following material misstatements detected as a result of audit procedures were corrected by management.
 - The City had recorded a right-of-use asset and liability for a software-based information technology arrangement for which the subscription period had not commenced, rather than recording a prepaid item until the subscription commences.
 - The City had recorded unavailable revenue and receivables related to grants for which expenditures had been incurred but for which the grants had not been formally executed. These unavailable revenue and receivable have been removed.
 - The Tourism Improvement District is being included in the City's financial statements as a discretely presented component unit.

CITY FINANCIAL IMPACTS

Staff time to develop and implement process improvements and additional tracking for the oversight in grant administration.

PUBLIC OUTREACH

None

Discussion / Next Steps;

Kelly Ohlson; happy with slides – brief editorial -I don't believe it is a fee – wish I hadn't voted for it – glad we are taking care of the bookkeeping

Kelly Ohlson; how do we close the loop? Is there anything from them back to us? Council took this seriously and we have done these things.

Trevor Nash; we are required to submit an official response for every finding

Randy Bailey; response to Council – organization responded very well here – just some brief things that will close the loop.

B. North College Urban Renewal Bond Issuance – Moral Obligation

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

EXECUTIVE SUMMARY

The Fort Collins Urban Renewal Authority (the “Authority”) will be issuing additional bonds against the North College projected tax increment revenues. The bond proceeds will be used to fund the acquisition of blighted properties, support blight remediation through redevelopment of the same properties, and invest in additional public infrastructure. All proceeds will be expended at the direction and with the approval of the Authority board. As part of this bond issuance, the Authority is seeking a moral obligation from the City of Fort Collins (the “City”). The moral obligation would result in improved bond ratings and reduced debt service costs to the Authority. Council would consider a Replenishment Resolution that codifies its “Moral Obligation Pledge” and approves a Cooperation Agreement between the City and the Authority in connection with the revenue bond issuance.

STAFF RECOMMENDATION

Staff recommends forwarding the item to the full City Council for consideration at an upcoming meeting.

BACKGROUND / DISCUSSION

In 2018, the Authority commissioned a professional third-party analysis of opportunities for potential investment within the North College Urban Renewal Plan Area (the “Plan Area”). The analysis culminated in a report, and in 2019, the report was followed and considered by key community stakeholders. The report culminated with three categories of proposed investment and targeted allocations for each:

1. Complete, Vibrant neighborhoods (25%)
2. Community Hub (50%)
3. Infrastructure Improvements (25%)

Since 2020 and the completion of the Community Investment Plan, an assortment of opportunities, challenges, and policy objectives have emerged. The Authority has responded to these opportunities by entering into purchase and sale agreements for two blighted properties, pursuing additional blighted properties within the plan area, considering support of a proposed middle income deed restricted housing project, support of pedestrian improvements at the intersection of Jerome and Vine Drive.

Current Authority Plans

At this time, the Authority is considering a range of investments that could total over \$19.2 million. Current cash on hand (approximately \$8.0 million) falls short of this amount. At the end of 2024, Authority staff ask the Authority's municipal advisor (Melissa Buck with UMB) to analyze a number of scenarios to fund the proposed projects. These scenarios included pay-as-you-go and issuing bonds. The projected cash balance, both now and in the future, will not fund the projects based on current anticipated timing. However, an initial analysis suggests that the projected TIF to be collected within the Plan Area could be leveraged into a bond issuance of approximately \$12.4 million. This would create cash-on-hand sufficient to meet the projected needs of the Authority.

City's Moral Obligation Pledge

The Authority is seeking a moral obligation from the City to receive a more favorable bond rating and interest rate. The moral obligation expresses the City's intent to meet any debt service obligations under the bond issuance in the event the Authority defaults. However, the City will not be legally obligated to make any debt service payments in the event of default by the Authority. In addition, any such payments by the City will be subject to appropriation by City Council, which the Council may elect in its sole discretion to do or not. Furthermore, the City and Authority will enter into a Cooperation Agreement to govern the terms and conditions surrounding any payments made by the City should the Authority default on the bonds.

Past Moral Obligation Pledges

The City has provided moral obligations pledges on all previous Authority revenue bonds. These include both the North College Series 2013 Revenue Bonds and the Prospect South Series 2019 Revenue Bonds. Since those pledges, the Authority has made on-time and full payments on each of those Bonds. Additionally, current financial forecasts indicate that the Authority will have sufficient revenue – barring any unforeseen changes in property values – to make all remaining payments.

CITY FINANCIAL IMPACTS

The City's moral obligation result in more favorable bond rating and interest rate for the Authority. This will enable the Authority to expend more of the available TIF on blight remediation and improvements to the Plan Area. At the termination of the TIF collection period, this will result in increased property tax revenues to the City and may translate into additional revenues through sales tax or other sources.

The moral obligation pledge remains contingent upon further Council action – most importantly the need to appropriate any funds necessary to meet the debt service obligations of the Authority under the bonds. The financial risk to the City comes from any potential changes to TIF collection or property values in the area. At this time, the Authority is not aware of any recent events or factors that might affect the tax base of the Plan Area or Authority's operations or financial condition.

PUBLIC OUTREACH

None

Discussion / Next Steps;

Created in 2004 – issued debt in 2013

URA Financial Stability and Debt Service Coverage



	FYE	2025	2026	2027	2028	2029	2030	2031
Revenues								
TIF		4,204,451	4,288,540	4,288,540	4,374,310	4,374,310	4,461,797	-
Bond Proceeds (New money net of COI, etc.)		12,400,000	-	-	-	-	-	-
Other (Investment Income, etc.)		16,000	12,000	12,000	10,000	10,000	-	-
Total		16,620,451	4,300,540	4,300,540	4,384,310	4,384,310	4,461,797	-
Expenditures								
Cash Funded Projects		(8,000,000)	-	-	-	-	-	-
Bond Funded Projects		(12,400,000)	-	-	-	-	-	-
Series 2013 Debt Service		(946,363)	(945,363)	(948,163)	(944,563)	(948,675)	-	-
Series 2025 Debt Service*		(2,323,179)	(2,389,500)	(2,383,250)	(2,452,750)	(2,449,000)	(3,470,250)	-
Other Debt Service		(27,591)	-	-	-	-	-	-
Operations & Project Supplements (From FCURA Financial Forecast)*		(594,827)	(360,510)	(377,727)	(391,742)	(400,353)	86,678	-
Trustee Fees*		(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	(4,000)	-
County Collection Fee (2.00%)		(84,089)	(85,771)	(85,771)	(87,486)	(87,486)	(89,236)	-
Developer Payments (From FCURA Financial Forecast)		(26,791)	(28,311)	(29,406)	(30,187)	(31,338)	(32,167)	(35,241)
Total		(24,406,840)	(3,813,454)	(3,828,316)	(3,910,728)	(3,920,852)	(3,508,975)	(35,241)
Operating Income Over/(Under)		(7,786,389)	487,085	472,223	473,583	463,458	952,822	(35,241)
BOP Net Available Fund Balance		10,489,588	2,703,199	3,190,284	3,662,507	4,136,090	4,599,548	5,552,370
Ending Net Available Fund Balance		2,703,199	3,190,284	3,662,507	4,136,090	4,599,548	5,552,370	5,517,129

Strong Revenue Stream: Forecasts show revenues sufficient to cover existing and proposed debt, City's pledge unlikely to ever been called upon.

Healthy Reserves: The URA is projected to hold ~\$2.6M (2025), growing to ~\$5.5M (2030).

* Preliminary, subject to change. Assumes City of Fort Collins Moral Obligation on proposed Series 2025 Bonds.

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Healthy reserves - \$2.6M in cash on hand – will grow over the next 5 years to \$5.5M
More dollars toward remediation –

Kelly Ohlson; in the future, executive summary (see below),, let's use the term 'consider' issuing additional bonds. We don't like assumptions being made. I am fine with this moving forward.

EXECUTIVE SUMMARY

The Fort Collins Urban Renewal Authority (the "Authority") will be issuing additional bonds against the North College projected tax increment revenues. The bond proceeds will be used to fund the acquisition of blighted properties, support blight remediation through redevelopment of the same properties, and invest in additional public infrastructure. All proceeds will be expended at the direction and with the approval of the Authority board. As part of this bond issuance, the Authority is seeking a moral obligation from the City of Fort Collins (the "City"). The moral obligation would result in improved bond ratings and reduced debt service costs to the Authority. Council would consider a Replenishment Resolution that codifies its "Moral Obligation Pledge" and approves a Cooperation Agreement between the City and the Authority in connection with the revenue bond issuance.

Moral Obligation Pledge – A Proven Approach



What It Is

- A pledge to consider replenishing the URA's debt service reserve if ever needed, subject to annual appropriation (not a legally binding debt guarantee). This mechanism boosts investor confidence and lowers the URA's interest costs.



Consistent with City Policy

- Used only for "highest priority projects" where City risk is minimal and credit standing is not impacted. Fort Collins has successfully utilized moral obligation pledges in past URA revitalization efforts (e.g. North College Series 2013 and South Prospect Series 2019).



No Impact on City's Budget Unless Needed

- The City is not obligated to pay under this pledge unless TIF revenues fall short (an unlikely scenario given strong financial projections). This approach mirrors past City actions and demonstrates our continued partnership.

3

Kelly Ohlson; Moral Obligation Pledge (see above) -We are pledging we are going to do this but in 2-3 other places it says, 'we really don't have to do that'?

Josh Birks; this moral obligation is an oddity in the financial / bond markets. It is basically saying that we believe enough in the entity and the projects. If they get into real trouble, we will consider helping them. How is that enough of a pledge to really make a difference? The market has never seen a city that made a moral obligation. It is kind of like a vote of support plus.

Kelly Ohlson; what happens if some council didn't honor that and there wasn't enough money and the URA is going out of business?

Josh Birks; the bond holders taking that risk because the pledge is not a pledge of certainty more of we like this. The URA could refund its debt to meet its obligations, or it could default on bonds and bondholders. Most bondholders feel confident that a city wouldn't let that happen. Community provides a character reference as opposed to being a cosigner.

This will go to the full Council on May 7th

Meeting adjourned

File Attachments for Item:

13. Items Relating to Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project (Grant Award and Services Agreement).

A. Resolution 2025-053 Authorizing the City Manager to Accept Grant Funds for Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project.

B. Resolution 2025-054 Authorizing the City Manager to Enter into an Agreement with the Colorado State Forest Service for Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project.

The purpose of these items is for Council to authorize the City Manager to: 1) accept grant funds awarded in a grant award letter from the State of Colorado, Department of Natural Resources, through Colorado Department of Natural Resource's Colorado Strategic Wildfire Action Program ("COSWAP") ("Grant Award Letter") and; 2) enter into an agreement with the Colorado State Forest Service ("CSFS") to perform certain forest health and pre-fire mitigation work ("Services Agreement").

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Richard Thorp, Lead Specialist, Sciences
Kerri Ishmael, Senior Analyst, Utilities Finance
Leslie Hill, Director, Sciences
Jill Oropeza, Senior Director, Water Planning and Sciences

SUBJECT

Items Relating to Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project (Grant Award and Services Agreement).

EXECUTIVE SUMMARY

A. Resolution 2025-053 Authorizing the City Manager to Accept Grant Funds for Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project.

B. Resolution 2025-054 Authorizing the City Manager to Enter into an Agreement with the Colorado State Forest Service for Phase 2 of the Michigan Ditch Pre-Fire Mitigation Project.

The purpose of these items is for Council to authorize the City Manager to: 1) accept grant funds awarded in a grant award letter from the State of Colorado, Department of Natural Resources, through Colorado Department of Natural Resource's Colorado Strategic Wildfire Action Program ("COSWAP") ("Grant Award Letter") and; 2) enter into an agreement with the Colorado State Forest Service ("CSFS") to perform certain forest health and pre-fire mitigation work ("Services Agreement").

STAFF RECOMMENDATION

Staff recommends adoption of the Resolutions.

BACKGROUND / DISCUSSION

The Michigan Ditch is a trans-basin diversion located primarily within the Colorado State Forest State Park near Cameron Pass. The ditch conveys water from the upper Michigan River Watershed to the upper Poudre River Watershed, where it is stored in Joe Wright Reservoir. Releases from Joe Wright Reservoir are used to increase the City's Poudre River Watershed source water supply. The Michigan Ditch and Joe Wright Reservoir are considered critical water supply infrastructure, accounting for approximately 11% of the City's water supply and are valued at approximately \$428 million. The Michigan Ditch narrowly escaped damage during the 2020 Cameron Peak Wildfire. Although it was spared, future large-scale wildfires continue to threaten this infrastructure and water supply. To address this threat, Utilities and several regional partners completed a regional collaborative forest fuels mitigation plan that identifies priority forest fuels treatments to reduce the risk of future wildfires to these important assets.

The Michigan Ditch Forest Health and Pre-Fire Mitigation Project serves to implement identified forest fuels treatments. Based on the large number of acres to be treated and the high costs of treatment measures via tethered and helicopter logging, the project needs to be implemented in phases to meet funding needs and capacity of Colorado State Forest Service in managing all aspects of implementation measures.

Planning for Phase 1 of the Project has been completed, including a forest inventory; scouting and data collection; identification of forest treatment priorities; data analyses and mapping; and forest treatment layouts. Phase 1 of the Project, which is scheduled to kick off in 2025, will include ~150 acres of forest treatments using tethered and helicopter logging. See Resolution 2024-113.

For Phase 2 of the Project, in late 2024 the City applied to the COSWAP Grant Program for funding to support the Michigan Ditch Forest Health and Pre-Fire Mitigation Project. The City was awarded a \$1,000,000 grant through COSWAP to support Phase 2 of the Project. As demonstrated by the Grant Award Letter from the State of Colorado (Exhibit A to Resolution 2025-053), the City will provide \$316,682 in cash match in support of Phase 2 work. Phase 2 is projected to cost \$1,316,682, which includes costs for forest treatments and administrative costs of CSFS in managing all aspects of project implementation, will commence in late spring/early summer of 2026.

The City and CSFS entered into a previous services agreement in 2024 for Phase 1 work, which will commence in July 2025. See Resolution 2024-113. Similar to the 2024 services agreement, Phase 2 work will occur on State lands managed by CSFS. Phase 2 work will also be managed by CSFS based on their experience and expertise in completing forest fuels reduction work.

To establish CSFS's role and responsibility over Phase 2 work that is being funded by \$1,000,000 through COSWAP and \$316,682 from the City, the City and CSFS have negotiated a draft Services Agreement (Exhibit A to the Resolution 2025-054). The services to be performed by CSFS mirror those presented in the Statement of Work of the Grant Award Letter, which proposes completing upwards of 180 acres of fuel reduction work in support of protecting the City's Michigan Ditch water supply and infrastructure. Pursuant to the \$1,000,000 in COSWAP funds being passed through to CSFS in support of Phase 2 work, CSFS is deemed a subrecipient of these state funds, and thereby, as presented in the Services Agreement, obligated to abide by certain terms and conditions of the Grant Award Letter.

Phase 2 work will follow Phase 1, with Phase 2 proposed to commence late spring/early summer 2026. There is no requirement that the City sign the Grant Award Letter. Rather, upon the City submitting the first request for reimbursement for costs associated with Phase 2 work, the City agrees to all terms and conditions of the Grant Award Letter. Terms and conditions include the City's obligation to reimburse CSFS in upwards of \$316,682 for allowable Phase 2 costs. The City will request that Council appropriate the \$1,000,000 in COSWAP funds and allocate City funds accordingly to meet the City's cost share obligation. This request of Council will be made in 2026, to align with the timing of Phase 2 work.

In support of the Michigan Ditch Pre-Fire Mitigation Project, the City recommends that Council authorize the City Manager to enter into the Services Agreement with CSFS for Phase 2. In addition, the City recommends Council authorize the City Manager to accept the grant funds and comply with the terms and conditions of the Grant Award Letter.

CITY FINANCIAL IMPACTS

Execution of the Services Agreement with CSFS and acceptance of the COSWAP award provides no financial impact.

In 2026 when Phase 2 is proposed to commence, based on terms and conditions of the Grant Award Letter, the City will request that Council appropriate the \$1,000,000 in grant funds and allocate appropriately the City's \$316,682 required cost share.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

Utilities staff presented the Utilities' Watershed Program to the Water Commission at its April 17, 2025, regular meeting. The Water Commission recommended Council formally approve of Utilities' Watershed Program to enter into the Intergovernmental Agreement Regarding Michigan Ditch Forest Health and Pre-Fire Mitigation Project Phase-2 Services through the Colorado State Forest Service and accepting the Colorado Department of Natural Resources' Colorado Strategic Wildfire Program Grant.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution 2025-053
2. Exhibit A to Resolution 2025-053 (Grant Award Letter)
3. Resolution 2025-054
4. Exhibit A for Resolution 2025-054 (Services Agreement)
5. Water Commission Minutes, April 17, 2025 (excerpt)
6. Copy of Resolution 2024-113

RESOLUTION 2025-053
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ACCEPT GRANT FUNDS FOR PHASE 2
OF THE MICHIGAN DITCH PRE-FIRE MITIGATION PROJECT

A. The City owns and operates a water utility that provides water service to customers within its water service area. As part of the water utility, the City owns and operates the Michigan Ditch and associated infrastructure for the purpose of providing raw water for water supply, including for drinking water treatment.

