

RESOLUTION 2017-032
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND THE
COMMUNITY FOUNDATION OF NORTHERN COLORADO CONCERNING THE
CREATION OF THE CITY OF FORT COLLINS FOUNDATION FUND

WHEREAS, the City Council wishes to facilitate a funding mechanism that would allow individuals and private companies to help fund certain City projects and initiatives with their private and tax-deductible contributions in support of the City's mission of providing world-class services through operational excellence and a culture of innovation as an alternative to a direct donation to the City; and

WHEREAS, the Community Foundation of Northern Colorado (the "Community Foundation") is a tax-exempt community foundation that has served charitable causes and organizations in Fort Collins and other communities in Northern Colorado since it was established in 1975 by receiving, administering and disbursing contributions for their benefit;

WHEREAS, the Foundation currently has over \$98 million in assets that it administers for these causes and organizations; and

WHEREAS, the Foundation is interested in establishing a City of Fort Collins Foundation Fund (the "Fund") to which individuals and private companies can make their private and tax-deductible contributions to be used to benefit City projects and activities; and

WHEREAS, it is the City's wish that the City projects and activities to be funded with grants from the Fund be City capital projects and operational activities needing additional one-time funding, such as matching funds required for another grant being received by the City, and not for on-going funding needs; and

WHEREAS, to accomplish this, attached as Exhibit "A" is an Agreement to set out the mutual expectations for the terms and conditions under which the Fund will be administered and the manner in which its funds may be used for future City projects and activities (the "Agreement"); and

WHEREAS, the Agreement provides that the Foundation will establish an "Advisory Committee," the members of which will be selected by the Foundation with initial input from the City Council, and the members of Advisory Committee are to be philanthropic-minded, committed to sustaining a vibrant and healthy community, and committed to equity and inclusion within the community; and

WHEREAS, the role of the Advisory Committee will be to work with the Foundation to coordinate fundraising activities for the Fund and to serve as a liaison with the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes any and all determinations and findings contained in the recitals set forth above.

Section 2. That Agreement is hereby approved and the City Manager is authorized to enter into the Agreement on the City's behalf.

Section 3. That the City Manager is hereby authorized to execute the Agreement substantially in the form attached hereto as Exhibit "A", together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines necessary and appropriate to protect the interests of the City or further the purposes of this Resolution, as set forth above.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of March, A.D. 2017.



Mayor

ATTEST:

City Clerk

Agreement between the City of Fort Collins and the Community Foundation of Northern Colorado Concerning the Creation of the City of Fort Collins Foundation Fund

THIS AGREEMENT is made and entered into this __ day of March, 2017, by and between the Community Foundation of Northern Colorado (the "Foundation") and the City of Fort Collins, Colorado (the "City").

WHEREAS, the Foundation is a tax-exempt foundation, established and operating as a community foundation and the City is a Colorado home rule municipality; and

WHEREAS, the City wishes to enter into this Agreement in order to provide a funding mechanism that would allow citizens and private companies the opportunity to help fund certain City projects and initiatives with their private and tax-deductible contributions in support of the City's mission of providing world-class services through operational excellence and a culture of innovation, as an alternative to making a direct donation to the City; and

WHEREAS, it is the City's wish that the City projects and activities to be funded with grants from the Fund be City capital projects and operational activities needing additional one-time funding, such as matching funds required for another grant being received by the City, and not for on-going funding needs; and

WHEREAS, to accomplish this, the City and the Foundation are entering into the Agreement to provide for the establishment of a special fund that will be maintained and operated by the Foundation in accordance with its Articles of Incorporation and Bylaws and this Agreement.

NOW, THEREFORE, the Foundation and the City agree:

1. **Overview:** The Foundation shall establish the City of Fort Collins Foundation Fund (the "Fund"). The Foundation shall maintain a separate accounting for the Fund that shall be increased with contributions and income to the Fund, and decreased with grants, expenses and disbursements from the Fund. The Fund is not a trust or a separate legal entity of any kind.
2. **Contributions:** The Foundation shall receive, commingle, invest and reinvest the contributions to the Fund and any proceeds from the sale of the contributed property as a part of the general funds and investments of the Foundation.
3. **Distributions:** The organization designated to receive grants from the Fund is the City. Except as permitted in this Agreement, monies from the Fund shall only be disbursed for City projects or activities. However, if the City ceases to exist, disbursements may be made as determined by the Board of Trustees of the Foundation, at its discretion, to an organization or cause as similar as practicable to typically City projects and activities. The Fund is not currently endowed, so it will not be subject to a spending policy.
4. **Advisory Committee:** The Foundation will establish and appoint, with initial input from the Fort Collins City Council, the members of an Advisory Committee for the Fund. The

Advisory Committee will be made up of philanthropic-minded citizens from the Fort Collins community who are committed to sustaining a vibrant, healthy community including a commitment to equity and inclusion within the community. The role of the Advisory Committee will be to work with the Foundation to coordinate fundraising activities for the Fund and to serve as a liaison with the City.

5. **Governance:** The Board of Trustees of the Foundation has expressed its general intention to make grants from the Fund in accordance with the specific designations of donors related to various City projects. . However, as required by the Internal Revenue Code and Regulations, the Fund shall only be used in furtherance of the Foundation’s charitable purposes. The Foundation shall retain ultimate authority and control over the investment, expenditure, distribution and grants of principal and income from the Fund. The Foundation shall have the power to modify any restriction or condition on the distribution of funds for any specific City project or activity if in the sole judgment of the Foundation’s Board of Trustees (without the approval of any trustee, custodian or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment or inconsistent with the charitable purposes for which the Fund is being created.

6. **Charitable Purposes:** Funds and assets of the Foundation may only be used for the "charitable purposes" described in the Articles of Incorporation of the Foundation as educational, scientific, literary, public or other purposes permitted to be carried on by organizations described in Sections 170(c)(1) and 170(c)(2) of the Internal Revenue Code of 1954, as amended, and corresponding provisions of future revenue laws.

7. **City Council Acceptance of Grants:** The Foundation acknowledges and agrees that the decision of whether the City accepts any grant from the Fund is subject to the Fort Collins City Council’s sole discretion.

8. **Administrative Provisions:** The Foundation will hold and administer the Fund in accordance with the terms of this Agreement and all procedures, rules and regulations of the Foundation; including future amendments thereto (all of which provisions and amendments are incorporated by reference). The Foundation will charge a 1% fee on all incoming gifts as a share of the Foundation’s operating and administrative expenses for the Fund.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

COMMUNITY FOUNDATION OF NORTHERN COLORADO:

By _____
Ray Caraway, President

CITY OF FORT COLLINS, COLORADO:

By _____
Darin A. Atteberry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney