

RESOLUTION 2017-043
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT WITH
COLORADO STATE UNIVERSITY REGARDING THE PROSPECT ROAD
AND CENTRE AVENUE BICYCLE AND PEDESTRIAN UNDERPASS

WHEREAS, the City and Colorado State University (CSU) are parties to an Intergovernmental Agreement dated April 13, 2015, regarding the impacts of the new on-campus stadium on the CSU campus and surrounding areas of the City (the "2015 IGA"); and

WHEREAS, as part of the 2015 IGA, CSU agreed to construct or fund the construction of certain improvements at the Prospect Road and Centre Avenue intersection, including construction of an underpass under Prospect Road; and

WHEREAS, certain components of the underpass are within the City's right-of-way, and other components are on CSU property outside the right-of-way; and

WHEREAS, the City and CSU have negotiated an agreement regarding ownership and maintenance responsibility for the underpass, as described in the proposed Memorandum of Understanding (Prospect and Center Underpass) attached as Exhibit "A" and incorporated herein by reference (the "MOU"); and

WHEREAS, under the MOU, the City would assume ownership and maintenance responsibility for the underpass structure and electric lighting system located in the right-of-way, and CSU would own and maintain all structures outside of the right-of-way, as well as landscaping, irrigation and storm sewer systems; and

WHEREAS, the City would own and maintain the underpass structure in the right-of-way as part of its Bridge Program, and would own, operate and maintain the electric lighting system in the right-of-way as part of its streetlighting program; and

WHEREAS, Article II, Section 16 of the City Charter of Fort Collins 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; and

WHEREAS, under Section 1-22 of the City Code, intergovernmental agreements and other cooperative arrangements between the City and other governmental entities are to be submitted to the City Council for review, unless they fit within one of the exceptions that permit execution by the City Manager; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such 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; and

WHEREAS, the Council finds it is in the best interests of the City and in furtherance of the objectives of the 2015 IGA to enter into the MOU.

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

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

Section 2. That the City Manager is hereby authorized to execute the Memorandum of Understanding (Prospect and Center Underpass) in substantially the form attached hereto as Exhibit "A," with such modifications and additions 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 set forth herein and not otherwise inconsistent with this Resolution.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 16th day of May, A.D. 2017.




Mayor

ATTEST:



City Clerk

**MEMORANDUM OF UNDERSTANDING
(PROSPECT AND CENTER UNDERPASS)**

This Memorandum of Understanding (the "Agreement") is made and entered into this ____ day of _____, 2017, by and between the CITY OF FORT COLLINS, COLORADO, a Municipal Corporation, (the "City") and the BOARD OF GOVERNORS of the COLORADO STATE UNIVERSITY SYSTEM, acting by and through COLORADO STATE UNIVERSITY (the "University").

RECITALS

- A. In the Intergovernmental Agreement Related To An On-Campus Stadium dated April 13, 2015 (the "Stadium IGA") the University agreed to construct or fund certain improvements at the Prospect Road and Centre Avenue intersection including an underpass below Prospect Road (the "Underpass");
- B. In connection therewith, the University granted to the City a Deed of Dedication for Right-of-Way which was recorded at the Larimer County Clerk and Recorder on June 24, 2016 at No. 20160040358 ("Right-of-Way"); and
- C. This Agreement is intended to clarify the rights and responsibility of the parties concerning the ownership and maintenance of the Underpass and adjoining Right-of-Way areas.

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **General Purpose.** The general purpose of this Agreement is to allocate the responsibility of the parties for the operation and maintenance of the Underpass and adjoining right-of-way areas, which are shown on **Exhibit A** to this Agreement and incorporated herein by this reference. The Underpass is approximately 18' wide by 9' tall by 92' long, through the City's right-of-way on Prospect Road. The project also contains ramps, retaining walls, stairs, landscaping, and storm sewer infrastructure. These components are on University property, outside of the City's right-of-way.
2. **Ownership and Maintenance of Improvements.** The City and University agree to each be responsible for the maintenance of the Underpass and related areas as set forth below:
 - (a) **City Responsibilities.** As of December 6, 2016, the date that the Underpass opened to the public, the City has assumed ownership and maintenance responsibilities for:
 - (i) Snow removal for the Prospect Road and Center Avenue roadways (curb to curb);
 - (ii) Signing and striping with the City's right-of-way;

(iii) The traffic signal system, and all appurtenances at the Prospect and Center intersection; and

(iv) Closing the Underpass when large storm events make the Underpass unsafe for users.

(b) **Additional City Responsibilities.** Commencing on November 1, 2017, the City will assume ownership and maintenance responsibilities for:

(i) The “Structure” within the Prospect right-of-way which will be defined as: H-piles, sheet piling and all concrete (pre-cast and cast-in-place), and headwalls within the City’s Right-of-Way; and

(ii) Electrical lighting circuit, fixtures, and all appurtenances for the Underpass structure.