B. Between August and December 2020, the Cameron Peak Fire significantly impacted federal and state lands abutting the Michigan Ditch.

C. The City has identified a need to develop and execute forest health treatment activities in priority areas at risk of future large scale catastrophic wildfires with regards to pre-fire mitigation thinning, fuel breaks and forest restoration, including in and around the Michigan Ditch and its associated infrastructure.

D. The City has thus begun work on the Michigan Ditch Pre-Fire Mitigation Project ("Project") and has worked with the Colorado State Forest Service. Phase 1 of the Project and previous agreements with the Colorado State Forest Service are addressed in Resolution 2024-113.

E. For Phase 2 of the Project, the Colorado State Forest Service is willing to work with the City to fund the Project. In coordination with the Colorado State Forest Service, the City applied for and the Colorado Department of Natural Resource, through the Colorado Strategic Wildfire Action Program, has awarded the City a grant for forest health and pre-fire mitigation work in and around the Michigan Ditch and its associated infrastructure. By accepting such grant funds, the City would be agreeing to comply with the terms and conditions of the Grant Award Letter Summary of Grant Award Terms and Conditions, attached as Exhibit "A" ("Grant Award Letter").

F. As set forth in the Grant Award Letter, the City's required matching funds are \$316,682. The City intends to appropriate such funds in 2026, before accepting any of the grant funds.

G. City Council finds that accepting the grant funds and complying with the terms and conditions of the Grant Award Letter is necessary to safeguard the City's critical water supply infrastructure and is in the best interests of the City water utility ratepayers and the city as a whole.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to accept the grant funds awarded in the Grant Funds Letter and to comply with the terms and conditions of the Grant Funds Letter, substantially in the form of Exhibit "A", provided that any required

funds have been appropriated beforehand, with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Eric Potyondy

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GRANT AWARD LETTER
SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Colorado Department of Natural Resources Executive Director's Office Colorado Strategic Wildfire Program (COSWAP) 1313 Sherman Street Denver, Colorado 80203	Grant Agreement Number: CORE: CTGG* PAAA 2025*3540 CMS: 196764
Grantee City of Fort Collins	
Grant Issuance Date The Effective Date	
Grant Expiration Date February 1, 2028	Grant Amount Total for all State Fiscal Years: \$1,000,000.00
Grant Authority This grant is authorized by section 24-33-117, C.R.S..	Local Match Amount Total for all State Fiscal Years: \$316,682.00

Grant Purpose

COSWAP's Landscape Resilience Grant program facilitates the planning and implementation of landscape scale, cross boundary wildfire mitigation to protect life, property, and infrastructure.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Grant:

1. Exhibit A, Statement of Work.
2. Exhibit B, Budget.
3. Exhibit C, PII Certification
4. Exhibit D, Sample Option Letter

In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §17 of the main body of this Grant
2. The provisions of the other sections of the main body of this Grant.
3. Exhibit A, Statement of Work.
4. Exhibit C, PII Certification
5. Exhibit D, Sample Option Letter
6. Exhibit B, Budget.

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SIGNATURE PAGE

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

<p>STATE OF COLORADO Jared S. Polis, Governor Dan Gibbs, Executive Director</p> <p><i>Timothy J. Mauck</i></p> <p>By: <u>Timothy J. Mauck</u> Deputy Executive Director Date: <u>February 24, 2025 12:48 PM MST</u></p>	<p>In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p><i>Jeanette Stroud</i></p> <p>By: <u>Jeanette Stroud</u> Deputy Procurement Director Date: <u>February 25, 2025 8:26 PM MST</u></p>
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1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the "State") hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the "Grantee") an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties' respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an Option Letter in a form substantially similar to Exhibit D showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Budget"** means the budget for the Work described in Exhibit B.
- B. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- C. **"CJI"** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau

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of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.

- D. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et seq.*, C.R.S.
- E. **“Grant Award Letter”** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- F. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- G. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- H. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- I. **“Exhibits”** exhibits and attachments included with this Grant as shown on the first page of this Grant
- J. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter
- K. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- M. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- N. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- O. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S.
- R. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an

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- individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.
- S. **“Recipient”** means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Award.
 - T. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
 - U. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
 - V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
 - W. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
 - X. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
 - Y. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
 - Z. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
 - AA. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

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Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. Matching Funds.

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the "Local Match Amount"). Grantee's obligation to pay all or part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purpose of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies..

D. Reimbursement of Grantee Costs

Upon prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: (i) reasonable and necessary to accomplish the Work and for the Goods and Services provided; and (ii) equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

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Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

F. Grant Funding Change- State's Option

The State, at its discretion, shall have the option to increase or decrease the funding provided under the same terms specified herein. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Grant Award Letter.

6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in §5.E, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law

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enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit __ on an annual basis Contractor's duty and obligation to certify as set forth in Exhibit __ shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of

this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

Except as herein specifically provided, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

16. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

17. COLORADO SPECIAL PROVISIONS (Colorado Fiscal Rule 3-3)**A. STATUTORY APPROVAL. §24-30-202(1) C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5) C.R.S.

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the Parties's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its**

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agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.
§§24-18-201 and 24-50-507 C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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EXHIBIT A, STATEMENT OF WORK**PROPOSAL****GRANTEE and FISCAL AGENT (if different)**

City of Fort Collins

PRIMARY CONTACT

Richard Thorp, Watershed Program Manager

ADDRESSPO Box 580
Fort Collins, CO 80522**PHONE**

970-416-4327

EMAIL

rthorp@fcgov.com

PROJECT NAME

Michigan Ditch Pre-Fire Mitigation Phase 2

GRANT AMOUNT

Amount shall not exceed \$1,000,000

FUND EXPENDITURE

2/1/2028 or upon completion of the project.

INTRODUCTION AND BACKGROUND

The Colorado Strategic Wildfire Action Program (COSWAP) Landscape Resilience Investment grant was created to facilitate the planning and implementation of landscape scale, cross boundary wildfire mitigation to protect life, property and infrastructure. For a special release of the Landscape Resilience Investment program, COSWAP has partnered with the Colorado Water Conservation Board through the Wildfire Ready Watersheds program to support landscape scale wildfire mitigation and forest health projects focused on improving watershed health and/or protecting critical water infrastructure.

TREATMENT OBJECTIVES

1. Reduced risk from future large-scale wildfires to water supply and water supply infrastructure
2. Improvement of forest health and release of advanced regeneration
3. Improvement of recreational opportunities and wildlife habitat

BRIEF DESCRIPTION OF PROJECT

Michigan Ditch is a critical element of the City's drinking water supply infrastructure. The proposed project would reduce risks of damage to this infrastructure from future larger-scale wildfires and help maintain the availability and quality of the City's raw water supply. Funding for this project will be used to continue targeted forest treatments to protect Michigan Ditch and help meet broader landscape

Exhibit A

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level goals identified within the Poudre Water Supply Infrastructure Wildfire Ready Action Plan (WRAP).

SCOPE OF WORK

The Phase 2 Project area is located within the Colorado State Forest State Park, southwest of Cameron Pass.

Treatment 1 prescription: Focuses on the removal of 15-30 acres of dead trees/surface fuels near the ditch in spruce bark beetle impacted forest with post-harvest target live basal area (BA) of 70-90 ft²/acre. Most standing dead trees will be removed (BA 102ft²/acre), excluding 2 snags/acre for wildlife (spruce & fir >10" diameter breast height). Surface fuels will be reduced to 20-30 tons/acre, which will lower extreme fire behavior potential and post-fire erosion from high soil burn severity. Removal of live overstory fir greater than 30ft in height at risk of blowdown or declining from western balsam bark beetle. Retains all live lodgepole & aspen and favors spruce over fir.

Helicopter treatment will be used with whole trees harvested. Merchantable material will be sold as a "deck sale" and hauled to nearby wood processing facilities with proceeds going to the Colorado State Land Board. Slash piles will be built with any non-merchantable material and Colorado State Forest Service (CSFS) will conduct winter burning operations.

Treatment 2 prescription: Focuses on the creation of a firebreak through thinning and expanding an existing treeless wetland area. The planned firebreak connects to rocky alpine areas to the north and south of Hwy 14 and has the following prescriptions:

1. Forest thinning (80-125 acres) will reduce canopy cover and density by spacing mature and established trees to approximately 10' between tree crowns and up to 30' on steeper slopes. Small, isolated groups of trees may be retained to improve forest aesthetics. In extremely dense pockets of less mature subalpine fir, the retained canopy will consist of small "islands" of trees. Subalpine fir grows in dense clumps and thinning to a 10' crown spacing may cause mortality and decrease overall moisture retention in the stand. On machine operable slopes, merchantable material will be hauled to nearby wood processing facilities. On steep slopes, and areas with non-merchantable material woody biomass, harvested trees will either be burned or chipped. For any slash piles created, CSFS will conduct winter burning operations.
2. The wetland enhancement (20-25 acres) identifies low lying areas near the Michigan River where trees have "encroached" in the absence of beaver activity. Prescription calls for removal of most trees, and the creation of small islands of trees in higher elevation areas of the wetland. Tree removal will serve to raise the water table, encouraging establishment of wetland vegetation in place of trees which can serve as a natural firebreak. Post-treatment, CSFS will plant willow for wildlife habitat. It is anticipated that additional pre-fire mitigation projects may be identified through development of the Poudre Water Supply Infrastructure WRAP that could further improve the health of this wetland and reduce the risk of future wildfires to this infrastructure and water supply.

Acres: Total acres treated will be determined by bid prices. Price per acre and total acreage estimates are:

1. helicopter \$15,000-\$25,000/acre (15-30 acres)
2. thinning/wetland enhancement \$4,000-\$6,000/acre (100-150 acres)

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Implementation: CSFS will plan, contract and administer work, with the City and CPW providing financial and logistical support.

Measures of success: Reduction of potential surface fuels, hazard trees mitigated, reduced risk of crown fire, acres treated, forest products supplied, defensible space created for fire suppression, increased tree species diversity.

BUDGET AND NARRATIVE

Total Proposal Budget	Treatment 1	Treatment 2	In-kind Match	Cash Match	COSWAP Total Ask
Personnel (maximum 20% of COSWAP Share)	\$ -		\$ -	\$ 191,200	\$ -
Project Implementation (minimum 70% of COSWAP Share)	\$ 245,000	\$ 750,000	\$ -		\$ 995,000
Indirect Costs (maximum 10% of COSWAP Share)	\$ 5,000		\$ -	\$ 125,482	\$ 5,000
Total	\$ 250,000	\$ 750,000	\$ -	\$ 316,682	\$ 1,000,000

TOTAL project Costs \$ 1,316,682

TREATMENT 1 Prescription Budget					
Total number of acres to be treated via helicopter	Range \$/acre	Median \$/acre	# of acres to be treated with COSWAP funds	COSWAP \$ amount at Median \$/acre	Future treated \$ amount at high range estimate \$/acre (based on available FY25 CDS funds and/or CSFS FY25/26 grant funds and/or City of Fort Collins funds)
30	\$15k to \$25k	\$ 20,000	12.25	\$ 245,000	\$ 443,750

TREATMENT 2 Prescription Budget					
Total number of acres to be treated	Range \$/acre	Median \$/acre	# of acres to be treated with COSWAP funds	COSWAP \$ amount at Median \$/acre	
150	\$4k to \$6k	\$ 5,000	150	\$ 750,000	

City of Fort Collins Forest Service (CFFS) costs in management portion of Treatment 1 and Treatment 2 field work, as well as all direct administrative costs (including data, computer equipment and supplies and other field-related items).

Estimated TOTAL direct hours for Colorado State Forest Service personnel	Colorado State Forest Service TOTAL Direct	City of Fort Collins Amount for Direct Colorado State Forest Service personnel costs
Hourly Rate (CFS service rate) \$ 93	2056	\$ 191,200

CFF Colorado State Forest Service and City of Fort Collins entered into an Administrative Services Agreement that provides Colorado State Forest Service with 11% in support of forest support costs, 11% relative to TOTAL Direct Costs, with the exception of (1) \$995,000 for forest treatment Direct costs and (2) \$191,200 for Direct personnel costs by Colorado State Forest Service in support of CFF work, and (3) all equipment, supplies, and other field-related items by City of Fort Collins.

TOTAL Direct costs	11% applied Indirect Cost Rate	City of Fort Collins Amount for Colorado State Forest Service Indirect Costs	COSWAP Amount of Indirect costs
\$ 1,186,700	11%	\$ 125,482	\$ 5,000

Project Implementation:

The City is seeking \$995,000 in support of forest treatment work for Phase 2 of the Michigan Ditch Pre-Fire Mitigation project.

Project Implementation for Phase 2 includes Treatment 1 work that supports removal of dead trees/surface fuels adjacent to Michigan Ditch and corresponding ditch road. Considering the terrain, helicopter treatment is proposed. Based on evaluation work completed to date by CSFS, acres proposed for Treatment 1 are in upwards of 30 acres. Treatment 2 work supports creation of a firebreak combined with removal of trees for proposed wetland enhancement. Proposed acres identified for

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Treatment 2 are in upwards of 150 acres. The terrain for Treatment 2 is not steep, providing the opportunity to complete this work using tethered logging.

Treatment layout, including total number of acres to be treated per Treatment 1 and Treatment 2, will be finalized in Q3 2025. Cost estimates per acre of treatment via helicopter and tethered logging are based on estimates provided by CSFS. The per acre treatment estimate is based on current year prices, providing a range based on Phase 2 work not commencing until 2026. Considering that the treatment layout will not be finalized until Q3 2025, the City's estimate for the use of the \$995,000 in COSWAP funds is on the higher range of cost per acre via Treatment. The City anticipates using the higher range of acres to be treated and median cost per acre. Implementation costs for Treatment 1 and Treatment 2 work are estimated to exceed \$995,000 in COSWAP funds. The City anticipates use of FY 2025 Congressionally Directed Spending (CDS) funds and/or CSFS grant funds, provided awarded, to support treatment of additional acres for Phase 2 treatment.

The City is very optimistic that the project will receive continued grant funds, which will support treatment of acres identified for Phase 2 and further treatment of the Michigan Ditch Pre-Fire Mitigation project area. Specifically, considering the Michigan Ditch Pre-Fire Mitigation project being an approved FY 2025 CDS request in the Senate. The City also plans to submit a FY 2025 request for funds under CSFS' Forest Restoration & Wildfire Risk Mitigation Grant Program.

CSFS will manage all aspects of the forest treatments proposed for Treatment 1 and Treatment 2 of Phase 2 work, including procurement, contracting and contract administration for forest treatment work. The City will treat CSFS as a subrecipient under the COSWAP award, completing subrecipient monitoring throughout the life of the grant funded project.

Personnel:

The City's \$191,200 in cash match will be used to cover CSFS direct personnel costs.

CSFS will manage all aspects of planning, treatment layout, contracting, contract administration of treatment, grant administration, communication and coordination with external partners, and monitoring. The City will support CSFS, providing dedicated City staff to collaborate on Phase 2 treatment work and to assist with communications with key stakeholders. City personnel costs will be covered from City budgeted funds and, therefore, not incorporated in Total project costs.

Personnel costs for CSFS direct staff time are based on the total number of estimated hours for both field work and direct administrative time for Phase 2 work.

Indirect:

The City's \$125,482 in cash match will be used to cover CSFS indirect costs.

Considering CSFS' partnership in leading Phase 2 of the Michigan Ditch Pre-Fire Mitigation project, which includes direct field work and administrative work, CSFS has applied an 11% indirect cost rate to total direct costs. CSFS's indirect costs will be covered by (1) City's cash match of \$125,482 and (2) \$5,000 in COSWAP funds. Based on available budget the City does not have the \$5,000 needed to cover 100% of CSFS' indirect costs.

The City, in partnership with CSFS, is seeking to use COSWAP grant funds in support of implementation of forest treatments in support of the Michigan Ditch Pre-Fire Mitigation Project.

Exhibit A

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Based on the acres proposed for treatment, requiring staff time as well as funds to support implementation, the project will be completed in phases.

Phase 3:

The Michigan Ditch Pre-Fire Mitigation Project is being completed in multiple phases due to the total cost needed to complete treatments via helicopter and conventional/tethered logging. In addition to funding needs, staff time by CSFS, City and other partnering agencies is needed for both on the ground monitoring and management of forest treatment, combined with data collection, reporting and communication to key stakeholders.

Phase 1 funding is committed in full, with treatment implementation commencing in summer 2025. Funding in support of Phase 2 treatments includes \$1,000,000 in COSWAP funds and the City's \$316,682 in cash match. Phase 3 treatments are proposed for 198 total acres, with 51 acres being completed via tethered logging and 147 acres being treated via helicopter. Per acre treatment costs range between \$4,000 to \$6,000 for tethered logging and \$15,000 to \$25,000 for helicopter logging. This provides projected Phase 3 treatment costs of between \$2,409,000 and \$3,981,000.

If Phase 2 treatment costs are below the estimated \$995,000, the City, in partnership with CSFS, would use such funds to support continued treatment work for Phase 3. Any COSWAP funds would be used in combination with anticipated FY 2025 CDS funds and CSFS grant funds.

PAYMENTS

Grantee shall initiate payment requests by invoice to DNR using the DNR invoice and match template. The Grantee may invoice DNR monthly or quarterly.

