

RESOLUTION 2017-062
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH THE DOWNTOWN DEVELOPMENT AUTHORITY REGARDING
CONTRIBUTIONS TO THE CITY FOR PUBLIC PARKING SPACES AND PARKING
PROGRAMS IN DOWNTOWN FORT COLLINS

WHEREAS, the City of Fort Collins, Colorado (the "City") is a duly organized and existing home rule municipality of the State of Colorado, created and operating pursuant to Article XX of the Constitution of the State of Colorado and the home rule charter of the City (the "Charter"); and

WHEREAS, the City is authorized by Article II, Section 16 of the Charter and C.R.S. § 29-1-203 to enter into agreements with other governmental entities to cooperate in providing public services and facilities authorized to be provided by the City and the other governmental entity and to share the costs of providing such services and facilities; and

WHEREAS, the City's Parking Plan approved by the City Council with the adoption of Resolution 2013-002, dated January 15, 2013, projects that an additional nine hundred (900) off-site public parking spaces will be needed by 2023, with a potential need for an additional six hundred (600) such spaces within the same timeframe, so having adequate parking in the City's downtown area is a substantial concern for the City; and

WHEREAS, in light of this concern, the City has taken steps to acquire approximately 216 parking spaces in a parking facility that is being constructed by Bohemian Companies in connection with a hotel development project in downtown Fort Collins and to use these spaces for public parking (the "Public Parking Spaces"); and

WHEREAS, the City will finance the acquisition of the Public Parking Spaces by entering into a lease-lease back transaction which will provide the funds to purchase the Public Parking Spaces (the "Lease Financing"); and

WHEREAS, it is expected that the Public Parking Spaces will be completed sometime in August 2017 and the City will acquire ownership of them within thirty days after such completion; and

WHEREAS, maintaining adequate levels of public parking within its boundaries is also a matter of substantial concern for the Fort Collins Downtown Development Authority (the "DDA") and the City; and

WHEREAS, pursuant to C.R.S. 31-25-807(2)(d), the Board of Directors of the DDA (the "DDA Board") has the power to plan and propose public facilities within the boundaries of the DDA and, in accordance with C.R.S. 31-25-802(8), public facilities specifically include parking facilities; and

WHEREAS, the DDA Plan of Development, approved and adopted by the City Council with its adoption of Resolution 1981-129 on September 8, 1981, identifies maintaining adequate levels of parking as a purpose and objective of the DDA, and provides as a plan of development project the creation of a "parking program to provide sufficient public parking to service all occupants and owners within the DDA's boundaries including, but not limited to, the following...construction of parking garages and lots concentrating on areas of present parking deficiencies and such areas as may require parking facilities in connection with projects undertaken hereafter"; and

WHEREAS, the City's acquisition cost for the Public Parking Spaces will be approximately \$8,430,000; and

WHEREAS, the availability of the Public Parking Spaces will provide a substantial benefit to the DDA and the DDA has agreed to make contributions in thirteen annual installments to the City totaling \$3,900,000 to defray the City's Lease Financing costs to acquire the Public Parking Spaces; and

WHEREAS, to evidence DDA's agreement to provide the City with this additional funding for the City's payment of the Lease Financing, the City and DDA desire to enter into the "Intergovernmental Agreement Regarding DDA Contributions to the City Public Parking Spaces and Parking Programs in Downtown Fort Collins" attached hereto as Exhibit "A" and incorporated herein by reference (the "IGA"); and

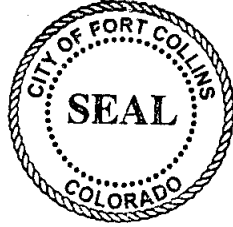
WHEREAS, the City Council hereby finds that entering into the IGA will be in the best interest of the City and its residents and is necessary for the public's health, safety and welfare.

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 IGA is hereby approved and the City Manager is hereby authorized to execute the IGA 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 a regular meeting of the Council of the City of Fort Collins this 5th day of July, A.D. 2017.



Mayor

ATTEST:

W Winkalman
City Clerk

INTERGOVERNMENTAL AGREEMENT
REGARDING DDA CONTRIBUTIONS TO THE CITY FOR PUBLIC PARKING SPACES
AND PARKING PROGRAMS IN DOWNTOWN FORT COLLINS

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is made and entered into on the date set forth below 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 municipal corporation (the “City”).