(c) **University Responsibilities.** As of December 6, 2016, the University has assumed ownership and maintenance responsibilities for:

(i) Snow removal for the at-grade sidewalks adjacent to the Underpass, the ramps from Bay Drive to Lake Street, the structure under Prospect Road and the two sets of stairs associated with the Underpass;

(ii) Maintenance of the sidewalks as shown on **Exhibit A**;

(iii) All lighting associated with the ramps, outside of the City's Right-of-Way;

(iv) All landscape and irrigation systems installed with the Underpass project, including the Right-of-Way area;

(v) Pre-cast concrete walls outside of the City’s Right-of-Way;

(vi) Storm sewer system and all appurtenances related to the Underpass;

(vii) Retaining walls;

(viii) Signing and striping for the Underpass only; and

(ix) Items listed in 2(b) above until November 1, 2017.

(d) **Failure to Maintain Improvements.** In the event that the University fails to maintain the improvements as set forth herein, the City reserves the right to notify the University in writing, and if such maintenance remains deficient for a period of thirty (30) days after the date of such notice, the City may perform the maintenance deemed necessary and the

University will reimburse the City for the cost of such maintenance upon receipt of a written invoice.

3. **Acceptance of the Structure by the City.** Prior to accepting the Structure, the City requires the following:
- (a) A copy of the construction documentation package as outlined in the Memo provided to the University on January 8, 2016;
 - (b) A site walk with the University and the Contractor to identify punch list items; and
 - (c) A follow-up site walk with the University and Contractor to ensure all punch list items have been satisfactorily addressed.
4. **Notice.** Whenever a notice is either required or permitted to be given, it shall be given in writing and delivered personally, or delivered by the U.S. Postal Service, certified mail, return receipt requested, to the other party at the address indicated below or at such other address as may be designated by either party:

If to the City: City of Fort Collins
 City Manager
 P.O. Box 580
 Fort Collins, CO 80522

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

If to the University: Vice President for University Operations
 309 Administration Building
 Colorado State University
 Fort Collins, CO 80523

With copies to: Office of the General Counsel
 01 Administration Building
 Colorado State University
 Fort Collins, CO 80523-0006

Facilities Management
 Colorado State University
 6030 Campus Delivery
 Fort Collins, CO 80522

5. **Liability.**

(a) The University shall be responsible for any and all claims, damages, liability and court awards incurred as a result of any action or omission of the University or its officers, employees, and agents in connection with the performance of this Agreement.

(b) The City shall be responsible for any and all claims, damages, liability and court awards incurred as a result of any act or omission by the City, or its officers, employees, and agents in connection with the performance of this Agreement.

(c) Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the City or University may have under the Colorado Governmental Immunity Act (C.R.S. § 24-10-101 *et seq.*) or to any other defenses, immunities, or limitations of liability available to the City or the University by law.

6. **Default/Remedies.**

(a) Except as otherwise provided herein, in the event any party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof.

(b) In the event a party has been declared in default hereof, such defaulting party shall be allowed a period of thirty (30) days, from receipt of notice of the default from the non-defaulting party, within which to cure the default. In the event the default remains uncorrected, the non-defaulting party may require specific performance or avail itself of any other remedy at law or equity.

7. **Tabor.** All financial obligations of the City or the University arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted, or otherwise made available by the governing bodies of the City or the University.

8. **Assignment.** Neither party may assign any rights or delegate any duties under this Agreement without the written consent of the other party.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties, their officers, employees, agents, and assigns and shall inure to the benefit of their respective survivors, heirs, successors and assigns. Covenants or representations not contained in this Agreement shall not be binding on the parties.

10. **Jurisdiction/Severability.** This Agreement shall be governed in all respects by the laws of the State of Colorado. 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.

11. **No Beneficial Interest**. The signatories aver that to their knowledge, no state employee has any personal or beneficial interest whatsoever in the service or property described herein.

12. **No Corrupt Influences**. The signatories aver that they are familiar with Section 18-8-301, et seq. (Bribery and Corrupt Influences) and Section 18-8-401 et seq. (Abuse of Public Office) of the Colorado Revised Statutes, as amended, and that no violation of such provisions is present.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding on the day and year first above written.

