

RESOLUTION NO. 084
OF THE BOARD OF COMMISSIONERS OF THE FORT COLLINS URBAN RENEWAL
AUTHORITY APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE
CITY OF FORT COLLINS FOR THE AUTHORITY'S CONTRIBUTION OF FUNDS TO
THE CITY'S WHITEWATER PARK PROJECT FOR PUBLIC IMPROVEMENTS

WHEREAS, the City of Fort Collins (the "City") is planning the construction of a park in the downtown area along the Poudre River, to be known as the Whitewater Park, funding for which the City's voters approved in 2015 as part of the City's Community Capital Improvement Program (the "CCIP"); and

WHEREAS, improvements constructed for the Whitewater Park will include world class whitewater features, park gathering places, river overlooks, fish passage and habitat improvements, stormwater improvements, street and sidewalk improvements, and various other related public improvements (the "Park Project"); and

WHEREAS, in 2004, the Fort Collins City Council adopted Resolution 2004-152 approving the North College Avenue Urban Renewal Plan, which it subsequently amended in 2015 in Resolution 2015-106, (the "North College Plan"); and

WHEREAS, the North College Plan was adopted to facilitate the elimination and prevention of blighted areas within the plan area identified in the Plan (the "Plan Area") by promoting and assisting undertakings and activities within the Plan Area involving the development, redevelopment and rehabilitation of Plan Area properties as part of a single urban renewal project (the "North College Project"); and

WHEREAS, City and Authority staff have identified and reported to the Authority's Board of Commissioners (the "Board") several significant benefits that the Park Project will provide to the North College Project as contemplated in the North College Plan, which benefits include, without limitation: (i) improvements to portions of Vine Drive in the Plan Area ("Vine Drive Improvements"), (ii) stormwater improvements that will remove several developable properties in the Plan Area from the floodway and reduce the likelihood that College Avenue in the Plan Area will overtop during a flood, and (iii) improvements that will improve connectivity between the Plan Area and downtown Fort Collins (collectively, the "Park Project Benefits"); and

WHEREAS, staff has also presented to the Board for its consideration the Intergovernmental Agreement attached as Exhibit "A" and incorporated herein (the "Agreement"), pursuant to which the Authority will pay the City \$300,000 to help fund the Vine Drive Improvements, which are estimated to cost \$513,000; and

WHEREAS, the Board has conducted its own review of the Park Project and finds that the Park Project Benefits will facilitate the elimination and prevention of blighted areas in the Plan Area as contemplated in the North College Plan and, therefore, entering into the Agreement and providing funds for the Vine Drive Improvements will be in the best interest of the Authority and serve the public purposes of eliminating and preventing blight in the Plan Area in furtherance of the North College Plan; and

WHEREAS, the Board further finds that the value of the Park Project Benefits to the Authority are significant, with a value greater than \$300,000, and they represent undertakings and activities within the North College Project that will benefit the development, redevelopment and rehabilitation of properties within the Plan Area through the construction of public improvements; and

WHEREAS, the Authority currently has sufficient funds in its North College Fund available for appropriation to satisfy its \$300,000 payment obligation under the Agreement without impairing any of the Authority's other existing financial obligations under the North College Plan; and

WHEREAS, the City and the Authority are authorized to enter into the Agreement to cooperate in the funding and construction of the Park Project pursuant to C.R.S. § 29-1-203 and the Colorado Urban Renewal Law, including, without limitation, C.R.S. § 31-25-112, and the City is further authorized to do so under City Charter Article II, Section 16.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE FORT COLLINS URBAN RENEWAL AUTHORITY as follows:

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

Section 2. That the Agreement is hereby approved and the Executive Director of the Authority is hereby authorized to enter into the Agreement on the Authority's behalf in substantially the form attached hereto as Exhibit "A," subject to such minor modifications as the Executive Director, in consultation with the Authority's Legal Counsel, may determine to be necessary and appropriate to protect the interests of the Authority or to effectuate the purposes of this Resolution.

Section 3. That there is hereby appropriated for expenditure from the North College Fund the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000) to be paid to the City as provided in the Agreement.

Passed and adopted at a regular meeting of the Board of Commissioners of the Fort Collins Urban Renewal Authority this 20th day of March, A.D. 2018.



Vice Chair

ATTEST:



Secretary



**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF FORT COLLINS
AND THE FORT COLLINS URBAN RENEWAL AUTHORITY REGARDING THE
AUTHORITY'S CONTRIBUTION OF FUNDS FOR THE WHITEWATER PARK
PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into this ____ day of March __, 2018, (this "Agreement") by and between the City of Fort Collins, a Colorado home rule municipality, (the "City") and the Fort Collins Urban Renewal Authority, a corporate body and political subdivision of the state, (the "Authority"). The City and Authority shall also hereafter be jointly referred to as "Parties" or individually as "Party."