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EXHIBIT B, BUDGET

Total Proposal Budget	Treatment 1	Treatment 2	In-kind Match	Cash Match	COSWAP Total Ask
Personnel (maximum 20% of COSWAP Share)	\$ -		\$ -	\$ 191,200	\$ -
Project Implementation (minimum 70% of COSWAP Share)	\$ 245,000	\$ 750,000	\$ -		\$ 995,000
Indirect Costs (maximum 10% of COSWAP Share)	\$ 5,000		\$ -	\$ 125,482	\$ 5,000
Total	\$ 250,000	\$ 750,000	\$ -	\$ 316,682	\$ 1,000,000
TOTAL project Costs					\$ 1,316,682

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EXHIBIT C - PII CERTIFICATION**STATE OF COLORADO****THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: _____

Printed Name: _____

Date: _____

DocuSign Envelope ID: 0462EF81-EEC0-428B-9D2A-F672EF961871

EXHIBIT C-PII CERTIFICATION**STATE OF COLORADO****THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO
PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

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<p>By: _____</p> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>	<p>By: _____</p> <p>Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: _____</p>
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Exhibit D

RESOLUTION 2025-054
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE
COLORADO STATE FOREST SERVICE FOR PHASE 2 OF THE MICHIGAN DITCH
PRE-FIRE MITIGATION PROJECT

A. The City owns and operates a water utility that provides water service to customers within its water service area. As part of the water utility, the City owns and operates the Michigan Ditch and associated infrastructure for the purpose of providing raw water for water supply, including for drinking water treatment.

B. Between August and December 2020, the Cameron Peak Fire significantly impacted federal and state lands abutting the Michigan Ditch.

C. The City has identified a need to develop and execute forest health treatment activities in priority areas at risk of future large scale catastrophic wildfires with regards to pre-fire mitigation thinning, fuel breaks and forest restoration, including in and around the Michigan Ditch and its associated infrastructure.

D. The City has thus begun work on the Michigan Ditch Pre-Fire Mitigation Project ("Project") and has worked with the Colorado State Forest Service. Phase 1 of the Project and previous agreements with the Colorado State Forest Service are addressed in Resolution 2024-113.

E. For Phase 2 of the Project, the Colorado State Forest Service is willing to develop and provide access to environmental information and expertise to provide relevant data analysis and to complete certain forest fuels reduction work to mitigate the risk of future large-scale wildfires in and around the Michigan Ditch and its associated infrastructure.

F. For Phase 2 of the Project, the City and the Colorado State Forest Service have also negotiated a proposed Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services through the Colorado State Forest Service, attached as Exhibit "A" ("Services Agreement"), the purpose of which is for the City to retain the Colorado State Forest Service to perform certain forest health and pre-fire mitigation services related to the Michigan Ditch and its associated infrastructure.

G. City Council finds that entering into the Services Agreement is necessary to safeguard the City's critical water supply infrastructure and is in the best interests of the City water utility ratepayers and the City as a whole.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to enter into a Services Agreement substantially in the form of Exhibit "A", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be

necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on May 6, 2025

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Eric Potyondy

INTERGOVERNMENTAL AGREEMENT REGARDING
FOREST HEALTH AND PRE-FIRE MITIGATION SERVICES
THROUGH THE COLORADO STATE FOREST SERVICE

THIS INTERGOVERNMENTAL AGREEMENT FOR FOREST HEALTH AND PRE-FIRE MITIGATION SERVICES ("Agreement"), is made and entered into on the day and year that it is fully executed by all Parties ("Effective Date"), by and between the City of Fort Collins, Colorado, a home rule municipality of the State of Colorado ("City") and The Board of Governors of The Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado, for the use and benefit of the Colorado State Forest Service ("CSFS"), (collectively, the "Parties").

WHEREAS, the City owns and operates, through Fort Collins Utilities, the Michigan Ditch and associated infrastructure for the purpose of providing raw water for water supply, including for drinking water treatment; and

WHEREAS, between August and December 2020, the Cameron Peak Fire significantly impacted federal and state lands abutting the Michigan Ditch; and

WHEREAS, the City has identified a need to develop and execute forest health treatment activities in priority areas at risk of future large scale catastrophic wildfires with regards to pre-fire mitigation thinning, fuel breaks and forest restoration; and

WHEREAS, the CSFS is willing to develop and provide access to environmental information and expertise to provide relevant data analysis and to complete certain forest fuels reduction work to mitigate the risk of future large scale wildfires; and

WHEREAS, the Parties have previously entered into agreements related to such work, including: (1) *Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services Through the Colorado State Forest Service*, dated August 22, 2022; and (2) *Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services Through the Colorado State Forest Service*, dated October 16, 2024; and

WHEREAS, the City and the State of Colorado have entered into a grant agreement related to such work ("State Grant Agreement"), a copy of which is attached as Appendix A; and

WHEREAS, the Parties desire to enter into this new Agreement setting forth the terms for development and access to CSFS resources regarding data analysis, forest fuels treatment and hazards mitigation; and

WHEREAS, the Parties have authority pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. **Independent Contractors.** It is understood and agreed by the Parties that the CSFS is an independent contractor with respect to the City and that this Agreement is not intended and shall not be construed to create an employer/employee or a joint venture relationship between the CSFS and the City. The CSFS shall be free from the direction and control of the City in the performance of the CSFS's obligations under this Agreement, except that the City may indicate specifications, standards requirements and deliverables for satisfaction of the CSFS's obligations under this Agreement.
2. **Term.** This Agreement shall be effective on the date of final signature (the "Effective Date") and shall terminate on February 1, 2028, unless sooner terminated as provided herein or extended by written agreement of the Parties or extended pursuant to this paragraph. The Parties agree that the term of this Agreement shall be extended automatically if the City obtains an Option Letter per Section 2.A. of the State Grant Agreement, with the extension of the term of this Agreement being the same as the extension provided in the Option Letter.
3. **State Grant Agreement.** The Parties agree that the CSFS shall be deemed a subgrantee under the State Grant Agreement. The CSFS, in its capacity as a subgrantee under the State Grant Agreement, must follow the terms and conditions of the State Grant Agreement, including its Section 8 – Confidential Information – State Records.
4. **Scope of Work.** The CSFS agrees to perform the services (the "Services") described in the Statement of Work attached as Exhibit A of the State Grant Agreement and as may be more specifically set forth in project work orders issued pursuant to this Agreement ("Statement of Work").
5. **Budget and Compensation.**
 - 5.1. As described in the Statement of Work, the work completed by the CSFS will be funded:
 - (a) from the Colorado Department of Natural Resources ("CO DNR") through the Colorado Strategic Wildfire Program (\$1,000,000), which was awarded to the City through the State Grant Agreement; and
 - (b) from the City (\$316,682), which was the City's matching funds under the State Grant Agreement.
 - 5.2. As compensation for the Services rendered under this Agreement, City agrees to reimburse the CSFS for "Allowable Costs," which shall mean those costs that are: (1) necessary and proper for the Services described in the Statement of Work, and (2) in alignment with eligible expenses as described in the Colorado Strategic Wildfire Action Program Landscape Resilience Investment Policies ("Policies"), attached as Appendix B.
 - 5.3. In no event shall the total amount paid by the City through such project work orders exceed the sum of one million three hundred sixteen thousand six hundred and eighty-two dollars (\$1,316,682.00), being the sum of the funds identified in paragraph 5.1.

- 5.4. The CSFS shall notify the City for any proposed adjustment to a line item of the budget presented in the Statement of Work. Any proposed change to the budget shall first be provided to and approved by the CO DNR. An approved change for a line item of the budget will be by written agreement of the Parties, such an email from each Party approving the change.
6. Reimbursement
- 6.1. The CSFS shall request from the City reimbursement for incurred and paid Allowable Costs for Services rendered under this Agreement each quarter.
- 6.2. All Allowable Costs for which the CSFS seeks reimbursement from the City shall be supported by documentation that at minimum meets documentation requirements of the Policies.
- 6.3. The City will not pay the CSFS for any expenses incurred and paid by the CSFS that are not Allowable Costs, including "Ineligible Expenses," which, per the CO DNR, include food and beverages; hardware, software, technology, office supplies, printing; marketing and educational materials; maintenance and equipment repair; equipment purchases; and construction and infrastructure.
7. Ownership of Information. At all times during and following the term of this Agreement, including any extensions or renewals hereof, all records, information and data provided to the CSFS by the City or developed during the performance of the Services under this Agreement by the CSFS and/or the City ("Project Records") shall be and remain the sole property of the City. The CSFS retains the right to use the Project Records for academic and research purposes; subject to prior written notice to and approval from the City before publication, which the City shall not unreasonably withhold. Except as provided in paragraph 7 of this Agreement, the CSFS shall provide any Project Records or return to the City upon request after termination of this Agreement.
8. Reporting Requirements.
- 8.1. The CSFS shall provide information required by the City for quarterly reporting to the CO DNR. Quarterly reporting includes all required information for Colorado Strategic Wildfire Action Program Landscape Resilience Investment Grants per CO DNR at <https://forms.gle/gWKTBug6Wp1NqQaW8>. The CSFS shall provide this information by third day of month following each fiscal quarter through at least March 2028. The CSFS will work with the City in completing final reporting in accordance with the CO DNR's requirements within 45 days of project completion or expiration of the State Grant Agreement.
- 8.2. The CSFS agrees that it will make all Project Records as defined in the Statement of Work or project work orders available to City at any reasonable time, subject to the reporting requirements set forth by the CO DNR.
- 8.3. The City shall have the right to audit the records of the CSFS, to the extent such records are related to the Services performed under this Agreement, during normal business

hours and upon reasonable notice to CSFS. Such audit may include the financial records of CSFS relating to the Services. The CSFS shall reasonably cooperate with the City in satisfying any requirement or order issued by any governmental agency or court, including but not limited to the inspection of CSFS records or facility.

9. Confidentiality.

- 9.1. Each Party has certain documents, data, information, and methodologies that are confidential and proprietary to that Party ("Confidential Information"). During the term of this Agreement, either Party may, as the "Disclosing Party," disclose its Confidential Information to the other Party (the "Recipient"), in writing, visually, or orally. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of this Agreement, and for no other purpose (except as may be specifically authorized by the Disclosing Party, in writing). Recipient agrees not to make use of the Confidential Information except for such Services and agrees not to disclose the Confidential Information to any third party or parties without the prior written consent of the Discloser, subject to paragraph 9.4.
- 9.2. Recipient shall use its reasonable best efforts to preserve the confidentiality of the Confidential Information (using the same or similar protections as it would as if the Confidential Information were Recipient's own, and in any event, not less than reasonable care). Recipient shall obligate its affiliates with access to any portion of the Confidential Information to protect the proprietary nature of the Confidential Information.
- 9.3. "Confidential Information" shall not include, and Recipient shall have no obligation to refrain from disclosing or using, information which: (i) is generally available to the public at the time of this Agreement; (ii) becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient; (iii) is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality; (iv) has been independently developed by persons in Recipient's employ or otherwise who have no contact with Confidential Information, as proven with written records; or (v) is required to be disclosed by law; provided that, in the event that Recipient is required to disclose Confidential Information under this paragraph 9.3, it will promptly notify the Disclosing Party, and the Disclosing Party may, at its sole discretion and expense, initiate legal action to prevent, limit or condition such disclosure.
- 9.4. With respect to paragraph 9.3, the Parties acknowledge that each is subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, et seq. ("CORA"). If disclosure of any Confidential Information is required pursuant to CORA, the Parties shall reasonably cooperate to review and identify any information not subject to disclosure. However, each Party shall retain the right to proceed in the manner it believes, in its sole discretion and judgment, is required to be compliant with the law with regard to any records request received by that Party.

- 9.5. Notwithstanding any other provision of this Agreement, a Party may retain one copy of the other Party's Confidential Information in its confidential files, for the sole purpose of establishing compliance with the terms hereof.
10. **Liability; Insurance.** Each Party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of the CSFS, and City is at all times herein strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. §§ 24-10-101, et seq. as now or hereafter amended (the "GIA"). Pursuant to Section 10 – Insurance of the State Grant Agreement, each Party shall ensure that any subcontractors maintain all insurance customary for the completion of the work done by that subcontractor as required by the State of Colorado or the GIA. Nothing in this Agreement shall be construed as a waiver of the protections of the GIA. As public entities of the State of Colorado, neither Party is authorized to indemnify any party, public or private, as against the claims and demands of third parties and any such indemnification provision in this Agreement shall be null and void.
11. **Exclusive Warranty; Disclaimer.** CSFS warrants that it will provide all deliverables under this Agreement substantially in accordance with the Statement of Work and as may be more specifically set forth in project work orders issued pursuant to this Agreement. All other warranties, express and implied, are hereby expressly disclaimed INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CSFS does not perform any Services under this Agreement that may be subject to United States Food and Drug Administration regulations, e.g. Good Manufacturing Practice (GMP), Current Good Manufacturing Practice (cGMP), Good Laboratory Practice (GLP), Good Clinical Practice (GCP) work/services. Neither Party is liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether such Party knows or should know of the possibility of such loss or damages). The liability of either Party under this Agreement shall not exceed the amount paid or payable to the CSFS under this Agreement.
12. **Termination.** In the event of termination under this paragraph 12, the CSFS will be reimbursed for all Allowable Costs incurred and paid by the CSFS that align with required supporting documentation per paragraph 5. The CSFS shall exert its best efforts to limit or terminate any outstanding financial commitment for which the City is liable.
- 12.1. **Termination for Convenience.** This Agreement may be terminated for convenience with sixty (60) days written notice, given in accordance with the Notice provisions of this Agreement. The written notification must set forth reasons for the termination and the effective date.
- 12.2. **Termination for Withdrawal, Reduction or Limitation of Funding.** In the event the City does not receive the CO DNR funding, or the CO DNR funds are withdrawn, reduced or limited in any way after the effective date of this Agreement, the City may summarily terminate or suspend this Agreement as to the CO DNR funds not received, reduced or limited, notwithstanding any other termination provision of this Agreement. If the level of funding is reduced to such an extent that the City deems that the continuation

of the Services to be provided by CSFS is no longer in the best interest of the public, the City may summarily terminate this Agreement in whole or part notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective thirty (30) days upon receipt of written notice by the CSFS.

12.3. Continuing Obligations. When this Agreement is terminated the CSFS remains responsible for the responsibilities of the Reporting Requirements provisions of this Agreement.

13. City Representative. The City will designate, prior to commencement of work, its project representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project. The CSFS shall direct all requests for contract interpretation, change orders, and other clarification or instruction to the City representative.
14. Notices. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder will be in writing and will be deemed to have been given when personally delivered or deposited in the United States mail or with an overnight courier, with proper postage and address as follows:

If to CSFS:

Weston Toll
5060 Campus Delivery
Colorado State University
Fort Collins, CO 80523-5060
Phone: 970-491-8760
weston.toll@colostate.edu

With a Copy to:

Office of the General Counsel
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Phone: 970-491-6270
contracts@colostate.edu

If to City:

Richard Thorp
City of Fort Collins Utilities
City of Fort Collins
Water Quality Services Division, Watershed
Program
P.O. Box 580
Fort Collins, CO 80522-0580

With a Copy to:

City Attorney's Office
City of Fort Collins
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522-0580

15. **Binding Effect; Third Party Beneficiaries.** This writing, together with the exhibits hereto, constitutes the entire agreement between the Parties and binding upon the Parties, their officers, employees, successors, and permitted assigns, and shall inure to the benefit of the respective successors, and permitted assigns of the Parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
16. **Amendment.** No modification or amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the Parties.
17. **Default; Termination; Dispute Resolution.**
- 17.1. **Default.** A Party will be considered in default of its obligations under this Agreement if such Party fails to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for 10 days after a non-defaulting Party gives the defaulting Party written notice thereof.
- 17.2. **Termination for Cause.** In the event of default, a non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice.
- 17.3. **Dispute Resolution.** Any dispute concerning the performance of this Agreement not resolved by the designated representatives of the Parties shall be referred to superior departmental management staff designated by each Party (which, for the CSFS, shall be the Vice President for University Operations, and for the City, shall be the City Manager), whose decisions shall be made within thirty (30) days after notice or such other period as the Parties may agree. Failing resolution at that level, either Party has the right to bring legal action to recover only such damages and remedies as are authorized pursuant to this Agreement, in accordance with Colorado law, and only in a court of competent jurisdiction located within the City of Fort Collins, County of Larimer, Colorado. Notwithstanding any other provision contained herein, neither Party shall be liable to the other for any indirect, consequential, incidental, exemplary (punitive) or special damages. In the event of any default or dispute, each Party shall be solely responsible for its own attorneys' fees.
18. **Appropriation.** The City's financial obligations under this Agreement are contingent upon the annual appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Agreement shall create a payment guaranty by either Party or a debt or a multiple-fiscal year financial obligation under the Colorado Constitution or any similar provisions of the City's charter or ordinances.
19. **Legal Authority.** Each Party to this Agreement warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind it to its terms. The person(s)

executing this Agreement on behalf of a Party warrant(s) that such person(s) have full authorization to execute this Agreement. This Agreement is not binding upon the CSFS, its governing board or the State of Colorado unless signed by the Associate Vice-President for Finance or his/her authorized delegate.

20. **Survival of Certain Terms.** Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of this Agreement shall survive such termination date.
21. **Waiver.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or construed as a waiver of any subsequent breach of the same or other provision hereof.
22. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
23. **Counterparts and Facsimiles.** This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.