WHEREAS, maintaining adequate levels of public parking within the boundaries of the DDA (the “DDA District”) is a matter of substantial concern to the DDA and the City;

WHEREAS, pursuant to C.R.S. 31-25-807(2)(d) the Board of Directors of the DDA (the “DDA Board”) has the power to plan and propose public facilities within the DDA District and, in accordance with C.R.S. 31-25-802(8), public facilities specifically include parking facilities;

WHEREAS, the DDA Plan of Development, approved on September 8, 1981, identifies maintaining adequate levels of parking as a purpose and objective of the DDA, and provides as a plan of development project the creation of a “parking program to provide sufficient public parking to service all occupants and owners within the [DDA] District including, but not limited to, the following...construction of parking garages and lots concentrating on areas of present parking deficiencies and such areas as may require parking facilities in connection with projects undertaken hereafter”;

WHEREAS, the City’s Parking Plan, dated January 15, 2013, projects that an additional nine hundred (900) off-site public parking spaces will be needed by 2023, with a potential need for an additional six hundred (600) such spaces within the same timeframe;

WHEREAS, the Bohemian Companies, McWhinney Enterprises and Sage Hospitality (the “Developers”) are currently constructing a hotel in Downtown Fort Collins at 363 Jefferson Street and, in connection therewith, a parking structure adjacent to the hotel containing approximately three hundred thirty-five (335) parking spaces (the “Parking Structure”);

WHEREAS, the City and the Developers have entered into a public/private partnership regarding the Parking Structure pursuant to which the City has agreed to purchase an approximately sixty-four percent (64%) interest in the Parking Structure (the “Ownership Interest”), which will enable the City to utilize approximately two hundred sixteen (216) of the parking spaces as public parking spaces (the “Public Parking Spaces”);

WHEREAS, it is expected that the Parking Structure will be completed sometime in August 2017 and the City will acquire the Ownership Interest within thirty (30) days after such completion;

WHEREAS, the estimated cost to construct the Parking Structure is twelve million four hundred thousand dollars (\$12,400,000), with the City's estimated acquisition cost of the Ownership Interest being eight million three hundred thousand dollars (\$8,300,000);

WHEREAS, the availability of the Public Parking Spaces will provide a substantial benefit to the DDA District and the DDA desires to make contributions to the City totaling Three Million Nine Hundred Thousand Dollars (\$3,900,000) to defray the costs incurred by the City in acquiring the Ownership Interest and in creating and implementing certain parking programs providing additional benefits to the DDA District, in return for certain commitments from the City regarding the Public Parking Spaces and such parking programs;

WHEREAS, pursuant to C.R.S. §31-25-808(g), the DDA is empowered to make contributions, grants, and loans to the City which advance the statutory mission of the DDA; and

WHEREAS, contributing funds to the City for the purposes described herein will advance the statutory mission of the DDA and the DDA's Plan of Development and will serve the purposes of the City's Parking Plan.

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

1. Term. This IGA shall commence upon execution and continue through December 31, 2031.
2. DDA Contributions. Subject to the conditions and limitations contained in Sections 3 and 4 below, the DDA agrees to contribute to the City the maximum sum of Three Million Nine Hundred Thousand Dollars (\$3,900,000), payable in thirteen (13) annual installments of Three Hundred Thousand Dollars (\$300,000), with the first such installment being due on December 1, 2019, and the final installment being due on December 1, 2031 ("Annual DDA Contribution(s)"), to be used by the City exclusively for the following purposes:
 - A. Servicing of the debt incurred by the City for its acquisition of the Ownership Interest in the Parking Structure, up to a maximum amount of Two Million Seven Hundred Thousand Dollars (\$2,700,000); and
 - B. For the lease or purchase of real property (or an interest therein), or capital improvements to such property, that are directly linked to the creation and operation of a transportation demand management system providing permit parking in close proximity to MAX Bus Rapid Transit ("Max") station areas for employees of businesses located within the DDA District, thereby allowing such employees to park their vehicles and ride Max to Downtown Fort Collins rather than utilizing public parking spaces in the Downtown Fort Collins area (the "TDM Program").

