

VIBRANT NEIGHBORHOODS GRANT AGREEMENT

THIS VIBRANT NEIGHBORHOODS GRANT AGREEMENT (“Agreement”), effective as of 26th day of December, 2017 (the “Effective Date”), by and between the City of Fort Collins, a Colorado municipal corporation (the “City”), and Village West/Lexington Green Pool and Tennis Court Association, a Colorado nonprofit corporation (“Recipient”).

WHEREAS, on September 29, 2017, Lloyd Walker, on behalf of Recipient, submitted an application to the City for financial assistance as part of the City’s Vibrant Neighborhoods Grant program; and

WHEREAS, the Vibrant Neighborhoods Grant program is designed to provide funding to support neighborhood projects which have been envisioned by neighbors through discussions around neighborhood priorities; and

WHEREAS, Recipient’s proposed use of the funding includes installing an open sided roofed structure with seating, a bike repair station, bicycle parking and updated landscaping; and

WHEREAS, Recipient’s outreach to neighborhood stakeholders and through grassroots efforts prior to seeking this funding is in alignment with the Vibrant Neighborhoods Grant program objectives, and aligns with programmatic goals of improving connections among residents, stakeholders and the City; and

WHEREAS, City staff has determined funding Recipient’s project is in furtherance of the City’s Vibrant Neighborhoods Grant program; and

WHEREAS, the parties desire to formalize their agreement to fund Recipient’s project as further set forth herein.

NOW THEREFORE, the undersigned parties hereto agree as follows:

1. Statement of Objectives. To provide an outdoor facility to members of the general public that can serve as a shelter for gathering and social interaction, and to encourage bicycle usage by providing a bike repair station and bicycle parking; all of which aligns with multiple City objectives which include: strong, connected neighborhoods and high quality recreational amenities, protecting and preserving the City’s quality of life and neighborhoods, and accommodating multiple means of travel.
2. Deliverables. Recipient agrees to undertake the work in accordance with the Statement of Deliverables attached hereto as Exhibit “A”, consisting of one (1) page (the “Project”), and incorporated herein by this reference. Irrespective of references in Exhibit A to certain named third parties, Recipient shall be solely responsible for performance of all duties hereunder. Recipient agrees to complete the work in compliance with the financial limits established by the project budgets set forth in Exhibit A.

3. Funding.

- a. City shall pay Recipient Forty Thousand Three Hundred Fifty Dollars (\$40,350.00) in a single lump sum payment to develop and execute the Project, subject to Recipient's completion of the work required herein to the City's satisfaction. Recipient shall apply the funds received from the City under this Agreement in furtherance of the work set forth in Exhibit A. Four Thousand Thirty-Five Dollars (\$4,035.00) shall be held by the City as contingency (the "Contingency"). Recipient may request payment of a portion or all of the Contingency for costs in excess of those set forth in Exhibit A. Such request must be submitted in writing and shall specifically state the reasons for the request and include supporting documentation. Payment of any or all of the Contingency shall be in the discretion of the City, and all such requests shall be reviewed and approved or denied by the City. In no event shall the City's funding obligation to Recipient under this Agreement exceed Forty-Four Thousand Three Hundred Eighty Five Dollars (\$44,385.00).
- b. In the event the City determines any funds were expended by Recipient for unauthorized or ineligible purposes – or the expenditures constitute disallowed costs in any other way – the City may order repayment of the same. Recipient shall remit the disallowed amount to the City within thirty (30) days of written notification of the disallowance.
- c. The Recipient agrees that funds determined by the City to be surplus upon completion of the Project will be subject to cancellation by the City. The City shall be relieved of any obligation for payments if funds allocated to the City cease to be available for any cause other than misfeasance of the City itself. The City reserves the right to withhold payments pending timely delivery of program reports or documents as maybe required under this Agreement. The City reserves the right to withhold payments if Recipient fails to obtain necessary permits to undertake work identified in Exhibit A.
- d. Any funds distributed to Recipient not necessary to carry out the Project shall be returned to the City within thirty (30) days of completion of the Project. Recipient shall provide the City with copies of receipts for all Recipient's expenditures using City funds by July 1, 2018.
- e. In the event the Project's costs exceed the funding provided under this Agreement, Recipient shall remain responsible for completing the work identified

in Exhibit A and shall be responsible for obtaining any and all funds necessary to complete said work.