[Signatures appear on following page]

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT THE DAY AND YEAR WRITTEN BELOW

<p>CITY:</p> <p>CITY OF FORT COLLINS, A COLORADO MUNICIPAL CORPORATION</p> <p>By: _____ Jeni Arndt Mayor, City of Fort Collins</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ City Clerk</p> <p>APPROVED AS TO FORM</p> <p>_____ Eric Potyondy, Senior Assistant City Attorney</p>	<p>STATE FOREST:</p> <p>BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, acting by and through Colorado State University</p> <p>By: <u>Angela Nielsen</u> <small>Angela Nielsen (Apr 2, 2025 16:46 MDT)</small> Angela Nielsen Director, Office of Budgets</p> <p>Date: <u>Apr 2, 2025</u></p> <p>By: <u>Christina Burri</u> <small>Christina Burri (Apr 2, 2025 15:57 MDT)</small> Christina Burri Deputy State Forester</p> <p>*APPROVED AS TO FORM:</p> <p>By: <u>Brian Anderson</u> <small>Brian Anderson (Apr 2, 2025 14:19 MDT)</small> Brian Anderson, Esq Office of the General Counsel</p> <p>*Not required unless legal changes made to this document</p>
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APPENDIX A
Intergovernmental Agreement among State of Colorado and City of Fort Collins

**GRANT AWARD LETTER
SUMMARY OF GRANT AWARD TERMS AND CONDITIONS**

State Agency Colorado Department of Natural Resources Executive Director's Office Colorado Strategic Wildfire Program (COSWAP) 1313 Sherman Street Denver, Colorado 80203	Grant Agreement Number: CORE: CTGG' PAAA 2025*3540 CMS: 196764
Grantee City of Fort Collins	
Grant Issuance Date The Effective Date	
Grant Expiration Date February 1, 2028	Grant Amount Total for all State Fiscal Years: \$1,000,000.00
Grant Authority This grant is authorized by section 24-33-117, C.R.S..	Local Match Amount Total for all State Fiscal Years: \$316,682.00

Grant Purpose

COSWAP's Landscape Resilience Grant program facilitates the planning and implementation of landscape scale, cross boundary wildfire mitigation to protect life, property, and infrastructure.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Grant:

1. Exhibit A, Statement of Work.
2. Exhibit B, Budget.
3. Exhibit C, PII Certification
4. Exhibit D, Sample Option Letter

In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Colorado Special Provisions in §17 of the main body of this Grant
2. The provisions of the other sections of the main body of this Grant.
3. Exhibit A, Statement of Work.
4. Exhibit C, PII Certification
5. Exhibit D, Sample Option Letter
6. Exhibit B, Budget.

SIGNATURE PAGE**THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT**

<p>STATE OF COLORADO Jared S. Polis, Governor Dan Gibbs, Executive Director</p> <p>By: _____</p> <p>Date: _____</p>	<p>In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an Option Letter in a form substantially similar to Exhibit D showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Budget”** means the budget for the Work described in Exhibit B.
- B. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- C. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau

of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.

- D. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et seq.*, C.R.S.
- E. **“Grant Award Letter”** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- F. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- G. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- H. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- I. **“Exhibits”** exhibits and attachments included with this Grant as shown on the first page of this Grant
- J. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter
- K. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- M. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- N. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- O. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S.
- R. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an

individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

- S. **“Recipient”** means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Award.
- T. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- U. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- W. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- X. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- Y. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- Z. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- AA. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. Matching Funds.

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the "Local Match Amount"). Grantee's obligation to pay all or part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purpose of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies..

D. Reimbursement of Grantee Costs

Upon prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: (i) reasonable and necessary to accomplish the Work and for the Goods and Services provided; and (ii) equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

F. Grant Funding Change- State's Option

The State, at its discretion, shall have the option to increase or decrease the funding provided under the same terms specified herein. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Grant Award Letter.

6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in §5.E, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law

enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit __ on an annual basis Contractor's duty and obligation to certify as set forth in Exhibit __ shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of

this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

Except as herein specifically provided, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

16. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

17. COLORADO SPECIAL PROVISIONS (Colorado Fiscal Rule 3-3)**A. STATUTORY APPROVAL. §24-30-202(1) C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5) C.R.S.

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the Parties's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its**

agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.
§§24-18-201 and 24-50-507 C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

EXHIBIT A, STATEMENT OF WORK**PROPOSAL****GRANTEE and FISCAL AGENT (if different)**

City of Fort Collins

PRIMARY CONTACT

Richard Thorp, Watershed Program Manager

ADDRESS

PO Box 580
Fort Collins, CO 80522

PHONE

970-416-4327

EMAIL

rthorp@fcgov.com

PROJECT NAME

Michigan Ditch Pre-Fire Mitigation Phase 2

GRANT AMOUNT

Amount shall not exceed \$1,000,000

FUND EXPENDITURE

2/1/2028 or upon completion of the project.

INTRODUCTION AND BACKGROUND

The Colorado Strategic Wildfire Action Program (COSWAP) Landscape Resilience Investment grant was created to facilitate the planning and implementation of landscape scale, cross boundary wildfire mitigation to protect life, property and infrastructure. For a special release of the Landscape Resilience Investment program, COSWAP has partnered with the Colorado Water Conservation Board through the Wildfire Ready Watersheds program to support landscape scale wildfire mitigation and forest health projects focused on improving watershed health and/or protecting critical water infrastructure.

TREATMENT OBJECTIVES

1. Reduced risk from future large-scale wildfires to water supply and water supply infrastructure
2. Improvement of forest health and release of advanced regeneration
3. Improvement of recreational opportunities and wildlife habitat

BRIEF DESCRIPTION OF PROJECT

Michigan Ditch is a critical element of the City's drinking water supply infrastructure. The proposed project would reduce risks of damage to this infrastructure from future larger-scale wildfires and help maintain the availability and quality of the City's raw water supply. Funding for this project will be used to continue targeted forest treatments to protect Michigan Ditch and help meet broader landscape

level goals identified within the Poudre Water Supply Infrastructure Wildfire Ready Action Plan (WRAP).

SCOPE OF WORK

The Phase 2 Project area is located within the Colorado State Forest State Park, southwest of Cameron Pass.

Treatment 1 prescription: Focuses on the removal of 15-30 acres of dead trees/surface fuels near the ditch in spruce bark beetle impacted forest with post-harvest target live basal area (BA) of 70-90 ft²/acre. Most standing dead trees will be removed (BA 102ft²/acre), excluding 2 snags/acre for wildlife (spruce & fir >10" diameter breast height). Surface fuels will be reduced to 20-30 tons/acre, which will lower extreme fire behavior potential and post-fire erosion from high soil burn severity. Removal of live overstory fir greater than 30ft in height at risk of blowdown or declining from western balsam bark beetle. Retains all live lodgepole & aspen and favors spruce over fir.

Helicopter treatment will be used with whole trees harvested. Merchantable material will be sold as a "deck sale" and hauled to nearby wood processing facilities with proceeds going to the Colorado State Land Board. Slash piles will be built with any non-merchantable material and Colorado State Forest Service (CSFS) will conduct winter burning operations.

Treatment 2 prescription: Focuses on the creation of a firebreak through thinning and expanding an existing treeless wetland area. The planned firebreak connects to rocky alpine areas to the north and south of Hwy 14 and has the following prescriptions:

1. Forest thinning (80-125 acres) will reduce canopy cover and density by spacing mature and established trees to approximately 10' between tree crowns and up to 30' on steeper slopes. Small, isolated groups of trees may be retained to improve forest aesthetics. In extremely dense pockets of less mature subalpine fir, the retained canopy will consist of small "islands" of trees. Subalpine fir grows in dense clumps and thinning to a 10' crown spacing may cause mortality and decrease overall moisture retention in the stand. On machine operable slopes, merchantable material will be hauled to nearby wood processing facilities. On steeper slopes, and areas with non-merchantable material woody biomass, harvested trees will either be burned or chipped. For any slash piles created, CSFS will conduct winter burning operations.
2. The wetland enhancement (20-25 acres) identifies low lying areas near the Michigan River where trees have "encroached" in the absence of beaver activity. Prescription calls for removal of most trees, and the creation of small islands of trees in higher elevation areas of the wetland. Tree removal will serve to raise the water table, encouraging establishment of wetland vegetation in place of trees which can serve as a natural firebreak. Post-treatment, CSFS will plant willow for wildlife habitat. It is anticipated that additional pre-fire mitigation projects may be identified through development of the Poudre Water Supply Infrastructure WRAP that could further improve the health of this wetland and reduce the risk of future wildfires to this infrastructure and water supply.

Acreage: Total acres treated will be determined by bid prices. Price per acre and total acreage estimates are:

1. helicopter \$15,000-\$25,000/acre (15-30 acres)
2. thinning/wetland enhancement \$4,000-\$6,000/acre (100-150 acres)

Implementation: CSFS will plan, contract and administer work, with the City and CPW providing financial and logistical support.

Measures of success: Reduction of potential surface fuels, hazard trees mitigated, reduced risk of crown fire, acres treated, forest products supplied, defensible space created for fire suppression, increased tree species diversity.

BUDGET AND NARRATIVE

Total Proposal Budget	Treatment 1	Treatment 2	In-kind Match	Cash Match	COSWAP Total Ask
Personnel (maximum 20% of COSWAP Share)	\$ -		\$ -	\$ 191,200	\$ -
Project Implementation (minimum 70% of COSWAP Share)	\$ 245,000	\$ 750,000	\$ -		\$ 995,000
Indirect Costs (maximum 10% of COSWAP Share)	\$ 5,000		\$ -	\$ 125,482	\$ 5,000
Total	\$ 250,000	\$ 750,000	\$ -	\$ 316,682	\$ 1,000,000

TOTAL project Costs \$ 1,316,682

TREATMENT 1 Prescription Budget					
Total number of acres to be treated via helicopter	Range \$/acre	Median \$/acre	# of acres to be treated with COSWAP funds	COSWAP Amount at Median \$/acre	Future treated \$ amount at high range estimate \$/acre (based on available FY25 CDS funds and/or CSFS FY25/26 grant funds and/or City of Fort Collins funds)
30	\$15k to \$25k	\$ 20,000	12.25	\$ 245,000	\$ 443,750

TREATMENT 2 Prescription Budget					
Total number of acres to be treated	Range \$/acre	Median \$/acre	# of acres to be treated with COSWAP funds	COSWAP Amount at Median \$/acre	
150	\$4k to \$6k	\$ 5,000	150	\$ 750,000	

City of Fort Collins Personnel Costs					
Hourly Rate (CSFS service rate)		Estimated TOTAL direct hours for Colorado State Forest Service personnel	Colorado State Forest Service TOTAL Direct	Amount for direct Colorado State Forest Service personnel costs	City of Fort Collins
\$ 93		2056	\$ 191,200	\$ 191,200	

NOTE: Colorado State Forest Service and City of Fort Collins are parties in a Memorandum of Understanding that includes a cost-sharing agreement. 18% of indirect costs will be applied to TOTAL Direct Costs, which accounts for (1) 50% for direct personnel costs and (2) 50% for direct personnel time as Colorado State Forest Service in support of the work and (3) 100% for indirect costs and contributions to the work.

TOTAL Direct costs	11% applied Indirect Cost Rate	Amount for Colorado State Forest Service Indirect Costs	City of Fort Collins	COSWAP Amount of Indirect costs
\$ 1,186,700	11%	\$ 130,537	\$ 175,482	\$ 5,000

Project Implementation:

The City is seeking \$995,000 in support of forest treatment work for Phase 2 of the Michigan Ditch Pre-Fire Mitigation project.

Project Implementation for Phase 2 includes Treatment 1 work that supports removal of dead trees/surface fuels adjacent to Michigan Ditch and corresponding ditch road. Considering the terrain, helicopter treatment is proposed. Based on evaluation work completed to date by CSFS, acres proposed for Treatment 1 are in upwards of 30 acres. Treatment 2 work supports creation of a firebreak combined with removal of trees for proposed wetland enhancement. Proposed acres identified for

Treatment 2 are in upwards of 150 acres. The terrain for Treatment 2 is not steep, providing the opportunity to complete this work using tethered logging.

Treatment layout, including total number of acres to be treated per Treatment 1 and Treatment 2, will be finalized in Q3 2025. Cost estimates per acre of treatment via helicopter and tethered logging are based on estimates provided by CSFS. The per acre treatment estimate is based on current year prices, providing a range based on Phase 2 work not commencing until 2026. Considering that the treatment layout will not be finalized until Q3 2025, the City's estimate for the use of the \$995,000 in COSWAP funds is on the higher range of cost per acre via Treatment. The City anticipates using the higher range of acres to be treated and median cost per acre. Implementation costs for Treatment 1 and Treatment 2 work are estimated to exceed \$995,000 in COSWAP funds. The City anticipates use of FY 2025 Congressionally Directed Spending (CDS) funds and/or CSFS grant funds, provided awarded, to support treatment of additional acres for Phase 2 treatment.

The City is very optimistic that the project will receive continued grant funds, which will support treatment of acres identified for Phase 2 and further treatment of the Michigan Ditch Pre-Fire Mitigation project area. Specifically, considering the Michigan Ditch Pre-Fire Mitigation project being an approved FY 2025 CDS request in the Senate. The City also plans to submit a FY 2025 request for funds under CSFS' Forest Restoration & Wildfire Risk Mitigation Grant Program.

CSFS will manage all aspects of the forest treatments proposed for Treatment 1 and Treatment 2 of Phase 2 work, including procurement, contracting and contract administration for forest treatment work. The City will treat CSFS as a subrecipient under the COSWAP award, completing subrecipient monitoring throughout the life of the grant funded project.

Personnel:

The City's \$191,200 in cash match will be used to cover CSFS direct personnel costs.

CSFS will manage all aspects of planning, treatment layout, contracting, contract administration of treatment, grant administration, communication and coordination with external partners, and monitoring. The City will support CSFS, providing dedicated City staff to collaborate on Phase 2 treatment work and to assist with communications with key stakeholders. City personnel costs will be covered from City budgeted funds and, therefore, not incorporated in Total project costs.

Personnel costs for CSFS direct staff time are based on the total number of estimated hours for both field work and direct administrative time for Phase 2 work.

Indirect:

The City's \$125,482 in cash match will be used to cover CSFS indirect costs.

Considering CSFS' partnership in leading Phase 2 of the Michigan Ditch Pre-Fire Mitigation project, which includes direct field work and administrative work, CSFS has applied an 11% indirect cost rate to total direct costs. CSFS's indirect costs will be covered by (1) City's cash match of \$125,482 and (2) \$5,000 in COSWAP funds. Based on available budget the City does not have the \$5,000 needed to cover 100% of CSFS' indirect costs.

The City, in partnership with CSFS, is seeking to use COSWAP grant funds in support of implementation of forest treatments in support of the Michigan Ditch Pre-Fire Mitigation Project.

Based on the acres proposed for treatment, requiring staff time as well as funds to support implementation, the project will be completed in phases.

Phase 3:

The Michigan Ditch Pre-Fire Mitigation Project is being completed in multiple phases due to the total cost needed to complete treatments via helicopter and conventional/tethered logging. In addition to funding needs, staff time by CSFS, City and other partnering agencies is needed for both on the ground monitoring and management of forest treatment, combined with data collection, reporting and communication to key stakeholders.

Phase 1 funding is committed in full, with treatment implementation commencing in summer 2025. Funding in support of Phase 2 treatments includes \$1,000,000 in COSWAP funds and the City's \$316,682 in cash match. Phase 3 treatments are proposed for 198 total acres, with 51 acres being completed via tethered logging and 147 acres being treated via helicopter. Per acre treatment costs range between \$4,000 to \$6,000 for tethered logging and \$15,000 to \$25,000 for helicopter logging. This provides projected Phase 3 treatment costs of between \$2,409,000 and \$3,981,000.

If Phase 2 treatment costs are below the estimated \$995,000, the City, in partnership with CSFS, would use such funds to support continued treatment work for Phase 3. Any COSWAP funds would be used in combination with anticipated FY 2025 CDS funds and CSFS grant funds.

PAYMENTS

Grantee shall initiate payment requests by invoice to DNR using the DNR invoice and match template. The Grantee may invoice DNR monthly or quarterly.

EXHIBIT B, BUDGET

Total Proposal Budget	Treatment 1	Treatment 2	In-kind Match	Cash Match	COSWAP Total Ask
Personnel (maximum 20% of COSWAP Share)	\$ -		\$ -	\$ 191,200	\$ -
Project Implementation (minimum 70% of COSWAP Share)	\$ 245,000	\$ 750,000	\$ -		\$ 995,000
Indirect Costs (maximum 10% of COSWAP Share)	\$ 5,000		\$ -	\$ 125,482	\$ 5,000
Total	\$ 250,000	\$ 750,000	\$ -	\$ 316,682	\$ 1,000,000
TOTAL project Costs					\$ 1,316,682

EXHIBIT C - PII CERTIFICATION**STATE OF COLORADO****THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: _____

Printed Name: _____

Date: _____

EXHIBIT C-PII CERTIFICATION**STATE OF COLORADO****THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO
PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT D, SAMPLE OPTION LETTER

State Agency Insert Department's or IHE's Full Legal Name	Option Letter Number Insert the Option Number (e.g. "1" for the first option)
Contractor Insert Contractor's Full Legal Name	Original Contract Number Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount	Option Contract Number Insert CMS number or Other Contract Number of this Option
Initial Term State Fiscal Year 20xx	
Extension Terms State Fiscal Year 20xx State Fiscal Year 20xx State Fiscal Year 20xx State Fiscal Year 20xx	Contract Performance Beginning Date Month Day, Year
Total for All State Fiscal Years	Current Contract Expiration Date Month Day, Year

1. OPTIONS:

- B. Option to change the Increase/Decrease Funding**

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. **For use with Options 1(B):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the Funding in the Original Contract, as amended.

