

RESOLUTION 2019-035
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN
INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY AND
POUDRE SCHOOL DISTRICT FOR THE NATURE IN THE CITY PROGRAM

WHEREAS, on March 24, 2015, the Council adopted the Nature in the City Strategic Plan as an element of the City's Comprehensive Plan; and

WHEREAS, the Nature in the City Program's vision is to have a connected open space network accessible to the entire community and provide a variety of experiences and functional habitat for people, plants, and wildlife; and

WHEREAS, to help realize this vision, Nature in the City developed a capital project program to implement small "on the ground" community projects; and

WHEREAS, coordinating with Poudre School District ("the District") to leverage these program funds to create outdoor classrooms and experiential play spaces ("Learning Habitats") on District sites advances the level of services for educators and students alike, connects students to nature, provides wildlife habitat and empowers them to learn and recreate at on-site nature features; and

WHEREAS, Nature in the City has installed several Learning Habitats at District schools in the past, each time renegotiating details of those agreements; and

WHEREAS, City Council finds that entering into an Intergovernmental Agreement ("IGA") with the District will create efficiencies and facilitate success for the City and the District; and

WHEREAS, the City and the District have negotiated a proposed IGA, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and

WHEREAS, Article II, Section 16 of the City Charter 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

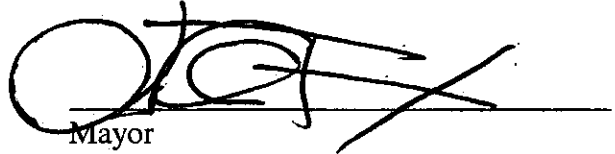
WHEREAS, the City Council has determined that entering into this IGA is in the best interests of the City.

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

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

Section 2. That the City Manager is hereby authorized to execute an agreement substantially in the form of Exhibit "A", with such modifications and additional terms and conditions consistent with this Resolution 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 of this Resolution.

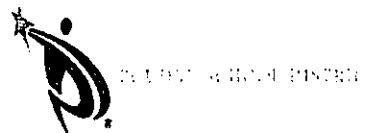
Passed and adopted on at a regular meeting of the Council of the City of Fort Collins this 19th day of March, A.D. 2019.


Mayor

ATTEST:


City Clerk





Nature in the City Memorandum of Agreement

1. Parties: This Memorandum of Agreement (“Agreement”) is entered into and effective _____, 2019 (“Effective Date”), and sets out the terms by which Poudre School District (“District”) and The City of Fort Collins, by and through the Natural Areas Department’s Nature in the City program, (“NIC”) (collectively, the “Parties” and individually as a “Party”) will collaborate to build outdoor educational program spaces (“Learning Habitats”) in District schools providing engaging outdoor features that connect students to nature, create functional micro-habitat for local wildlife, increase academic achievement, and drive community engagement.

RECITALS

2. Purpose of the Agreement: The Nature in the City Program Vision is “A connected open space network accessible to the entire community that provides a variety of experiences and functional habitat for people, plants, and wildlife” (“Vision”). To help realize this Vision, NIC developed a capital project program to implement small “on the ground” community projects. Coordinating with the District to leverage these program funds to create outdoor classrooms and experiential play spaces (“Learning Habitats”) on District sites advances the level of service provided by the Parties for educators and students alike, connecting students to nature, providing wildlife habitat and empowering them to learn and recreate at on-site nature features.

Through this Agreement, the District agrees to provide The City with limited access to identified schools on the terms and conditions described herein, in collaboration with students and staff who choose to voluntarily participate during the design and construction of the Learning Habitat and implementation of the City program.

Individual schools within the District that are interested in having NIC design, construct and install Learning Habitats at certain District schools may apply for a Learning Habitat grant through the NIC selection process (“Schools”).

Accordingly, the Parties desire to collaborate so NIC can design, construct and install Learning Habitats in the Schools (a “Project”) on the terms set forth in this Agreement.

Each awarded Project will follow a standard process developed by NIC (and subject to change over time) to apply for a Project, awarding of funds to a Project, and coordination on the design, construction, and maintenance of the Project. Once an individual school

Poudre School District and City of Fort Collins, Nature in the City

has applied for and been awarded a Learning Habitat grant, NIC will coordinate with District Facilities to approve a site for the Learning Habitat. NIC, District Facilities, and the School's Principal will complete a Site Review & Sign Off process to formalize the designated location for the Learning Habitat. A designated staff member at each school ("Team Lead") will be trained on the maintenance and troubleshooting for the Learning Habitat, information also provided in the maintenance manual that will be provided to the Team Lead after project completion.

In recognition of the Recitals set forth above, the Parties hereby express their mutual goals and good faith intentions as follows:

3. Term of Agreement: The initial term of this Agreement is from the effective date set forth above to December 31, 2019. After the initial term this Agreement may be extended up to four times for additional one-year terms, not to exceed five (5) years total, through the following process: if NIC wishes to extend the Agreement, then no less than thirty (30) days before the end of the then-current term NIC will send the District a signed extension agreement. If the District wishes to agree to such extension the District will sign the extension agreement where indicated and return the fully-executed extension agreement to NIC before the end of the then-current term.

4. Suspension or Termination of Project: The Agreement may be suspended or terminated by providing written notice as provided herein, in the following circumstances:

- a. Without cause, by either Party, upon 30 days written notice in the manner described in paragraph 10(g).
- b. By either Party for cause, or for a material default of the provisions of this Agreement. In the event of a default the non-defaulting Party shall provide the defaulting party written notice of the default and a thirty (30) day period to cure, or to commence curing the default, if the default reasonably would take more than thirty (30) days to cure.
- c. By the District, immediately upon written notice if, in the sole discretion of the District, the continuation of the Agreement presents a safety issue for District students.
- d. In the event of such suspension or termination during construction, the District shall pay NIC a fair and reasonable amount for the completed portion of the Project then in progress and interrupted by District's suspension or termination.