4. Reporting. Within thirty (30) days of completion of the Project, Recipient shall provide the City a written report documenting accomplishments, results achieved, community impact, areas for improvement/deficiencies, and monetary and other benefits, including jobs created if applicable. The City will prescribe the format for all reports.
5. Term. This Agreement shall commence on the Effective Date and shall continue in full force and effect until July 1, 2018, unless sooner terminated as herein provided. Notwithstanding other provisions of this Agreement, the terms of this Agreement shall cover the period that Recipient has control over City funds.
6. Early Termination. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to Recipient. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.
7. Close-Out. Upon termination of this Agreement, in whole or in part for any reason including completion of the Project, the following shall apply:
 - a. Recipient shall submit within thirty (30) days after the date of expiration of this Agreement, all financial, performance and other reports required by this Agreement, and if requested by the City, will cooperate in a program audit by the City or its designee.
 - b. Recipient shall return to the City any funding not otherwise expended or committed, along with a full accounting of all expenditures and commitments. Recipient shall return said funding with the accounting no later than thirty (30) days after the termination date.
8. Failure to Perform. In the event of a failure by Recipient to comply, with any terms or conditions of this Agreement or to provide in any manner the activities or other performance as agreed herein, the City reserves the right to temporarily withhold all or any part of payment pending correction of the deficiency, suspend all or any part of the Agreement, or prohibit the Recipient from incurring additional obligations of funds until the City is satisfied that corrective action has been taken or completed. The option to withhold funds is in addition to, and not in lieu of, the City's right to terminate as provided in Section 6 of the Agreement.
9. Notice. Any notice given under this Agreement will be in writing and will be deemed given (a) when delivered personally; (b) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (c) two (2) days

after deposit with a commercial overnight carrier with confirmed verification of receipt. All communications will be sent to the addresses set forth below or to such other address as may be designated by a party in writing pursuant to this Section:

City:
Fort Collins Neighborhood Services
ATTN: Emily Allen
Senior City Planner
P.O. Box 580
Fort Collins, CO 80522

Recipient:
Village West/Lexington Green Pool
and Tennis Court Association
ATTN: Michael Rozell
2519 S Shields St. #189
Fort Collins, CO 80526

With copy to:
City Attorney's Office
P.O. Box 580
Fort Collins, CO 80522

10. Subject to Annual Appropriation. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.
11. Use of Name. Neither party obtains by this Agreement any right, title, or interest in, or any right to reproduce or to use for any purpose, the name, tradenames, trade- or service marks, or logos (the "Marks"), or the copyrights of the other party. Neither party will include the name of the other party or of any employee of that party in any advertising, sales promotion, or other publicity matter without the prior written approval of that other party.
12. Warranty. Recipient warrants that all deliverables provided under this Agreement shall be provided substantially in accordance with the Statement of Deliverables.
13. Compliance with Applicable Law. Recipient warrants and agrees that it shall undertake all work required herein in accordance with all applicable federal, state and local laws, rules and regulations. If the Project involves a specific site or location, the Recipient shall obtain all appropriate permissions to use said site or location.
14. City Representative. Prior to commencement of the work, the City will designate its representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the Project. Any questions or requests shall be directed to the City's representative.

15. Audit. The City reserves the right to audit Recipient's compliance with this Agreement and use of the funds provided by the City. Recipient agrees to make all records pertaining to activities undertaken under this Agreement available to the City for audit upon request for a minimum of three (3) years following the completion of the Project.
16. Independent Contractor. The work performed by Recipient is that of an independent contractor and not of an employee of the City of Fort Collins.
17. Assignment. Recipient shall neither assign any responsibilities or delegate any duties arising hereunder without the prior written consent of the City.
18. Subcontractors. Recipient may subcontract the work set forth in Exhibit A only with the prior written consent of the City, which shall not be unreasonably withheld. If any of the work is subcontracted hereunder (with the consent of the City), then the following provisions shall apply: (a) the subcontractor must be a reputable, qualified firm with an established record of successful performance in its respective trade performing identical or substantially similar work; (b) the subcontractor will be required to comply with all applicable terms of this Agreement; (c) the subcontract will not create any contractual relationship between any such subcontractor and the City, nor will it obligate the City to pay or see to the payment of any subcontractor; and (d) the work of the subcontractor will be subject to inspection by the City to the same extent as the work of the Recipient.
19. Illegal Aliens. Pursuant to Section 8-17.5-101, C.R.S., et. seq., Recipient represents and agrees that:
 - a. As of the date of this Agreement:
 - i. Recipient does not knowingly employ or contract with an illegal alien who will perform work under this Agreement; and
 - ii. Recipient will participate in either the e-Verify program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, administered by the United States Department of Homeland Security (the "e-Verify Program") or the Department Program (the "Department Program"), an employment verification program established pursuant to Section 8-17.5-102(5)(c) C.R.S. in order to confirm the employment eligibility of all newly hired employees to perform work under this Agreement.

- b. Recipient shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or knowingly enter into a contract with a subcontractor that knowingly employs or contracts with an illegal alien to perform work under this Agreement.
- c. Recipient is prohibited from using the e-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
- d. If Recipient obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Recipient shall:
 - i. Notify such subcontractor and the City within three days that Recipient has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
 - ii. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not cease employing or contracting with the illegal alien; except that Recipient shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- e. Recipient shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation that the Department undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.
- f. If Recipient violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the City may terminate this Agreement. If this Agreement is so terminated, Recipient shall be liable for actual and consequential damages to the City arising out of Recipient's violation of Subsection 8-17.5-102, C.R.S.
- g. The City will notify the Office of the Secretary of State if Recipient violates this provision of this Agreement and the City terminates the Agreement for such breach.