3. **OPTION EFFECTIVE DATE:**

- A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO</p> <p>Jared S. Polis, Governor</p> <p>INSERT-Name of Agency or IHE</p> <p>INSERT-Name & Title of Head of Agency or IHE</p>	<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER</p> <p>Robert Jaros, CPA, MBA, JD</p>
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<p>_____</p> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>	<p>By: _____</p> <p>_____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: _____</p>
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i.

APPENDIX B
Colorado Strategic Wildfire Action Program Landscape Resilience Investment Policies



Landscape Resilience Investment Policies, Additional Information, and Final Reporting Requirements

Disclaimer: The COSWAP Landscape Resilience Investment policies are subject to review and change.

Media

Please acknowledge the Colorado Strategic Wildfire Action Program and the Department of Natural Resources Executive Director's Office as the funding source for this project in any outreach or media inquiries. Contact Chris Arend, DNR Communications Director, at chris.arend@state.co.us to discuss before sharing this project with the media.

Eligible and ineligible expenses

Eligible expenses for reimbursement and match		
Expense	Category	Description and supporting documentation
Implementation costs	Implementation	<p>Out of pocket expenses must provide receipts or invoices</p> <p>Implementation activities</p> <ul style="list-style-type: none"> • Fuel breaks • Ingress and egress fuels treatments • Mechanical and non-mechanical forest, shrubland and grassland fuels reduction • The removal of slash through piling and burning, chipping, mulching, grinding, hauling offsite, etc. • Community-wide defensible space connected to planned, or completed, landscape scale treatments • Prescribed fire preparation and/or implementation
Rented equipment	Implementation	Rental equipment with receipts
Staff time	Personnel & planning	<p>See <i>reimbursement for personnel time</i> below</p> <p>Eligible personnel capacity includes:</p> <ul style="list-style-type: none"> • Project planning, management, monitoring and reporting directly related to the projects in this proposal • Public outreach and education as it directly relates to the proposed treatments that are deemed necessary for project success • Personnel activities that directly support forest health and wildfire mitigation programming

Meeting room rental	Personnel & planning	Room rentals with receipts
Travel expenses	Personnel & planning	Mileage, per diem for overnight stays and hotel expenses. Mileage and per diem will be reimbursed at the federal mileage rate. See <i>Travel</i> below for more information
Non-recipient labor (Match Only)	Personnel & planning	For work completed by entities or individuals not included in the scope or budget. Valued at volunteer labor rate (at time work occurred) and must be documented using the COSWAP request for reimbursement form. Does not qualify for reimbursement.
Non-recipient cost (Match Only)	Implementation	Equipment or supplies donated by non-recipient, does not qualify for reimbursement.

Ineligible expenses for COSWAP Awards
<i>Examples of ineligible expenses for reimbursement through the Landscape Resilience Investment program. Indirect can be spent at the grantee's discretion.</i>
Food and beverages
Hardware, software, technology, office supplies, printing, uniforms, etc.
Marketing and educational materials
Maintenance and equipment repair (ex: oil changes, tire rotation, chains, etc.)
Equipment purchases (ex: chainsaws, tools, pruning shears, etc.)
Construction and infrastructure (building remodel, bridges, permanent road construction, water infrastructure development)

Requests for reimbursement:

Requests for reimbursement must be submitted on the COSWAP [request for reimbursement](#) form to coswap@state.co.us and accompanied by all supporting documentation. You can submit requests for reimbursement at a maximum, once a month, and at a minimum, once a year at the end of the state fiscal year- June 30. There are five approvals needed for each reimbursement request, please allow up to 45 days for processing. You will receive an email letting you know when your invoice has been processed by the COSWAP program staff and has moved on to accounting for payment.

Reimbursement for personnel time:

COSWAP is happy to support personnel time for both our direct grantees and subgrantees that receive funding in a pass through mechanism. Any time spent on personnel or planning must be outlined in the COSWAP grant agreement, we are only able to reimburse expenses that are outlined in the agreement.

In order to ease the process of time tracking and reporting COSWAP has outlined two options for reporting personnel time through supporting documentation.

Option A. A spreadsheet (or detailed timesheet) that includes the date, name of the person working, number of hours worked, and a brief explanation of the COSWAP related activity being worked on. If this person is working on the ground at a COSWAP project please include the name of the project.

Option B. If option A is too burdensome or you are not able to track to this specificity on your timesheet, Option B may be preferable. COSWAP will need a timesheet for the person working with the date and number of hours worked on COSWAP clearly defined. You will need to highlight the entries that are relevant. You will also need to include a summary of the work done on the COSWAP project by that person as reflected in the timesheet. ***These summaries must be by week.***

Again, any expenses must align with the contracted budget. If you have any questions about these reporting options please reach out to courtney.young@state.co.us.

Subgrantees:

Subgrantees must follow Grant Award Terms and Conditions, including sections 8 (Confidential Information - State Records) and 10 (Insurance). Below are the standards for Certificate of Insurance (COI) that DNR asks for from non-governmental entities. The state does not need a copy of COI from a subcontractor as part of the day-to-day compliance for your COSWAP project.

- A. Workers' Compensation
 - a. Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.
- B. General Liability
 - a. Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.
- C. Automobile Liability
 - a. Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

Travel:

If travel is included in your COSWAP budget you are eligible for reimbursement. Travel will not be reimbursed if it is not included in your COSWAP grant agreement budget. Mileage will be reimbursed at the federal rate and can only be used for in-state travel. Per diem will be

reimbursed at the federal rate, please use the rates found here:

<https://www.gsa.gov/travel/plan-book/per-diem-rates>. Hotel expenses will require receipts for reimbursement.

To request reimbursement for travel please use form #4 in the COSWAP Request for Reimbursament form.

Expense type	Single day travel	Overnight travel in state
Mileage	✓	✓
Breakfast per diem		✓ if leaving for travel before 5 am. If hotel does not offer free breakfast
Lunch per diem		✓ if leaving for overnight travel before 11 am or arriving home after 1 pm
Dinner per diem		✓ if leaving for overnight travel before 5 pm or arriving home after 8 pm

Extensions:

Grantees can request a grant extension six months before the expiration date of the grant agreement. Extensions for up to one year may be granted at DNR's sole discretion.

Requests for scope of work or budget changes:

Requests for scope modifications or extensions should be made via the [Amendment Request Form](#). Please be prepared to upload any supporting documentation. If you do not hear a response within two weeks, email coswap@state.co.us.

Quarterly reporting requirements:

Quarterly reports are due within five days of the end of each quarter (April 5, July 5, October 5, January 5) will be filled out using this [Google Form](#). If hyperlink does not work copy and paste into browser: <https://forms.gle/gWKTBug6Wp1NqQaW8>

Before and after photos:

Please select areas that represent the forest/fuel type you are impacting, and provide at least five before and after photos throughout the project taken from the same vantage point.

Final reporting requirements:

Each Grantee will report on the following within 45 days of grant completion or agreement expiration date. DNR will provide a Google form for reporting. Grantees must share before and after photos of the projects and upload their spatial data into the [Colorado Forest Tracker](#).

Reporting for mitigation projects:

- Acres treated by treatment type

- Canopy Treatment
 - Broadcast Burn
 - Hand Thin
 - Mechanical Thin
 - Other Thin
 - Patch/Stand Clear-cut
- Surface Treatment
 - Biomass Removal
 - Broadcast Burn
 - Chip/Haul
 - Lop and Scatter
 - Machine Pile
 - Mastication
 - Pile Burn
- Number of piles created
- Number of piles burned
- Miles of evacuation routes protected or improved
- Size of fuel breaks created (in miles)
- Forest products generated (type and volume)
- The change in community or social perception of the project from start to finish
- Number, and names, of communities directly impacted by the project
- Name and location of communities within two miles of the project
- Longevity of treatment
- Before and after photos

Reporting for personnel and planning

- Number, and hours, of personnel supported
- Planning efforts started and completed (Including stewardship agreements and Good Neighbor Authority)
- Impact of planning efforts on mitigation projects and funding opportunities
- Funding opportunities leveraged with COSWAP funds

Water Commission REGULAR MEETING

Excerpt from DRAFT Unapproved Minutes

April 17, 2025 – 5:30 PM

222 Laporte Ave., 1st Floor, Colorado River Room

1. CALL TO ORDER

- a. 5:31 PM

2. ROLL CALL

- a. **Board Members Present** (in person): Chairperson Jordan Radin and Commissioners Laura Chartrand, Paul Herman, Rick Kahn, Nick Martin, Nicole Ng, Greg Steed
- b. **Board Members Absent**: Commissioners James Bishop and Carson Madryga
- c. **Staff Members Present** (in person): Jill Oropeza, Katherine Martinez, Jesse Schlam, Kathryne Marko, Leslie Hill, Nicole Poncelet-Johnson
- d. **Staff Members Present** (online): Jen Authier, Michael Neale, Richard Thorp
- e. Guests: None

3. NEW BUSINESS

Regular Items

Michigan Ditch Forest Health and Pre-Fire Mitigation Project: Phase 2

The City owns Michigan Ditch, a critical water supply infrastructure located near Cameron Pass within Colorado State Forest State Park.

Watershed Program staff along with regional partners from the Colorado State Forest Service and Colorado Parks and Wildlife recently completed a multi-phase Michigan Ditch Pre-Fire Mitigation Plan. The plan identifies forest thinning treatments that will help reduce the risk to the Michigan Ditch infrastructure and water supply from future large-scale wildfires.

The Watershed Program was recently awarded a \$1 million grant from the Colorado Department of Natural Resources to implement the project's Phase 2 (scheduled for 2026-2028), which will include up to an additional 180 acres of targeted forest treatments designed to create fuels breaks and reduce the risk of future large-scale wildfires reaching the ditch from the north and west.

Watershed Program Manager Richard Thorp presented the project's Phase 1 to the Water Commission last year. He returned to provide an overview of Phase 2 including the Forest Health and Pre-Fire Mitigation Project, and request a recommendation from Water Commission that City Council approve accepting the grant and entering into an intergovernmental agreement regarding the project's Phase 2 services.

The project is in strategic alignment with City Plan's Environmental Health Outcome and the City Council Priority to "protect community water systems in an integrated way to ensure resilient water resources and healthy watersheds."

Discussion Highlights: Commissioners commented on or inquired about various related topics including clarifying the grant is already approved; expense of hauling out timber (Mr. Thorp responded that the goal is to reduce fuel); a match of \$317,000 from the watershed protection budget (from the Water Fund's Utilities capital improvement fund); staff plans to apply for another grant this fall that if awarded would mean the Water Fund would not have to be used; clarifying that no other cities or other water providers are contributing money to the project; the observation that one state entity is giving a grant, and staff is processing it and giving that money to another state agency; whether the U.S. Forest Service is doing similar work (Mr. Thorp replied that they're not as it relates to this project, which is part of a larger landscape-level effort; Watershed Specialist Jared Heath presented the wildfire readiness project to the Water Commission last year).

Commissioner Herman moved for Water Commission to recommend that City Council formally approve of the City entering into the Intergovernmental Agreement Regarding Michigan Ditch Forest Health and Pre-Fire Mitigation Project Phase-2 Services through the Colorado State Forest Service and accepting the Colorado Department of Natural Resources' Colorado Strategic Wildfire Program Grant.

Commissioner Ng seconded the motion

Vote on the motion: **it passed unanimously, 7-0**

Minutes will be approved by the Chair and a vote of the Water Commission on May 15, 2025.

RESOLUTION 2024-113
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO ENTER INTO TWO
AGREEMENTS WITH THE COLORADO STATE FOREST
SERVICE FOR THE MICHIGAN DITCH PRE-FIRE MITIGATION
PROJECT

A. The City owns and operates a water utility that provides water service to customers within its water service area. As part of the water utility, the City owns and operates the Michigan Ditch and associated infrastructure for the purpose of providing raw water for water supply, including for drinking water treatment.

B. Between August and December, 2020, the Cameron Peak Fire significantly impacted federal and state lands abutting the Michigan Ditch and associated infrastructure.

C. The City has identified a need to develop and execute forest health treatment activities in priority areas at risk of future large scale catastrophic wildfires with regards to pre-fire mitigation thinning, fuel breaks and forest restoration, including in and around the Michigan Ditch and its associated infrastructure.

D. The City has thus begun work on the Michigan Ditch Pre-Fire Mitigation Project ("Project"). The City has worked with the Colorado State Forest Service on this Project.

E. The Colorado State Forest Service is willing to develop and provide access to environmental information and expertise to provide relevant data analysis and to complete certain forest fuels reduction work to mitigate the risk of future large-scale wildfires in and around the Michigan Ditch and its associated infrastructure.

F. The City and the Colorado State Forest Service have negotiated a proposed services agreement, attached as Exhibit "A" ("Services Agreement"), the purpose of which is for the City to retain the Colorado State Forest Service to perform certain forest health and pre-fire mitigation services related to the Michigan Ditch and its associated infrastructure.

G. The Colorado State Forest Service is also willing to work with the City to fund the Project. The City applied for and the Colorado State Forest Service has awarded the City a grant for forest health and pre-fire mitigation work in and around the Michigan Ditch and its associated infrastructure. To accept such grant funds, the City must sign a proposed grant agreement, attached as Exhibit "B" ("Grant Agreement").

H. City Council finds that entering into the Services Agreement and Grant Agreement is necessary to safeguard the City's critical water supply infrastructure and is in the best interests of the City water utility ratepayers and the city as a whole.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Manager is hereby authorized to execute a Services Agreement substantially in the form of Exhibit "A", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

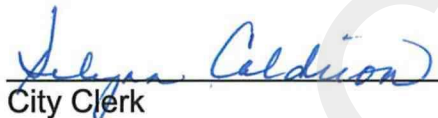
Section 2. The City Manager is hereby authorized to execute a Grant Agreement substantially in the form of Exhibit "B", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on September 3, 2024.



Mayor Pro Tem

ATTEST:


City Clerk

Effective Date: September 3, 2024
Approving Attorney: Eric Potyondy

INTERGOVERNMENTAL AGREEMENT REGARDING
FOREST HEALTH AND PRE-FIRE MITIGATION SERVICES
THROUGH THE COLORADO STATE FOREST SERVICE

THIS INTERGOVERNMENTAL AGREEMENT FOR FOREST HEALTH AND PRE-FIRE MITIGATION SERVICES ("Agreement"), is made and entered into on the day and year that it is fully executed by all Parties ("Effective Date"), by and between the City of Fort Collins, Colorado, a home rule municipality of the State of Colorado ("City") and The Board of Governors of The Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado, for the use and benefit of the Colorado State Forest Service ("Forest Service"), (collectively, the "Parties").

WHEREAS, the City owns and operates, through Fort Collins Utilities, the Michigan Ditch and associated infrastructure for the purpose of providing raw water for water supply, including for drinking water treatment; and

WHEREAS, between August and December, 2020, the Cameron Peak Fire significantly impacted federal and state lands abutting the Michigan Ditch; and

WHEREAS, the City has identified a need to develop and execute forest health treatment activities in priority areas at risk of future large scale catastrophic wildfires with regards to pre-fire mitigation thinning, fuel breaks and forest restoration; and

WHEREAS, the Colorado State Forest Service (CSFS) is willing to develop and provide access to environmental information and expertise to provide relevant data analysis and to complete certain forest fuels reduction work to mitigate the risk of future large scale wildfires; and

WHEREAS, the Parties desire to enter into an intergovernmental agreement setting forth the terms for development and access to CSFS resources regarding data analysis, forest fuels treatment and hazards mitigation; and

WHEREAS, the Parties have authority pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Independent Contractors. It is understood and agreed by the parties that the CSFS is an independent contractor with respect to the City and that this Agreement is not intended and shall not be construed to create an employer/employee or a joint venture relationship between the CSFS and the City. The CSFS shall be free from the direction and control of the City in the performance of the CSFS's obligations under this Agreement, except that the City may

indicate specifications, standards requirements and deliverables for satisfaction of the CSFS's obligations under this Agreement.