RECITALS

WHEREAS, the City is planning the construction of a park in the downtown area along the Poudre River, to be known as the Whitewater Park, funding for which the voters approved in 2015 as part of the City's Community Capital Improvement Program (the "CCIP"); and

WHEREAS, improvements constructed for the Whitewater Park will include world class whitewater features, park gathering places, river overlooks, fish passage and habitat improvements, stormwater improvements, street and sidewalk improvements, and various other related public improvements (the "Park Project"); and

WHEREAS, in 2004, the Fort Collins City Council adopted Resolution 2004-152 approving the North College Avenue Urban Renewal Plan, which it subsequently amended in 2015 in Resolution 2015-106, (the "North College Plan"); and

WHEREAS, the North College Plan was adopted to facilitate the elimination and prevention of blighted areas within the plan area identified in the Plan (the "Plan Area") by promoting and assisting undertakings and activities within the Plan Area involving the development, redevelopment and rehabilitation of Plan Area properties as part of a single urban renewal project (the "North College Project"); and

WHEREAS, the Authority's Board of Commissioners (the "Board") has reviewed the Park Project and identified several benefits it will provide to the North College Project as contemplated in the North College Plan, which benefits include, without limitation: (i) improvements to portions of Vine Drive in the Plan Area ("Vine Drive Improvements"), (ii) stormwater improvements that will remove several developable properties in the Plan Area from the floodway and reduce the likelihood that College Avenue in the Plan Area will overtop during a flood, and (iii) improvements that will improve connectivity between the Plan Area and downtown Fort Collins (collectively, the "Park Project Benefits"); and

WHEREAS, in consideration of the Park Project Benefits, the Board has adopted Authority Resolution No. 84 approving this Agreement and appropriating \$300,000 to be paid to the City to help fund the Vine Drive Improvements, which are estimated to cost approximately \$513,000; and

WHEREAS, the City Council has also approved this Agreement in its Resolution 2018-013; and

WHEREAS, the City and the Authority are authorized to enter into this Agreement to cooperate in the funding and construction of the Park Project pursuant to C.R.S. § 29-1-203 and the Colorado Urban Renewal Law, including, without limitation, C.R.S. § 31-25-112, and the City is further authorized to do so under City Charter Article II, Section 16.

NOW, THEREFORE, in consideration of the promises contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. **The Authority's Obligation.** The Authority agrees to pay the City three hundred thousand dollars (\$300,000) within sixty (60) days after the City enters into the construction contract with the general contractor it retains for the Park Project and provided such contract includes the construction of the Vine Drive Improvements and the other improvements that will provide the Park Project Benefits.

2. **TABOR.** The Parties understand and acknowledge that the Authority is not subject to the Taxpayer's Bill of Rights in Article X, Section 20 of the Colorado Constitution. The Parties therefore intend that the Authority's debt obligation in Section 1 above is a binding obligation enforceable by the City at law and in equity as provided in Section 3 below and such enforcement is not contingent upon the future appropriation of funds by the Board.

3. **Remedies Upon Default.** Upon the failure of either Party to comply with any of its obligations contained herein (a "Default"), the non-defaulting Party shall provide written notice of the Default to the defaulting Party. Immediately upon receipt of such notice, the defaulting Party shall promptly cure such Default within thirty (30) days, or if not susceptible of cure within thirty (30) days, within such time as agreed upon by the non-defaulting Party for the cure of such Default. If the defaulting Party fails to cure or remedy the Default within the time period prescribed, the non-defaulting Party may protect and enforce any or all of its rights and the obligations of the defaulting Party under this Agreement by suit in equity or action at law, in Larimer County District Court, whether for the specific performance of any covenants or agreements in this Agreement or otherwise, or take any action authorized or permitted under applicable law, and may require and enforce the performance of all acts and things required to be performed hereunder by the other Party. Each and every remedy of either Party shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy given hereunder or now or hereafter existing at law or in equity.

4. **Amendments.** This Agreement may only be amended, changed, modified or altered in a writing signed by both Parties.

5. **Implementing Agreements and Further Assurances.** The Parties agree to execute such other documents, and take such other actions, as will be reasonably requested by the other Party to confirm or clarify the intent of the provisions hereof and to effectuate the agreements herein contained.

6. **Term; Termination.** This Agreement shall remain in full force and effect until the Authority's debt obligation under this Agreement is paid in full to the City. However, in the event the City does not enter into a construction contract with a general contractor for the Park Project by January 1, 2019, this Agreement shall terminate and both Parties shall be released from all remaining obligations under this Agreement.

7. **No Third-Party Beneficiaries.** No term or provision of this Agreement is intended to be for the benefit of any person, entity, association or organization not a party to this Agreement, and no such other person, entity, association or organization shall have any right or cause of action hereunder.

8. **Applicable Law and Venue.** This Agreement shall be governed by and construed under the laws of the State of Colorado and the venue for any judicial proceedings related to this Agreement shall be in Larimer County District Court.

9. **Section Headings.** The captions or headings herein are for convenience or reference only and shall in no way define or limit the scope or intent of any provision or section of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as the date and year first above written.

THE FORT COLLINS URBAN RENEWAL AUTHORITY

By: _____
Darin A. Atteberry, Executive Director

ATTESTED:

By: _____
City Clerk
Print Name: _____

APPROVED AS TO FORM:

By: _____
Authority Legal Counsel
Print Name: _____

THE CITY OF FORT COLLINS, COLORADO

By: _____
Wade Troxell, Mayor

ATTESTED:

By: _____

APPROVED AS TO FORM:

By: _____

City Clerk
Print Name: _____

Deputy City Attorney
Print Name: _____