20. Non-discrimination. All programs assisted with funding through the City must be made available without discrimination based on race, color, national origin, age, sex, sexual orientation, religion, familial status or disability. Funds provided under this Agreement must not be used for religious activities, to promote religious interests, or for the benefit of a religious organization, except incidentally to the public purpose provided by the activities funded.
21. Resolution of Disputes. The parties agree that if any of the terms herein are subject to questions of intent or interpretation or if the parties identify other issues not addressed in this Agreement, they will enter into good faith negotiations to resolve any such issues. Resolution of any such issues will be confirmed by a written amendment to this Agreement.
22. Binding Effect. This writing, together with the exhibits hereto, constitutes the entire agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.
23. Law/Severability. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement 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 Agreement.
24. No Pecuniary Gain. The signatories maintain that, to the best of their knowledge, no City employee has a personal or financial interest whatsoever in the service or property described herein. While there may be City employees that work with the Recipient, no such employees are parties hereto or will receive payment through the receipt of the grant funds provided hereunder.
25. Indemnification. The Recipient shall indemnify, save and hold harmless the City, its officers, employees and agents against any and all claims, damages, liability and court awards, including costs, expenses and attorney fees incurred as a result of any act or omission by the Recipient, its employees, subcontractors, agents, or assignees arising from their performance under this Agreement or arising from the Project. Recipient shall be responsible, and shall hold the City harmless, for expenses not covered by this Agreement, including, but not limited to, those associated with replacement, installation and maintenance of any improvements identified in Exhibit A.

26. Public Records. The City is subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, *et seq.* (“CORA”). Thus, documents and other materials received by the City and its employees under this Agreement from the Recipient may be subject to public disclosure unless they fall within an exception under CORA. The City will deny the right of inspection of records which the City believes are considered under the Act to be trade secrets, privileged information, and confidential commercial and financial data, any of which Recipient must clearly indicate at the time it is provided to the City. Upon receiving an official open records request, the City will promptly notify the Recipient and as needed, seek legal guidance from the City Attorney’s Office.

27. Authority. If the Recipient is a corporation, association or other entity, the person signing this Agreement on behalf of the Recipient hereby affirms that he or she has authority to act on behalf of the Recipient and to bind the Recipient to the terms of this Agreement.

THE CITY OF FORT COLLINS, COLORADO

DocuSigned by:
Darin Atteberry
By: _____
0F393F2B13434CC...
Darin A. Atteberry, City Manager

DATE: 1/10/2018

ATTEST:

DocuSigned by:
Delynn Coldiron

DA94696740DA4BA...
City Clerk

Delynn Coldiron
Name

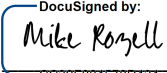
APPROVED AS TO FORM:

DocuSigned by:
RA

59650EAB82EA47D...
Assistant City Attorney

Ryan Malarky
Name

VILLAGE WEST/LEXINGTON GREEN POOL
AND TENNIS COURT ASSOCIATION

By:  _____
CC39F884578D434...

Title: President

Date: 1/9/2018

EXHIBIT A**Statement of Deliverables**

- I.** Installing an open sided roofed structure with seating, a bike repair station, bicycle parking and updated landscaping
- a. Desired Outcome: To provide an outdoor facility to members of the general public that can serve as a shelter for gathering and social interaction, and to encourage bicycle usage by providing a bike repair station and bicycle parking
 - b. Evaluation Tools: New facility is available for use by members of the neighborhood and the general public
 - c. Activities:

Activity Name	Start Date	End Date	Manager	Output	Award Amount
Removing existing turf from site	12/15/2017	1/15/2018	Michael Rozell	Site is cleared and ready for concrete installation	\$2,000.00
Procurement and Installation of Concrete	2/15/2018	3/15/2018	Michael Rozell	Concrete for structural slab, walkways, and bike station is installed	\$5,000.00
Irrigation Retrofit	2/15/2018	3/15/2018	Michael Rozell	Existing irrigation is updated where affected by concrete	\$1,000.00
Procurement and installation of shelter	3/15/2018	4/1/2018	Michael Rozell	New structure provides shelter and meeting space	\$20,000.00
Procurement and installation of bike racks, bike station, picnic tables, and benches	3/15/2018	4/1/2018	Michael Rozell	Facilities are available for sitting under the shelter and parking or repairing bicycles	\$9,250.00
Procurement and installation of Landscaping	4/1/2018	5/15/2018	Michael Rozell	New plantings help to beautify area	\$2,500.00
Professional Design Assistance	12/15/2017	1/15/2018	Michael Rozell	A guiding document is created to aid in the implementation of the project	\$600.00
				Total:	\$40,350.00