3. Conditions on DDA Contributions. The DDA's obligation to make, and the City's right to retain, Annual DDA Contributions are subject to the following terms and conditions:

- A. The City must acquire the Ownership Interest in the Parking Structure prior to December 1, 2019, or payment of Annual DDA Contributions shall not commence until such time as the City acquires such interest;
- B. The City shall use Annual DDA Contributions only for the purposes identified in Section 2 above; any Annual DDA Contribution, or part thereof, not expended by the City for such purposes shall be promptly returned to the DDA;
- C. At least one hundred (100) of the Public Parking Spaces shall remain available for use by the general public on a first-come, first-served basis throughout the term of this IGA;
- D. If the DDA is not obligated under this IGA to make an Annual DDA Contribution on December 1 of any given year during the term hereof, including, by way of example and not of limitation, due to the City's failure to acquire the Ownership Interest in the Parking Structure prior to December 1, 2019 (as required by Section 1 above) or the unavailability of the Line of Credit (as defined in Section 4 below), then the DDA's obligation to make such Annual DDA Contribution in such year shall be deemed waived; and
- E. All financial obligations of the DDA arising under this IGA that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the DDA Board, in its discretion, and the City Council of the City, in its discretion.

4. Source of DDA Funds. The parties hereto agree that Annual DDA Contributions shall be made from the DDA's revolving line of credit through First National Bank of Omaha which was established by the intergovernmental agreement between the DDA and the City entitled "Intergovernmental Agreement Governing a Line of Credit for Financing Downtown Development Authority Projects and Programs" dated October 15, 2012, or other annual revolving line of credit established pursuant to the terms of said intergovernmental agreement (the "Line of Credit"). The DDA's obligation to make Annual DDA Contributions is expressly contingent upon the continued availability of the Line of Credit. In the event the Line of Credit is no longer available to the DDA due to termination, expiration or for any other reason, the DDA shall have no obligation to make any Annual DDA Contribution due subsequent to the date the DDA lost access to the Line of Credit.

5. City's Commitment to TDM Program. In consideration of the Annual DDA Contributions, the City agrees that it will in good faith work to expedite the creation and implementation of the TDM Program, and in connection therewith, consult and collaborate with the DDA on the same.

6. Accounting. Upon written request of the DDA, the City shall provide to the DDA documentation sufficient for the DDA to determine that Annual DDA Contributions were expended by the City in a manner consistent with this IGA.

7. 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: Liley Law Offices, LLC
Attn: Lucia A. Liley, Esq.
419 Canyon Avenue, Suite 220
Fort Collins, CO 80521

CITY: City of Fort Collins
Attn: City Manager
215 N. Mason Street
Fort Collins, CO 80521

With a copy to: City of Fort Collins
Attn: City Attorney
300 LaPorte Avenue
Fort Collins, CO 80521

8. Governing Law. This IGA shall be governed by, and its terms construed under, the laws of the State of Colorado.

9. No Third Party Beneficiaries. It is the mutual intent of the parties hereto that this IGA shall inure to the benefit of only the parties hereto. Accordingly, nothing in this IGA shall be construed as creating any right or entitlement which inures to the benefit of any third party.

10. Enforceability. The parties hereto recognize that there are legal constraints imposed upon them by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by their respective governing statutes, charters, ordinances, rules and regulations, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this IGA. Nothing herein to the contrary withstanding, in no event shall either of the parties be obligated hereunder to exercise any power or take any action that is prohibited by applicable law. Whenever possible, each provision of this IGA shall be interpreted in such a manner so as to be effective and valid under applicable law.

IN WITNESS WHEREOF, the parties hereto have executed this IGA the day and year of the last signature below written.

THE FORT COLLINS, COLORADO,
DOWNTOWN DEVELOPMENT
AUTHORITY, a body corporate and politic.

By: _____
Justin Larson, Chairperson

Date: _____

ATTEST:

Cheryl Zimlich, Secretary

THE CITY OF FORT COLLINS,
COLORADO, a municipal corporation

By: _____
Darin Atteberry, City Manager

Date: _____

APPROVED AS TO FORM:

Deputy City Attorney

ATTEST:

Wanda Winkelmann, City Clerk