**The City of Fort Collins,
A Colorado Municipal Corporation**

By: _____

Title: _____

Date: _____

ATTEST

City Clerk

APPROVED AS TO FORM:

Senior Assistant City Attorney

Date: _____

**The Board of Governors of the Colorado
State University System, acting by and
through Colorado State University**

By: _____

Lynn Johnson, Vice President for University Operations

Date: _____

APPROVED AS TO FORM:
Office of the General Counsel
Colorado State University System

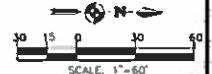
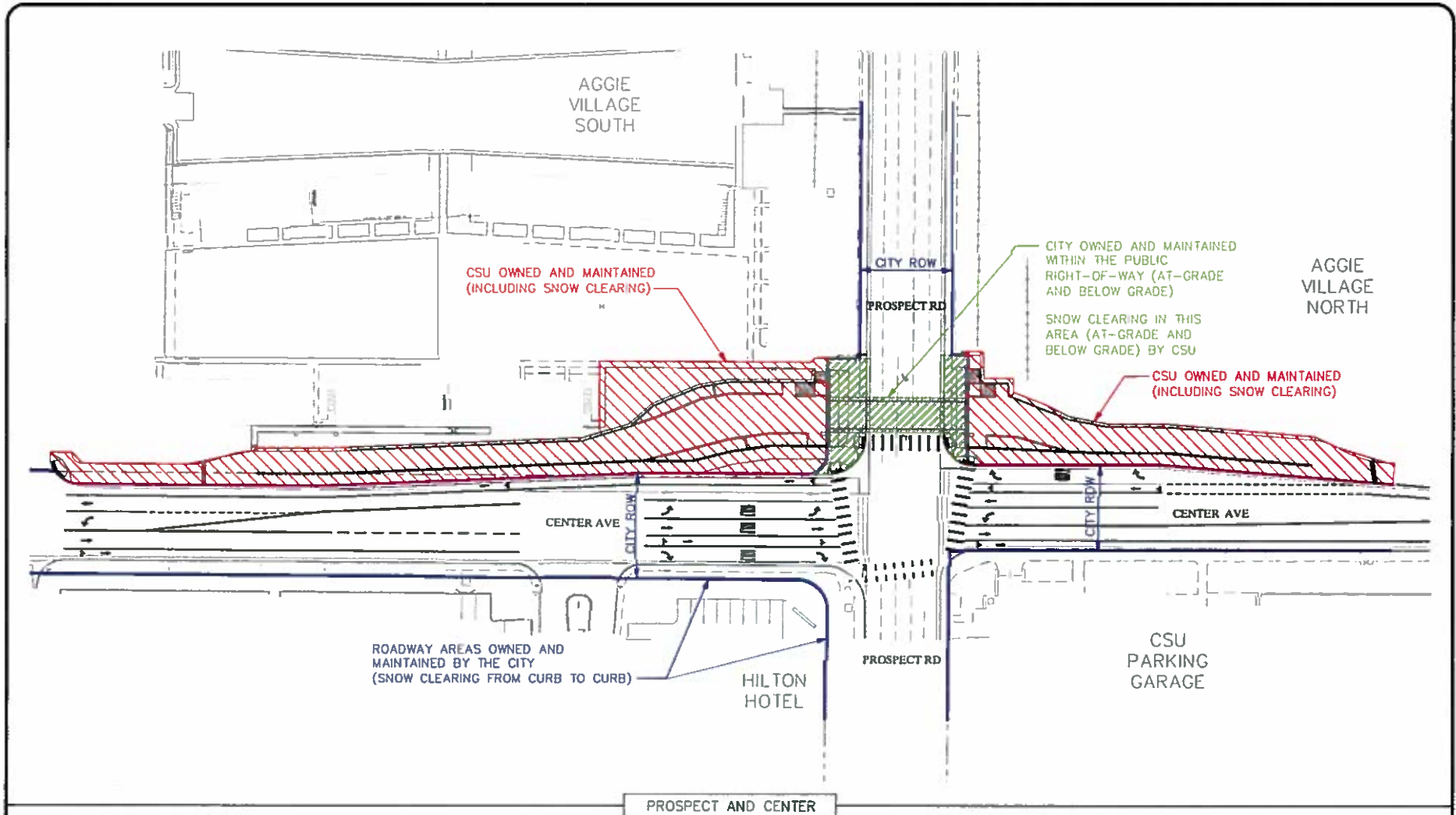
By: _____

Jean M. Christman
Senior Associate Legal Counsel

Date: _____

EXHIBIT A

OWNERSHIP AND MAINTENANCE MAP



NO. OF SHEETS: _____ DATE: _____ _____ _____	CITY OF FORT COLLINS, COLORADO ENGINEERING DEPT. - CAPITAL PROJECTS		DESIGNED BY: BJK SCALE: AS SHOWN DATE: 11/15/16	CHECKED BY: TRB DATE: 11/15/16	<input type="checkbox"/> FOR REVIEW <input type="checkbox"/> FOR CONSTRUCTION <input checked="" type="checkbox"/> AS-BUILT	PROSPECT ROAD & CENTER AVENUE EXHIBIT A - OWNERSHIP AND MAINTENANCE	SHEET 1 OF 1
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