2. Term. This Agreement shall be effective on the date of final signature (the "Effective Date") and shall terminate five years thereafter, unless sooner terminated as provided herein or extended by written agreement of the Parties.
3. Scope of Work. The CSFS agrees to perform the services (the "Services") generally described in the Scope of Work attached hereto and made a part hereof as Exhibit A, and as may be more specifically set forth in project work orders issued pursuant to this Agreement, under the direction and supervision of the Principal Investigator identified in Exhibit A.
4. Compensation.
 - 4.1. As described in Appendix A, the Michigan Ditch Pre-Fire Mitigation Phase 1 work will be completed using funding from: a Colorado State Forest Service Forest Restoration and Wildfire Risk Mitigation Grant (\$508,000); Congressional Directed Spending Contribution (\$500,000); and funding from the City (\$500,000). The CSFS will use City funding under this Agreement for Phase I.
 - 4.2. As compensation for the Services rendered under this Agreement, City agrees to pay the CSFS in accordance with the payment terms generally set forth in the Scope of Work and as clarified or modified by project work orders issued pursuant to this Agreement.
 - 4.3. In no event shall the total amount paid by the City through such project work orders exceed the sum of five-hundred thousand dollars (\$500,000.00).
5. Ownership of Information. At all times during and following the term of this Agreement, including any extensions or renewals hereof, all records, information and data provided to the CSFS by the City or developed during the performance of the Services under this Agreement by the CSFS and/or the City ("Project Records") shall be and remain the sole property of the City. The CSFS retains the right to use the Project Records for academic and research purposes; subject to prior written notice to and approval from the City before publication, which the City shall not unreasonably withhold. Except as provided in paragraph 7 of this Agreement, the CSFS shall provide any Project Records or return to the City upon request after termination of this Agreement.
6. Reporting Requirements.
 - 6.1. The CSFS agrees that it will make all Project Records as defined in the Scope of Work or project work orders available to City at any reasonable time, subject to the reporting requirements set forth in the Scope of Work.

6.2. City shall have the right to audit the records of the CSFS, to the extent such records are related to the Services performed under this Agreement, during normal business hours and upon reasonable notice to CSFS. Such audit may include the financial records of CSFS relating to the Services. CSFS shall reasonably cooperate with City in satisfying any requirement or order issued by any governmental agency or court, including but not limited to the inspection of CSFS records or facility.

7. Confidentiality.

7.1. Each Party has certain documents, data, information, and methodologies that are confidential and proprietary to that Party ("Confidential Information"). During the term of this Agreement, either Party may, as the "Disclosing Party," disclose its Confidential Information to the other Party (the "Recipient"), in writing, visually, or orally. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of this Agreement, and for no other purpose (except as may be specifically authorized by the Disclosing Party, in writing). Recipient agrees not to make use of the Confidential Information except for such Services and agrees not to disclose the Confidential Information to any third party or parties without the prior written consent of the Discloser, subject to paragraph 7.4.

7.2. Recipient shall use its reasonable best efforts to preserve the confidentiality of the Confidential Information (using the same or similar protections as it would as if the Confidential Information were Recipient's own, and in any event, not less than reasonable care). Recipient shall obligate its affiliates with access to any portion of the Confidential Information to protect the proprietary nature of the Confidential Information.

7.3. "Confidential Information" shall not include, and Recipient shall have no obligation to refrain from disclosing or using, information which: (i) is generally available to the public at the time of this Agreement; (ii) becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient; (iii) is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality; (iv) has been independently developed by persons in Recipient's employ or otherwise who have no contact with Confidential Information, as proven with written records; or (v) is required to be disclosed by law; provided that, in the event that Recipient is required to disclose Confidential Information under this paragraph 7.3, it will promptly notify the Disclosing Party, and the Disclosing Party may, at its sole discretion and expense, initiate legal action to prevent, limit or condition such disclosure.

- 7.4. With respect to paragraph 7.3, the Parties acknowledge that each is subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, et seq. ("CORA"). If disclosure of any Confidential Information is required pursuant to CORA, the Parties shall reasonably cooperate to review and identify any information not subject to disclosure. However, each Party shall retain the right to proceed in the manner it believes, in its sole discretion and judgment, is required to be compliant with the law with regard to any records request received by that Party.
- 7.5. Notwithstanding any other provision of this Agreement, a Party may retain one copy of the other Party's Confidential Information in its confidential files, for the sole purpose of establishing compliance with the terms hereof.
8. **Equipment.** Unless otherwise provided in the Scope of Work or in a writing signed by the parties, all equipment purchased by CSFS with funds provided under this Agreement for use in connection with this Agreement shall be the property of the CSFS and shall be dedicated to providing Services under this Agreement while this Agreement is in effect.
9. **Liability; Insurance.** Each Party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of the CSFS, and City is at all times herein strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. §§ 24-10-101, et seq. as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act. As public entities of the State of Colorado, neither Party is authorized to indemnify any party, public or private, as against the claims and demands of third parties and any such indemnification provision in this Agreement shall be null and void.
10. **Exclusive Warranty; Disclaimer.** CSFS warrants that it will provide all deliverables under this Agreement substantially in accordance with the Scope of Work and/or written protocol provided by City, including as specified in project work orders. All other warranties, express and implied, are hereby expressly disclaimed **INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE**. CSFS does not perform any Services under this Agreement that may be subject to FDA Regulations, e.g. GMP, cGMP, GLP, GCP work/services. Neither Party is liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether such Party knows or should know of the possibility of such loss or damages). The liability of either Party under this Agreement shall not exceed the amount paid or payable to the CSFS under this Agreement.

11. Termination. Either Party may terminate this Agreement, without cause, upon not less than sixty (60) days written notice, given in accordance with the Notice provisions of this Agreement. Termination of this Agreement shall not relieve a Party from its obligations incurred prior to the termination date. Upon early termination of this Agreement by the City, except in the case of a material breach by CSFS, the City shall pay all costs accrued by the CSFS as of the date of termination including non-cancelable obligations for the term of this Agreement, which shall include all appointments of staff incurred prior to the effective date of the termination. The CSFS shall exert its best efforts to limit or terminate any outstanding financial commitments for which the City is liable. The CSFS shall furnish, within ninety (90) days of the effective termination, a final report of all costs incurred, and all funds received and shall reimburse the City for payments which may have been advanced in excess of total costs incurred with no further obligations to the City.
12. City Representative. The City will designate, prior to commencement of work, its project representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project. CSFS shall direct all requests for contract interpretation, change orders, and other clarification or instruction to the City Representative.
13. Notices. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder will be in writing and will be deemed to have been given when personally delivered or deposited in the United States mail or with an overnight courier, with proper postage and address as follows:

If to State Forest Service:

Weston Toll
5060 Campus Delivery
Colorado State University
Fort Collins, CO 80523-5060
Phone: 970-491-8760
weston.toll@colostate.edu

With a Copy to:

Office of the General Counsel
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Phone: 970-491-6270
contracts@colostate.edu

If to City:

Richard Thorp
City of Fort Collins Utilities
City of Fort Collins
Water Quality Services Division, Watershed

Program
P.O. Box 580
Fort Collins, CO 80522-0580

With a Copy to:

City Attorney's Office
City of Fort Collins
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522-0580

14. **Binding Effect; Third Party Beneficiaries.** This writing, together with the exhibits hereto, constitutes the entire agreement between the Parties and binding upon the Parties, their officers, employees, successors, and permitted assigns, and shall inure to the benefit of the respective successors, and permitted assigns of the Parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
15. **Amendment.** No modification or amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the Parties.
16. **Default; Termination; Dispute Resolution.**
- 16.1. Default. A Party will be considered in default of its obligations under this Agreement if such Party fails to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for 10 days after a non-defaulting Party gives the defaulting Party written notice thereof.
- 16.2. Termination for Cause. In the event of default, a non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice.
- 16.3. Dispute Resolution. Any dispute concerning the performance of this Agreement not resolved by the designated representatives of the Parties shall be referred to superior departmental management staff designated by each Party (which, for CSFS, shall be the Vice President for University Operations, and for the City, shall be the City Manager), whose decisions shall be made within thirty (30) days after notice or such other period as the Parties may agree. Failing resolution at that level, either Party has the right to bring legal action to recover only such damages and remedies as are authorized pursuant to this Agreement, in accordance with Colorado law, and only in a court of competent jurisdiction located within the City of Fort Collins, County of Larimer, Colorado. Notwithstanding any other provision contained herein, neither Party shall be liable to the other for any indirect, consequential, incidental, exemplary (punitive) or special damages. In the event of any default or

dispute, each Party shall be solely responsible for its own attorneys' fees.

17. **Appropriation.** The City's financial obligations under this Agreement are contingent upon the annual appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Agreement shall create a payment guaranty by either Party or a debt or a multiple-fiscal year financial obligation under the Colorado Constitution or any similar provisions of the City's charter or ordinances.
18. **Legal Authority.** Each Party to this Agreement warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind it to its terms. The person(s) executing this Agreement on behalf of a Party warrant(s) that such person(s) have full authorization to execute this Agreement. This Agreement is not binding upon Colorado State CSFS, its governing board or the State of Colorado unless signed by the Associate Vice-President for Finance or his/her authorized delegate.
19. **Survival of Certain Terms.** Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of this Agreement shall survive such termination date.
20. **Waiver.** The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or construed as a waiver of any subsequent breach of the same or other provision hereof.
21. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
22. **Counterparts and Facsimiles.** This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.

[Signatures appear on following page]

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT THE DAY AND YEAR WRITTEN BELOW

<p>CITY:</p> <p>CITY OF FORT COLLINS, A COLORADO MUNICIPAL CORPORATION</p> <p>By: _____ Kelly Di Martino City Manager</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ Name: Title:</p> <p>APPROVED AS TO FORM</p> <p>_____ Eric Potyondy, Assistant City Attorney</p>	<p>STATE FOREST:</p> <p>BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, acting by and through Colorado State University</p> <p>By: _____ Angela Nielsen Director, Office of Budgets</p> <p>Date: _____</p> <p>By: _____ Matthew McCombs State Forester and Director</p> <p>*APPROVED AS TO FORM:</p> <p>By: _____ Brian Anderson, Esq Office of the General Counsel</p> <p>*Not required unless legal changes made to this document</p>
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EXHIBIT A
Scope of Work
Michigan Ditch Pre-Fire Mitigation Phase-1

Work to be completed/deliverables:

Project Summary

Michigan Ditch ("Ditch") is critical infrastructure for the City of Fort Collins ("City") water supply and project work will reduce the risk of future larger-scale wildfires by completing a total of approximately 150 acres of forest fuels reduction work.

The Colorado State Forest Service ("Forest Service") will bill the City, through Fort Collins Utilities, for \$360,000.00 in calendar year 2024 and \$140,000 in calendar year 2025.

Prescription

Three prescriptions: Unit 1, Unit 2, and small (~4-acre) HIZ treatment within Unit 2 around City historic structures.

- Prescription for Unit 1 has a post-harvest target live Basal Area of 70-90 ft² per acre. Dead standing trees 6" dbh will be removed (BA 159 ft² per acre), excluding four snags per acre for wildlife (spruce & fir > 10" dbh). Surface fuels target is 20-30 tons per acre, to maintain soil moisture & provide habitat whilst minimizing potential for high soil burn severity. Prescription calls for removal of live overstory fir greater than 30ft in height at risk of blowdown or declining from western balsam bark beetle.
- Prescription is designation by description, the contractor will conduct treatment based upon the following criteria by tree species.
 - Engelmann Spruce
 - Harvest and remove all dead Engelmann spruce from project area.
 - Retain live Engelmann spruce protected from windthrow, either
 - 30 foot or less total height
 - Or clumped with other live trees in a protected area
 - Sub-Alpine Fir
 - Harvest and remove from project area all merchantable (dead and live) subalpine fir greater than 30 feet in total height to meet basal area targets
 - Retain windfirm, healthy fir where applicable, painted in BLUE
 - Lodgepole Pine
 - Harvest and remove from project area all dead lodgepole pine.
 - Make an effort to retain all live lodgepole pine where operationally feasible.
 - Snags
 - Favor spruce for retaining four snags per acre
 - Exclude areas within 200 feet of the Ditch and associated infrastructure
 - Painted in YELLOW
- Prescriptions for Treatment Unit 2 (Prescription 2&3)
- Prescription 2 has a post-harvest target live Basal Area of 70-90 ft² per acre. All standing dead trees will be removed (BA = 34 ft² per acre), excluding four snags per acre for wildlife (spruce & fir > 10" dbh). Additional removal of live trees will target fir (live BA = 107 ft² per acre) to meet target basal area.

- Engelmann Spruce
 - Harvest and remove from project area all dead Engelmann spruce.
 - Retain live Engelmann spruce protected from windthrow, either
 - 30 foot or less total height
 - Or clumped with other live trees in a protected area
 - Favor spruce for retaining four snags per acre; exclude areas within 200 feet of the Ditch and associated infrastructure
- Sub-Alpine Fir
 - Harvest and remove from project area all merchantable (dead and live) subalpine fir greater than 30 feet in total height to meet basal area targets
 - Thin live young fir stands to meet additional basal area targets
 - Retain windfirm, healthy fir where applicable, painted in BLUE
- Lodgepole Pine
 - Harvest and remove from project area all dead lodgepole pine.
 - Make an effort to retain all live lodgepole pine where operationally feasible.
- Snags
 - Favor spruce for retaining four snags per acre
 - Exclude areas within 200 feet of the Ditch and associated infrastructure
 - Painted in YELLOW
- Within Unit 2 there is an approximately four-acre area that will follow Prescription 3, which reduces fuels surrounding City structures. Guidance follows standards in the 2021 Forest Service HIZ guide. Contractor will be responsible for product removal in Zone 3. In Zone 3 (30 to ≥ 150 ft uphill & parallel to structures, 30 to ≥ 250 ft on downslope of structures) crowns will be thinned to average spacing of 10ft. Retention will favor lodgepole pine > Engelmann spruce > subalpine fir. All dead trees and mistletoe or broom rust infected trees will be cut. Slash piles will be built where operationally feasible.
- Prescriptions for Slash (All Units)
 - For tethered harvest, lop and scatter slash treatment will be employed. Intermediate and co-dominant fir will be cut to create slash mats for minimizing erosion.
 - Helicopter treatment will employ whole tree harvest. Trees will be flown to landing sites along the American Lakes Road for processing, and slash piles built with non-merchantable material. The Forest Service will conduct winter burning operations at a later date.
- Utilization & Slash Management Plan
 - 30-35 CCF sawtimber per acre is anticipated from the treatment area and will be sold to relevant local mills where applicable. Spruce and fir POL are less desirable, so primary markets will be sawtimber and firewood.

Overall Budget Details

- Award (2024): \$508,000 Forest Health and Wildfire Risk Mitigation Grant
- CSFS Congressionally Directed Spending Contribution (2024): \$500,000
- City of Fort Collins under the *Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services Through the Colorado State First Service* (2024) (up to \$500,000)

- Approved budget items include contractual costs to complete the fuels reductions work, personnel/labor, supplies/materials, and indirect costs.
- Assessment & Further Planning
 - The Forest Service will assess the entire project area throughout the treatment process and will adjust as necessary to maximize impact of funding. At completion of tethered treatment, the State Forest Field Office will provide an in-depth plan for further treatment if funding is available

Any proposed changes during this assessment period will be provided to the Forest Service and City Program Managers.

Milestone dates:

- Treatment of the project area will begin in summer of 2024. Initial treatment will be tethered logging of approximately 100 acres of high priority treatment area. Total acres treated in 2024 will depend on operational limitations of tethered harvest machinery.
- In fall 2024, the CSFS will assess connectivity of treated areas and targeted areas, then prioritize remaining areas to apply treatment.
- In winter/spring of 2025, the CSFS will bid and contract the remaining project funds for treating high priority areas through helicopter logging. The CSFS will administer the project, and ensure that non-commercial material at the landing sites along American Lakes Road are piled w/in contract specifications.
- In Fall of 2025, the CSFS will inspect the treatment area for contract closeout.
- In winter of 2026, the CSFS personnel will burn slash piles from the helicopter treatment.
- In Spring of 2026, the CSFS will seed burned areas with native grass mix.
- In Summer of 2026 the City will prepare a report with: acres treated, a treatment map, merchantable volume removed, non-merchantable volume burned, and before and after aerial drone imagery.

Project Completion deadline: April 1, 2028

Standards or Guidelines: Best Management Practices must be followed for all forest management/fuels mitigation work completed under this award. Refer to the handbook Forestry Best Management Practices to Protect Water Quality in Colorado for more information.

Additional helpful resources include:

- The Home Ignition Zone
- CSFS guidelines for Defensible Space and Fuelbreaks
- CSFS guidelines for Pruning Cuts and Pruning Evergreens

All work completed under this award must be certified as meeting minimum CSFS standards prior to any reimbursement being made to the award recipient. CSFS Grant Reimbursement Request Package will be used to both request reimbursement and to certify that work has been completed to minimum standards.



Colorado State Forest Service Financial Assistance Program Project Award Notification

Project Name	Michigan Ditch Pre-Fire Mitigation
Project Number	#8
CSFS Account Number	1929415
CSFS Account Title	SB23-214 FRWRM Program
Estimated Total Project Cost	\$ 1,507,805
Award Amount	\$ 507,805 (Non-pass-through administered by CSFS State Forest Field Office)
Minimum Recipient Match Required	\$ 1,000,000 (\$500,000 City of Fort Collins, \$500,000 CSFS via CDS)
Award Beginning Date	April 1, 2024
Award End Date	April 1, 2028
Federal Funds	No
State Funds	Yes
Other Funds	Congressionally Directed Spending (CDS)

Based on the strength of the application submitted, the Colorado State Forest Service (CSFS) is providing funding in the amount up to but not exceeding **\$ 507,805** to accomplish the project described in the attached Scope of Work (Attachment A).

