

**AGREEMENT BETWEEN THE CITY OF FORT COLLINS, COLORADO AND  
BOHEMIAN COMPANIES LLC FOR SHARING OF THE COST OF THE  
PRELIMINARY ARCHITECTURAL DESIGN RELATING TO THE POSSIBLE  
CONSTRUCTION OF A MULTI-LEVEL PARKING GARAGE**

THIS AGREEMENT is made and entered into this 23rd day of June, 2015, between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation, hereafter “Fort Collins,” and BOHEMIAN COMPANIES LLC, a Colorado limited liability corporation, hereafter “Bohemian Companies”.

**WITNESSETH:**

WHEREAS, Bohemian Companies is evaluating the merits of constructing a parking structure to complement the proposed Old Town hotel which Bohemian Companies is considering developing; and

WHEREAS, the City believes it may be in the best interest of the City for Bohemian Companies to construct a multi-level parking structure (the “Parking Structure”) rather than a parking lot; and

WHEREAS, the City and Bohemian Companies are contemplating establishing a separate purchase and sale agreement for the sale by Bohemian Companies of 200 Parking Structure parking spaces to the City; and

WHEREAS, both parties need to know the cost to construct the Parking Structure before entering into that separate purchase and sale agreement; and

WHEREAS, the City and Bohemian Companies have both determined it is in each parties best interest to engage the services of an architectural firm to complete a preliminary design and cost estimate for the Parking Structure (the “Preliminary Design”); and

WHEREAS, both parties agree, for reasons of cost savings, schedule, and continuity of design, for Bohemian Companies’ developers McWhinney Real Estate Services Inc. and Sage Hospitality (jointly, the “Developers”) to complete the Preliminary Design; and

WHEREAS, both parties agree to equally share the cost to contract with McWhinney and Sage Hospitality for the purpose of developing a Preliminary Design for the construction of the Parking Structure; and

WHEREAS, the City and Bohemian Companies seek by this Agreement to memorialize the terms on which they have agreed, in a collaborative manner, to share the cost of the Preliminary Design of the Parking Structure, with the intent that their collaborative undertaking may result in a subsequent and separate purchase and sale agreement for the City to purchase 200 Parking Structure parking spaces.

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. Project Management & Establishment of Third Party Contract. The parties agree that Bohemian Companies will be solely responsible for all activities required to engage and contract the services of the Developers to complete the Preliminary Design for the Parking Structure.

2. Cost Share and Not-To-Exceed Cost. The parties agree to equally share the cost of the Preliminary Design for the Parking Structure. The total not-to-exceed cost for the Preliminary Design shall be \$55,000. In the event the cost of the Preliminary Design exceeds \$55,000, Bohemian Companies shall be solely responsible for all costs associated with such cost overrun unless the parties agree to a written change order. The City's share of the cost shall be solely for reimbursement of the direct cost for contracting with the Developers for the Preliminary Design and shall not include any overhead, administrative costs or similar incurred by Bohemian Companies.

3. City Payment. The City shall pay Bohemian Companies its share of the cost to complete the Preliminary Design up to \$27,500 upon successful completion of the Preliminary Design net 30 days from receipt of the Bohemian Companies' invoice. Bohemian Companies shall promptly provide the City copies of all invoices issued by the Developers for the Preliminary Design upon reasonable request.

4. Project Schedule. Bohemian Companies shall engage the services of the Developers to initiate the Preliminary Design for the Parking Structure within ten (10) business days of the execution of this Agreement. The Preliminary Design must be completed by July 31, 2015.

5. Design Ownership. Bohemian Companies shall retain ownership of the Preliminary Design deliverables. The City shall have the right to retain copies of such deliverables.

6. Term, Modifications, Extensions. This Agreement shall remain in full force and effect through completion of the Preliminary Design unless earlier terminated by mutual written agreement of the parties or as set forth below. This Agreement may be modified only by the written agreement signed by both parties.

7. Termination.

A. If either party fails to perform its obligations under the terms of this Agreement, the non-defaulting party may provide the defaulting party with written notice of the nature and extent of the default. If the default remains uncorrected after thirty (30) days from the date the notice is received, then the non-defaulting party may elect to bring an action for specific performance, or to pursue any other remedies provided for in this Agreement or available at law or in equity.

B. If the parties fail to reach agreement upon any decision which must be reached by mutual agreement under this Agreement, either party may terminate this Agreement upon not less than ten (10) days written notice to the other party. Each party will equally share and be obligated to pay any financial costs related to the Preliminary Design that have been incurred up to the date of termination.

C. The parties are committed to negotiating in good faith in attempting to reach the agreements that are called for in this Agreement.

8. Notices. Any notice, request, demand, consent, or approval, or other communication required or permitted hereunder, shall be in writing and shall be deemed to have been given when personally delivered, faxed, emailed, or deposited in the United States mail with proper postage and addressed as follows:

If to Bohemian Companies:  
Joseph C. Zimlich  
Bohemian Companies LLC  
262 E. Mountain Ave.  
Fort Collins, CO 80524

If to Fort Collins:  
City Manager  
With a copy to: Fort Collins City Attorney  
City of Fort Collins  
300 LaPorte Avenue  
P.O. Box 580  
Fort Collins, CO 80522

9. Relationship of Parties, Non-liability of Individuals, Benefit, No Assignment. The parties enter into this Agreement as separate, independent entities and maintain such status throughout. No officer, agent or employee of either party shall be charged personally or held contractually liable by or to the other party under any term or provision of this Agreement or of any supplement, modification or amendment to this Agreement because of any breach thereof, or because of his, her or their execution or attempted execution of the same. This Agreement is made for the sole and exclusive benefit of the parties, their successors and assigns, and is not made for the benefit of any third party. The parties covenant and agree that they will not assign this Agreement, any interest or part thereof or any right or privilege pertinent thereto, without written consent of the other party first having been obtained and that any assignment without such consent shall be deemed null and void and of no effect.

10. Entire Agreement/Ambiguities. This Agreement embodies the entire agreement of the parties. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. In the event of any ambiguity in any of the terms of this Agreement, it shall not be construed for or against any party hereto on the basis that such party did or did not author the same.

11. Applicable Law, Severability. The laws of the State of Colorado shall be applied in the interpretation, execution and enforcement of this Agreement. The parties also acknowledge and agree that the City, in entering into this Agreement, is subject to certain provisions of the Colorado Constitution and other state law and to provisions in the City's Charter and Code, and that this

Agreement is to be enforced and interpreted in light of those provisions. Any provision of this Agreement rendered null and void by operation of law shall not invalidate the remainder of this Agreement to the extent that this Agreement is capable of execution.

12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.


IN WITNESS HEREOF, this Agreement has been executed the day and year first above written.

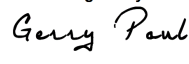
BOHEMIAN COMPANIES LLC  
A Colorado Limited Liability Corporation

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By: \_\_\_\_\_  
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Joseph C. Zimlich, Chief Executive Officer


THE CITY OF FORT COLLINS, COLORADO  
A Municipal Corporation

ATTEST:

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City Clerk

DocuSigned by:  
  
By: \_\_\_\_\_  
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Gerry Paul, Director of Purchasing

APPROVED AS TO FORM:

DocuSigned by:  
  
\_\_\_\_\_  
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Deputy City Attorney