As the recipient, **City of Fort Collins**, will be reimbursed for allowable costs incurred in implementing the project up to the amount listed above once the following requirements are met:

- Complete work as described in *Attachment A (Scope of Work)* including following Best Management Practices for Forest Management Practices.
- Cost/Match Documentation:
 - Expenses incurred prior to the *Award Beginning Date* will not be reimbursed or used as match.
 - Provide documentation that project funds have been matched at a minimum of **\$ 1,000,000**.
 - Documentation supporting costs and match must be submitted through the local CSFS Field Office for reimbursement. Documentation for all expenses (actual costs and values of items that are not out-of-pocket expenses) and match is required. Follow the guidelines in the "Expense Guidance" tab located in the enclosed CSFS Grant Reimbursement Package.
 - Only actual recipient costs that support accomplishing the Scope of Work as indicated in Attachment A of the Project Award Notification are eligible for reimbursement. Non-recipient costs may be used as match. Non-recipients are third party participants (contributors other than the award recipient) supporting the implementation of the project.
 - In-kind activities will be documented on the current *CSFS In-Kind Cost Documentation Form* using the current volunteer rate **at the time work was completed**. Grant recipients may use a spreadsheet to track hours, however, the information must be summarized in the In-Kind form.
 - In instances where there are multiple landowners involved with providing in-kind services documentation of volunteer hours will come from the *CSFS In-Kind Cost Documentation Form* for each landowner involved with the project and must be signed by the landowner.
 - For projects where the award recipient passes funds to individual landowners, the landowner's labor is reimbursable and valued at the volunteer rate. Reimbursement will only be made to the original award recipient who will then reimburse the landowner. Ex. HOA is the award recipient and makes additional awards to individual landowners. Landowners do the work, submit documentation to HOA, HOA submits reimbursement request for HOA to CSFS, CSFS reimburses HOA, HOA reimburses individual landowner.
 - Grant funds cannot be used for homeowner labor, volunteer labor, personnel coordination or grant administration; however these activities are valuable and can be considered as match.

- Grant funds may not be used to purchase capital equipment unless the equipment was approved and described in Attachment A Scope of Work. Tangible supplies under \$5,000 that contribute to the Scope of Work are allowable if approved and described in Attachment A Scope of Work.
- Project work will be inspected by the CSFS Field Office to certify the work meets the Scope of Work as described in Attachment A. Once all documentation is complete the CSFS Supervisory Forester will sign/date to certify the work and that costs/match are allowable.
- **NEW!** Project Reporting Requirements:
 - Grant recipients will be **required** to submit spatial map data (e.g., shapefiles) with each reimbursement request, indicating the completed project work.
 - A final report, using the CSFS provided template, will be **required** at the completion of the project, along with final project spatial map data and project photos (jpeg). This report must be submitted at the time the final reimbursement request is submitted to avoid having 10% of the total grant award withheld from reimbursement.
- **NEW!** Record Retention/Data Sharing: At all times during and following the Term of this Agreement, including any extensions or renewals hereof, all records, information and data collected or developed during the performance of the Agreement, and any information provided to CSFS by Licensor or developed during the performance of the Agreement shall be owned and retained by CSFS for academic and research purposes, which may include sharing information with CSFS affiliates. Any publishing or information made available to the public will not include personal information of Licensor. Upon request, Licensor may request the removal of Licensor's information or property information on any publishing or information available to the public, and, if feasible, CSFS shall remove such requested information.
- **City of Fort Collins** certifies that neither the award recipient nor any principals represented herein are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

The local CSFS Field Office is responsible for completing the CSFS Reimbursement Paperwork Package with documentation provided by the award recipient.

This funding may be extended at the discretion of the CSFS Program Manager. Requests for extensions must be made in writing **at least 90 days** before the award end date. Requests must be sent to the local CSFS Supervisory Forester and include: why an extension is needed, new timeline for completion, and changes to the Scope of Work (deliverables) if applicable. The CSFS Field Office will review and forward to the appropriate Program Manager for approval. Approvals will be given in writing to the award recipient.

As the award recipient I have read, understand, and agree to the conditions of participating in this financial assistance program.

Award Recipient Signature:

Date:

Award Recipient Name:

Mailing Address:

P.O. Box 580
Fort Collins, CO 80522

Telephone Number:

970-221-6505

Email Address:

kdimartino@fcgov.com

Colorado State Forest Service Financial Assistance Program

Attachment A: Scope of Work

Project Name: #8 Michigan Ditch Pre-Fire Mitigation
CSFS Account Number: 1929415

Work to be completed/deliverables:

Project Summary

Michigan Ditch is critical infrastructure for the City of Fort Collins water supply and project work will reduce the risk of future larger-scale wildfires by completing a total of 150 acres of fuels reduction work. The CSFS State Forest Field Office will be administering the project work outlined in this SOW on behalf of The City of Fort Collins and will encumber grant funds via the CSFS contracting process. The City of Fort Collins will coordinate with the CSFS State Forest Field Office and follow the reimbursement procedures and cost documentation requirements described in the Project Award Notification for tracking and reporting project costs and match.

Prescription

Three prescriptions: Unit 1, Unit 2, and small (~4-acre) HIZ treatment within Unit 2 around City of Fort Collins historic structures.

Prescription for Unit 1 has a post-harvest target live Basal Area of 70-90 ft² per acre. Dead standing trees 6" dbh will be removed (BA 159 ft² per acre), excluding four snags per acre for wildlife (spruce & fir >10" dbh). Surface fuels target is 20-30 tons per acre, to maintain soil moisture & provide habitat whilst minimizing potential for high soil burn severity. Prescription calls for removal of live overstory fir greater than 30ft in height at risk of blowdown or declining from western balsam bark beetle.

Prescription is designation by description, the contractor will conduct treatment based upon the following criteria by tree species. Additional information is provided in Appendix D.

Engelmann spruce

- Harvest and remove all dead Engelmann spruce from project area.
- Retain live Engelmann spruce protected from windthrow, either 30 foot or less total height or clumped with other live trees in a protected area

Sub-Alpine Fir

- Harvest and remove from project area all merchantable (dead and live) subalpine fir greater than 30 feet in total height to meet basal area targets
- Retain windfirm, healthy fir where applicable, painted in BLUE

Lodgepole Pine

- Harvest and remove from project area all dead lodgepole pine.
- Make an effort to retain all live lodgepole pine where operationally feasible.

Snags

- Favor spruce for retaining four snags per acre
- Exclude areas within 200 feet of the Ditch and associated infrastructure
- Painted in YELLOW

Prescriptions for Treatment Unit 2 (Prescription 2&3)

Prescription 2 has a post-harvest target live Basal Area of 70-90 ft² per acre. All standing dead trees will be removed (BA = 34 ft² per acre), excluding four snags per acre for wildlife (spruce & fir > 10" dbh). Additional removal of live trees will target fir (live BA = 107 ft² per acre) to meet target basal area.

Engelmann Spruce

- Harvest and remove from project area all dead Engelmann spruce.
- Retain live Engelmann spruce protected from windthrow, either
 - 30 foot or less total height
 - Or clumped with other live trees in a protected area
- Favor spruce for retaining four snags per acre; exclude areas within 200 feet of the Ditch and associated infrastructure

Sub-Alpine Fir

- Harvest and remove from project area all merchantable (dead and live) subalpine fir greater than 30 feet in total height to meet basal area targets
- Thin live young fir stands to meet additional basal area targets
- Retain windfirm, healthy fir where applicable, painted in BLUE

Lodgepole Pine

- Harvest and remove from project area all dead lodgepole pine.
- Make an effort to retain all live lodgepole pine where operationally feasible.

Snags

- Favor spruce for retaining four snags per acre
- Exclude areas within 200 feet of the Ditch and associated infrastructure
- Painted in YELLOW

Within Unit 2 there is an approximately four-acre area that will follow Prescription 3, which reduces fuels surrounding City of Fort Collins structures. Guidance follows standards in the 2021 CSFS HIZ guide. Contractor will be responsible for product removal in Zone 3. In Zone 3 (30 to ≥ 150ft uphill & parallel to structures, 30 to ≥250 ft on downslope of structures) crowns will be thinned to average spacing of 10ft. Retention will favor lodgepole pine> Engelmann spruce> subalpine fir. All dead trees and mistletoe or broom rust infected trees will be cut. Slash piles will be built where operationally feasible.

Prescriptions for Slash (All Units)

For tethered harvest, lop and scatter slash treatment will be employed. Intermediate and co-dominant fir will be cut to create slash mats for minimizing erosion.

Helicopter treatment will employ whole tree harvest. Trees will be flown to landing sites along the American Lakes Road for processing, and slash piles built with non-merchantable material. CSFS will conduct winter burning operations at a later date.

Utilization & Slash Management Plan

30-35 CCF sawtimber per acre is anticipated from the treatment area and will be sold to relevant local mills where applicable. Spruce and fir POL are less desirable, so primary markets will be sawtimber and firewood.

Budget Details

Award: \$507,805

Match: \$1,000,000 (66.32 %) - City of Fort Collins: \$500,000, CSFS (Via CDS): \$500,000

Approved budget items include contractual costs to complete the fuels reductions work, personnel/labor, and supplies/materials.

Assessment & Further Planning

CSFS will assess the entire project area throughout the treatment process and will adjust as necessary to maximize impact of funding. At completion of tethered treatment, the State Forest Field Office will provide an in-depth plan for further treatment if funding remains. Any proposed changes during this assessment period will be provided to the PI for the FRWRM grant.

Milestone dates:

- Treatment of the project area will begin in summer of 2024. Initial treatment will be tethered logging of approximately 100 acres of high priority treatment area. Total acres treated in 2024 will depend on operational limitations of tethered harvest machinery.
- In fall 2024, CSFS will assess connectivity of treated areas and targeted areas, then prioritize remaining areas to apply treatment and submit plan
- In winter/spring of 2025, CSFS will bid and contract the remaining project funds for treating high priority areas to facilitate highest connectivity. CSFS will administer the project, and ensure that non-commercial material at the landing sites along American Lakes Road are piled within contract specifications.
- In Fall of 2025, CSFS will inspect the treatment area for contract closeout.
- In winter of 2026, CSFS personnel will burn slash piles from the helicopter treatment.
- In Spring of 2026, CSFS will seed burned areas with native grass mix.
- In Summer of 2026 the City of Fort Collins will prepare a report with: acres treated, a treatment map, merchantable volume removed, non-merchantable volume burned, and before and after aerial drone imagery.

Project Completion deadline: **April 1, 2028**

Final Report and reimbursement request due to local CSFS Field Office: **May 1, 2028**

Standards or Guidelines: Best Management Practices must be followed for all forest management/fuels mitigation work completed under this award. Refer to the handbook [Forestry Best Management Practices to Protect Water Quality in Colorado](#) for more information.

Additional helpful resources include:

- [The Home Ignition Zone](#)
- CSFS guidelines for [Defensible Space](#) and [Fuelbreaks](#)
- CSFS guidelines for [Pruning Cuts](#) and [Pruning Evergreens](#)

All work completed under this award must be certified as meeting minimum Colorado State Forest Service standards prior to any reimbursement being made to the award recipient. CSFS Grant Reimbursement Request Package will be used to both request reimbursement and to certify that work has been completed to minimum standards.

File Attachments for Item:

14. Resolution 2025-055 Supporting the Grant Application for Funding for Front Range Passenger Rail Project Planning.

The purpose of this item is to obtain support for the City in applying for funding under the Colorado Department of Local Affairs Energy and Mineral Impact Assistance Fund program.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Seth Lorson, FC Moves
Kerri Ishmael, Utility Financial Operations

SUBJECT

Resolution 2025-055 Supporting the Grant Application for Funding for Front Range Passenger Rail Project Planning.

EXECUTIVE SUMMARY

The purpose of this item is to obtain support for the City in applying for funding under the Colorado Department of Local Affairs Energy and Mineral Impact Assistance Fund program.

STAFF RECOMMENDATION

Staff recommends adoption of the Resolution.

BACKGROUND / DISCUSSION

FC Moves and Engineering, in collaboration with the City of Loveland, are presently pursuing two grant opportunities through the State of Colorado: Energy/Mineral Impact Assistance Fund Grant (EIAF) from the Department of Local Affairs (DOLA) and Nonattainment Area Air Pollution Mitigation Enterprise (NAAPME) Community Clean Transportation Assistance Grant Funding Program from Colorado Department of Transportation (CDOT). This funding will support station location and preliminary design for Front Range Passenger Rail (FRPR), a new passenger rail system along the Front Range. The collaborative request under the NAAPME program is pending.

Both City of Fort Collins and City of Loveland identify the need to commence this preliminary planning effort to align with timing of the FRPR. This initial planning study serves as the catalyst for the cities of Fort Collins and Loveland to align with the vision established by FRPR District, an independent government agency with the mission to plan, design, finance, construct, operate and maintain a new passenger rail system along the Front Range. While a priority to align with future operation of the FRPR, both cities have limited funds to support covering 100% of total project costs.

To support meeting the funding gap for this preliminary planning project, the City, in partnership with the City of Loveland, applied to the DOLA grant program in late March. The cities anticipate using the DOLA grant funds for the local match for the NAAPME grant. DOLA funds are needed regardless of CDOT supporting the preliminary study in full or in part under the NAAPME grant program. The scope of work will be scaled down absent NAAPME funds, supporting both cities in completing preliminary planning to identify station location in Fort Collins and Loveland and to meet the FRPA District's schedule for advanced station planning.

CITY FINANCIAL IMPACTS

Support of FC Moves and Engineering in pursuing funds under DOLA's EIAF grant program does not impact City finances. If the grant is awarded, the City will seek appropriation of such grant funds from Council.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

None.

ATTACHMENTS

1. Resolution 2025-055

RESOLUTION 2025-055
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUPPORTING THE GRANT APPLICATION FOR FUNDING FOR FRONT
RANGE PASSENGER RAIL PROJECT PLANNING

A. The purpose of this item is to show the City's support for application for funding under the Colorado Department of Local Affairs ("DOLA") Energy and Mineral Impact Assistance Fund ("EIAF") program for station location and preliminary design for Front Range Passenger Rail ("FRPR"), a new passenger rail system along the Front Range.

B. The cities of Fort Collins and Loveland identify the need to commence this preliminary planning effort to align with timing of the FRPR. FC Moves and Engineering, in collaboration with the City of Loveland, are presently pursuing grant opportunities through the State of Colorado for this initial planning.

C. This initial planning study serves as the catalyst for the cities of Fort Collins and Loveland to align with the vision established by FRPR District, an independent government agency with the mission to plan, design, finance, construct, operate and maintain a new passenger rail system along the Front Range. It is both cities' priority to align with future operation of the FRPR and to meet the FRPA District's schedule for advanced station planning, but both cities have limited funds to support covering all the initial planning costs.

D. To help fund the preliminary planning project, the City applied to the DOLA grant program in late March. DOLA grant funding requires a demonstration of City support and commitment to the application. This Resolution demonstrates that the City Council has taken official action to endorse the application.

E. Under City Code Section 22-44, the City may accept grants in aid of the construction of any local public improvements.

F. Support of the FC Moves and Engineering departments in applying for this DOLA EIAF grant program does not impact City finances. If the grant is awarded, the City will seek appropriation of the grant funds from City Council.

G. The City Council finds and determines that the adoption of this Resolution advances the public's health, safety, and welfare by facilitating further design and improvement of the City's and region's transportation safety and infrastructure and by facilitating cost-sharing among local, regional, and state entities.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council approves and supports the application for funding for preliminary design and station location planning for the Front Range Passenger Rail and intends to provide required matching funds or other required contributions.

Section 2. The City Council supports the preliminary design and station location planning for the Front Range Passenger Rail and the future operation of the Front Range Passenger Rail.

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Heather N. Jarvis

File Attachments for Item:

15. Resolution 2025-056 Making an Appointment to the Board of Directors of Housing Catalyst.

The purpose of this item is to fill one vacancy on the Board of Directors of Housing Catalyst that has existed since December 31, 2024.

May 6, 2025

AGENDA ITEM SUMMARY

City Council



STAFF

Davina Lau, Public Engagement Specialist

SUBJECT

Resolution 2025-056 Making an Appointment to the Board of Directors of Housing Catalyst.

EXECUTIVE SUMMARY

The purpose of this item is to fill one vacancy on the Board of Directors of Housing Catalyst that has existed since December 31, 2024.

STAFF RECOMMENDATION

Staff recommends adoption of this Resolution.

BACKGROUND / DISCUSSION

This Resolution makes an appointment to fill one vacancy on the Housing Catalyst Board of Directors. The term of Ann Green expired on December 31, 2024, creating a vacancy in the resident seat.

City Code Section 2-474 provides that the Housing Authority shall consist of seven Commissioners appointed as set forth in Colorado Revised Statutes Section 29-4-205. One of such Commissioners may be a City official. Under this method of appointment, each Commissioner shall serve without compensation for a term of five years. No Commissioner shall serve more than two full, consecutive terms.

On April 17, 2025, Councilmember Emily Francis interviewed applicants for the Housing Catalyst Board.

This term will begin immediately upon adoption of this Resolution. The name of the individual recommended to fill this vacancy is listed below.

Housing Catalyst

Appointments	Term Effective Date	Expiration of Term
Heather Clemenshaw (Seat E)	Immediately upon adoption of this Resolution	December 31, 2029

CITY FINANCIAL IMPACTS

None.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

None.

PUBLIC OUTREACH

Public outreach to seek applicants for boards and commissions included a spotlight and press release on the City website, media releases for earned coverage in local media sources, and social media promotion of opportunities.

ATTACHMENTS

1. Resolution 2025-056
2. Application

RESOLUTION 2025-056
OF THE COUNCIL OF THE CITY OF FORT COLLINS
MAKING AN APPOINTMENT TO THE BOARD OF DIRECTORS OF HOUSING
CATALYST

A. The Housing Catalyst Board of Directors has a remaining vacancy due to the expiration of the term of Ann Green.

B. The City Council desires to make an appointment to fill this vacancy on the Housing Catalyst Board.

C. In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the following named person is hereby appointed to fill one of the open vacancies on the Housing Catalyst Board with a term to begin and expire as noted below next to the appointee's name:

Housing Catalyst		
Appointments	Term Effective Date	Expiration of Term
Heather Clemenshaw (Seat E)	Immediately upon adoption of this Resolution	December 31, 2029

Passed and adopted on May 6, 2025.

Mayor

ATTEST:

City Clerk

Effective Date: May 6, 2025

Approving Attorney: Carrie Daggett

VOLUNTEER APPLICATION

Heather Clemenshaw

3/23/2025 5:40 PM

Application: **HC - Housing Catalyst**

Applicant Information

Birthday: [REDACTED] Gender: Female Education Level: Associate degree

Address: [REDACTED] Phone: [REDACTED] <<

Volunteer Groups Applied For

Housing Catalyst

Job Description

☒ I have read the job description

Questions

Which Council District do you live in? Please refer to the map at: <https://gisweb.fcgov.com/HTML5Viewer/Index.html?Viewer=FCMaps&layerTheme=Council%20Districts> 6

I acknowledge I am available when the Housing Catalyst meets: 3rd Thursday of each month at 7:30 a.m.

YES

Current Occupation:

Early Childhood Educator 3.0 (Colorado Shines)

Current Employer:

Young Peoples Learning Center

Prior work experience (please include dates):

Senior Care Partners PACE - 2021
StructurTec- 2020
Solomon Org. 2019-2020 (Same Property as Fairfield Residential and Associated Estates)
Fairfield Residential 2018-2019
Trillium Ventures -2015 - 2018 (same Property as Eenhoorn)
Jaqua Realtors 2014- 2016
Eenhoorn 2015

Volunteer experience (please include dates):

Junior Chamber International (JCI)
Kalamazoo MI Chapter 2014 - 2022
2014 - General Member
2015 - Director
2016 - Executive Vice President
2017 General Member
2018 - Treasurer
2019 - General Member
2020 - Treasurer
2021 - State (Michigan) Elections Committee
2022 - Current - Alumni

2022

Are you currently serving on a City board or Commission? If so, which one?

No

Why do you want to become a member of this particular board or commission?

I would like to be a board member because I am deeply aligned with the mission of providing affordable housing and fostering community development. With my extensive experience in real estate / property management, I understand the importance of building and preserving affordable homes, especially in the context of long-term sustainability. The work Housing Catalyst does in creating partnerships and administering rental assistance for families is something I am passionate about and can strongly contribute to.

Having worked in various sectors of housing, from multi-family and single-family to luxury and investment properties, I bring a comprehensive understanding of the housing landscape. My experience aligns well with Housing Catalyst's work in moving people out of homelessness, stabilizing families, and creating opportunities for self-sufficiency. I am driven by the idea of making a tangible impact in the community and improving lives, and I believe my skills in leadership, community-building, and relationship management will be valuable to the Board of Commissioners.

Additionally, I have experience working with diverse teams and stakeholders, from government entities to vendors, which will support my ability to navigate intergovernmental agreements and partnerships effectively. The time commitment of 5-6 hours per month is something I can readily accommodate, and I am excited about the opportunity to lend my expertise to such a meaningful cause.

I look forward to being part of a board that plays such an important role in shaping the future of affordable housing in Northern Colorado, and I would welcome the opportunity to contribute to Housing Catalyst's continued success.

Have you already had any formal public housing authority commissioners training? (This is not a requirement)

NO

Have you had any exposure to the board or commission you are applying for? If yes, please explain:

Yes;
I have attended two board meetings.

Specify any activities which might create a serious conflict of interest if you are appointed:

None known

Are you willing to complete the required training if appointed?

YES

How did you learn of a vacancy on this board or commission?

Other (please specify);

Heather Clemenshaw

3/23/2025 5:00 PM

Item 15.

Resident Flyer on door at Village on Plum



Home



My Network



Jobs



Messaging




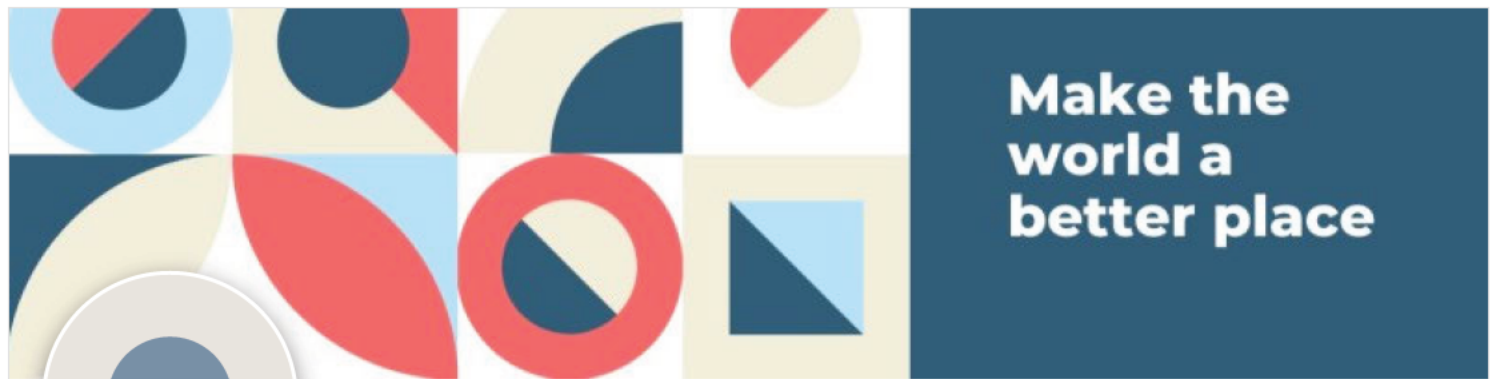
Notifications

Item 15.

Me ▼

Public profile settings

You control your profile and can limit what is shown on search engines and other off-LinkedIn services. Viewers who aren't signed in to LinkedIn will see all or some portions of the profile view displayed below.



Heather R. Clemenshaw
Executive Assistant to CEO, Real Estate Sales Person, National Apartment Leasing Professional (NALP), Early Childhood Educator
Fort Collins, Colorado, United States
1K followers · 500+ connections

[Join to view profile](#)

About

My career in the housing industry has ranged from Multi-Family income based to Luxury Living, Single family ranging from Foreclosures and Investment Properties to Vacation Homes in the Million-Dollar Market. I have been an active participant in the Property Management Association (PMA) and Member of the Greater Kalamazoo Association of Realtors (GKAR). I've held the National Apartment Leasing Professional (NALP) designation as well as a Real Estate Sales



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My Network



Jobs



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Notifications

Item 15.

Me ▼

member of Junior Chamber International (JCI) Kalamazoo, MI Chapter. I have held Board positions including Director, Executive Vice President and Treasurer. I also held a position on the Elections Committee for JCI Michigan.

I am passionate about my career. I work well with clients, contractors / vendors and personnel. I would like to work with a company that will utilize my knowledge, people skills and passion. I take great pride in the Communities and Teams that I lead. My goal is to develop relationships that allow people to feel involved allowing for established expectations to be met and exceeded.

I look forward to new opportunities. I would like to further discuss my qualifications, goals and experience.

Experience



Property Manager

The Solomon Organization

Oct 2019 - Jan 2020 · 4 months

Kalamazoo, Michigan Area

(FORMERLY OWNED BY FAIRFIELD RESIDENTIAL)

Summer Ridge Apartments- 248 units (Kalamazoo, MI)



Property Manager

Fairfield Residential

May 2018 - Oct 2019 · 1 year 6 months

Kalamazoo, Michigan Area

Portfolio Sold October 2019

(FORMERLY OWNED BY ASSOCIATED ESTATES REALTY CORP)

Summer Ridge Apartments- 248 units (Kalamazoo, MI)



Property Manager

Trillium Ventures MSV

Oct 2015 - Apr 2018 · 2 years 7 months

Kalamazoo, Michigan and Grand Rapids, Michigan



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Me ▼

Richmond Hills Apartments 222 Units (Grand Rapids, MI)

REPORT DIRECTLY TO OWNERSHIP

The Landing Apartments- 180 units (Kalamazoo, MI) and

As a Property Manager I was responsible for all facets if the property operations including the general administration and maintenance coordination for the property. My focus is to ensure the properties' revenue and profit targets are...

Show more ▼



Realtor, NALP

Jaqua Realtors

Jun 2014 - 2016 · 2 years

Greater Kalamazoo, Michigan Area

- Help clients buy, sell, and rent property.
- Study property listings, interview prospective clients, accompany clients to property site
- Discuss conditions of sales
- Prepare Real Estate Contracts
- Host Open Houses
- Advertising and Marketing Materials
- Attend Training Courses in Legal Aspects and Marketing and Prospecting
- Attend and Host Property Tours
- Weekly Marketing and Sales Meetings



Property Manager

Eenhoorn LLC

Apr 2015 - Oct 2015 · 7 months

Kalamazoo, Michigan Area

Property Sold 2015 (Trillium Ventures ,MSV)

The Landing Apartments

Remain Current and Compliant with policies and laws affecting the marketing and leasing of the property, including the Company's leasing agreement, Landlord Tenant



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Item 15.

Me ▼

- Approve, Code and Submit all invoices to Corporate Office for payment
- Prepare Purchase Orders
- Responsible...

[Show more ▼](#)


Leasing Specialist

Mission Rock Residential, LLC

Jul 2013 - Mar 2014 · 9 months

Fort Collins, Colorado Area

- Handle incoming phone calls requesting information, appointment setting, and customer service. Follow-up calls on all requests in order to establish positive resident relations.
- Maintain an accurate and in-depth knowledge of all aspects of the community, particularly in areas such as pricing, vacancies, apartment availability, lease expirations, etc.
- Responsible for insuring the model and vacant apartment homes, tour path, and amenities are ready for show.
- Accurately and...

[Show more ▼](#)


Leasing Specialist

Associated Estates Realty Corp

Aug 2011 - Jul 2013 · 2 years

Kalamazoo, Michigan Area

Summer Ridge Apartments 248 Units Kalamazoo, MI

- Commit to resident service & investor value by allowing residents, investors, vendors & all "others" to know what the company stands for & where they are heading.
- Maintain an accurate & in-depth knowledge of all aspects of the community, particularly in areas such as pricing information, apartment availability, lease expirations, etc.
- Handle incoming phone calls & email correspondence for information, appointment setting...

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Education



University of Phoenix

Associate of Arts (A.A.)



Rockford High School and South Haven High School

Diploma

1995 - 1998

Volunteer Experience



General Member

JCI Kalamazoo

Apr 2014 - Dec 2022 · 8 years 9 months

We Build Leaders

The Kalamazoo Jaycees are made up people age 21-40. We focus on Professional Development, Personal Growth and Community Service.

<http://www.kalamazoojaycees.org/what-we-do/>

When I moved to Kalamazoo I wanted to get involved in the local community and meet new people. That is what drew me to the Kalamazoo Jaycees. Little did I know, there is so much more to this amazing organization.

I signed up on the spot while attending a Mix-n- Mingle event. At...

Show more ▼



2015 Director - Kalamazoo Chapter

JCI Michigan

Jan 2015 - Dec 2015 · 1 year

Education



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Me ▼

**2016 Executive Vice President - Kalamazoo Chapter**

JCI Michigan

Jan 2016 - Dec 2016 · 1 year

Education

Focus on Public Relations, Marketing and Chapter Fundraising

**2018 Treasurer - Kalamazoo Chapter**

JCI Michigan

Jan 2018 - Dec 2018 · 1 year

Education

Administer and manage the financial assets and liabilities for the JCI Kalamazoo Chapter.

**Treasurer Board Of Directors 2020 Elect - Kalamazoo Chapter**

JCI Michigan

Jan 2020

Education

Administer and manage the financial assets and liabilities for the JCI Kalamazoo Chapter.

**State Elections Committee**

JCI Michigan

Jan 2021 - Dec 2021 · 1 year

Education

**Alumni**

JCI USA

Dec 2022 - Present · 2 years 4 months

Licenses & Certifications



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Colorado Online

Issued Dec 2023 · Expires Dec 2026

Credential ID PDIS-0000097786

**NALP (National Apartment Leasing Professional)**

National Apartment Association

Credential ID 1300063

**Real Estate Salesperson License**

Career WebSchool

Credential ID 6501383855

[See credential](#)

Courses

Business Information Systems

-

Contemporary Business Communication

-

Cultural Diversity

-

Essentials of Managerial Communication

-

Financial Accounting Concepts and Principles

-

Organizational Ethics and Social Responsibility

-

Legal Aspects



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Marketing and Prospecting

-

Marketing and Sales Meeting

-

Property Tour

-

12 C's of Exceptional Leadership

-

Advanced Leasing

-

Conflict Resolution

-

Customer Service as a Competitive Advantage

-

E-tools for Great Living- Overview of various 3rd party electronic tools and how they work together when electronic data transfers occur and what electronic or manual steps must be performed.

-

Ethics, Dispute Resolution and Fair Housing

-

Fair Housing

-

Fair Housing (Post 9/11)

-

Forms



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Me ▼

Human Trafficking Awareness

-

Internet Leasing

-

It's Showtime

-

Keybox and MLS Training

-

Keys to Successful Leasing

-

Lead to Lease- Yardi Workflow/Take it from the Top- Hands on Yardi Training

-

Leasing Demonstration and Resolving Objections

-

Leasing and the Internet

-

Leasing for a Living

-

Making the Best of Your Chapter Fundraising

-

Member Orientation

-

Miserly Marketing

-



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NAA Legal Aspects

-

Preventing Sexual Harrassment

-

Rental Policies and Procedures

-

Resident Retention for Today's Savvy Customers

-

So I have a Project Idea, Now What?

-

Telephone Presentations

-

Telephone to Visit-Extraordinary Telephone Presentation, Sell an Address, Gathering Information

-

The Leasing Interview and Qualifying Residents

-

The Psychology of Closing

-

Visit to Lease-WOW factor, Greeting , Qualifying, Touring and Demonstration, Overcoming Objectives, Closing the Sale, and Follow-up

-

What's your Brand?

-



Home



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Jobs



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Honors & Awards

Best Year Over Year Revenue Growth

Summer Ridge Apartments

Sep 2019

Best Year Over Year Revenue Growth

-

Sep 2019

Jaycees Michigan Junior Chamber Professional Skills Competition

Jennifer Mansfield- Competitions Chair

Feb 2015

1st Place- Fit for Life Challenge (2014 4th Quarter)

Jaycees Passport to Civic Leadership- 1st Degree

Management Vice President- Tom Quakenbush and Individual Development Program Director-

Jennifer Mansfield

Feb 2015

Each Degree represents a level of achievement in the natural evolutionary Jaycee process to tap the abilities and talents of members. This natural, evolutionary process takes a Jaycee from initiation, to learning, to leading, and finally to teaching. Once completed to the Tenth Degree level the Jaycee has accomplished the true goal of the organization, that of "Leadership Training."

Presidential Award of Excellence

Anna Versalle- 83rd President Kalamazoo Jaycees

Feb 2015

Award of Gratitude for Participation in- Stepping up to be a leader on the Board of Directors

Jaycees Michigan Junior Chamber Professional Skills Competition

Jennifer Mansfield-Competitions Chair

Sep 2014

1st Place- Fit For Life Challenge (2014 3rd Quarter)



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Me ▼

Lisa Miller, MD 82nd President of the Kalamazoo Jaycees

Apr 2014

Enthusiasm for new projects

JCI-USA Certificate of Membership

FayIn Poissant - President The United States Junior Chamber and Joel Harper- Executive

Director The United States Junior Chamber

2014

Our Mission is to provide development opportunities that empower young people to create positive change.

Member of the Michigan Junior Chamber

Kalamazoo Jaycees- 1 year of Service

Lisa Miller, MD 82nd President of the Kalamazoo Jaycees

2014

One Year of Service with the Kalamazoo Jaycees

Best of the Best

Edward Rose and Sons

2003

I was one of the top five leasing consultant within the Edward Rose and Sons Market with 200+ applications in a 12 month period.

Test Scores

Associated Estates Telephone Shop

Score: 95%

Mar 2013

Telephone Shop

"Wow" Factor

Technical



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Notifications

Item 15.

Me ▼

Associated Estates Telephone Shop

Score: 93%

Jan 2012

Telephone Shop

"Wow" Factor

Technical

Total Score 93%

Possible Score 95%

Associated Estates Telephone Shop

Score: 86%

Dec 2011

Telephone Shop

"Wow" Factor

Technical

Test Score 86%

Possible Score 95%

Languages

English

-

Organizations

JCI Kalamazoo

General Memeber, Director, Executive Vice President

Apr 2013 - Present

Greater Kalamazoo Association of Realtors