5. Control and Authority:

Poudre School District and City of Fort Collins, Nature in the City

- a. The District retains complete control and authority over its employees and agents, completed Projects, and the use of District property.
- b. Each Party shall appoint an employee to act as a project manager and to communicate directly with the other Party ("Project Manager"). The Project Managers are responsible for ensuring performance of the activities listed below. Should either Party's Project Manager change at any point during the term of this Agreement, a new Project Manager must be named as soon as practicable and notice of such appointment must immediately be provided to the other Party in writing of the new contact.

6. Responsibilities of the District:

- a. The District agrees to provide NIC with access to awarded Project- Schools and staff to facilitate construction of Projects, as well as programmatic support for NIC.
- b. Facilities: The District will allow NIC use of those selected Schools that have applied for and received a Learning Habitats grant to facilitate the City Learning Habitat initiative, and to access the Learning Habitat for establishment of the feature's infrastructure.
- c. Once the School's application has been accepted by NIC, the District shall provide signature sign-off on each individual School site, providing work authorization within specified work limits. NIC will provide each Site Review and Sign Off form for signature by the School Principal, District Project Manager, and District Facilities Representative(s).
- d. The District shall provide reasonable access and schedule requirements to complete the design, construction, and installation of each Learning Habitat. The District shall evaluate, comment, and provide approval/denial on NIC's designs in a prompt and efficient review process. The Parties agree to work through a fair and reasonable timeline for review of this process.
- e. Media Release: NIC will coordinate with the District's Communication Director or Communication Department designee on student media releases. Unless otherwise directed, NIC will rely on District media release form(s) as an indication of whether public use of student photos and video recordings are permissible for use by NIC.
- f. Marketing Requests: With the approval of the District's Communication Director or Communication Department designee, NIC may issue periodic requests to awarded Schools to conduct brief interviews and/or site visits for marketing

Poudre School District and City of Fort Collins, Nature in the City

purposes. These interviews and site visits are not mandatory and may be declined by a School or Communication Director.

- g. **Contributions:** When applicable, the District Operations & Facilities Department may provide ancillary services in creating a project-ready space on selected School sites. This may include services rendered through capital improvement(s) or additional District funding sources.

7. Responsibilities of the School:

- a. **The District understands Schools will be expected to agree to provide NIC with access to identified schoolyard, parking, and staff, when applicable. Students will be asked to participate in Learning Habitat activities sponsored by their School and students, parents or guardians always have the right to decline.**
- b. **Project Funding:** While not a prerequisite to be awarded a Learning Habitats grant, schools may choose to fundraise a portion of the project cost to match Learning Habitats grant funding. Funding will help realize each School's vision of the Project.
- c. **Engagement:** NIC encourages schools to be engaged in the visioning, design, and even implementation of the Project, through supervised and coordinated volunteer events.
- d. **Maintenance:** The District and School will approve the final as-built condition of each installation and NIC will provide a customized maintenance plan to guide the School and District Facilities in maintaining the site. The School and District Operations & Facilities Department are responsible for sustaining and maintaining their Learning Habitat long-term as detailed in each School's Learning Habitat maintenance plan.

8. Responsibilities of The City – Project Management:

- a. **Learning Habitat Infrastructure:** NIC will design, construct and assist in funding of the Learning Habitats at awarded Schools. NIC will also provide general project establishment for the Learning Habitat through the warranty period as outlined in section 8.c.
- b. **Selection of sub-consultants & sub-contractors:** NIC shall provide the District a list of sub-consultants and sub-contractors to be engaged by NIC to work on the Project and shall promptly provide an updated copy of such list in the event of any changes in sub-consultants and sub-contractors. Within 10 business days of receiving such list, the District shall have the right to reject, by written notice to

Poudre School District and City of Fort Collins, Nature in the City

NIC, any of the sub-consultants and sub-contractors selected by NIC. Upon District's request, each sub-consultant and sub-contractor shall provide details and references for services rendered by them for projects similar to the awarded School's Project. NIC will not contract with any contractor the District has made reasonable objection to working with on a Project. Additionally, NIC agrees to ensure any sub-consultants and/or sub-contractors will adhere to any District requirements (e.g. background checks, insurance requirements, etc.) If NIC or its contractors are unable to meet the District's requirements, NIC and the District will work in good faith to find a solution that will allow such Project to continue. Possible solutions include:

- The parties may agree on a different sub-contractor/sub-consultant;
- The parties may agree to modify the Project;
- NIC may choose to use one of the approved District contractors or consultants.

If the parties cannot agree on a solution within sixty (60) days, NIC reserves the right to cancel or postpone such Project.

- c. **Warranty:** NIC will pass through all warranties offered by plant suppliers, and offers a limited warranty on all installations. NIC guarantees all plant material for two years from planting to become well established. Any other installation components (e.g., seating, boulders, structures, etc.) are guaranteed to be free of defects in workmanship or materials when installed and maintained properly, and will be repaired or replaced within one year of installation. Items specifically not covered by this warranty include vandalism, man-made or natural disasters, lack of maintenance, proper irrigation, normal weathering or wear and tear due to public abuse.
- d. **When the NIC selection committee completes prioritization of Projects for a particular funding cycle, NIC will submit a list of any Schools tentatively selected for a Learning Habitat for District approval to move forward in the design and implementation of the Project.**
- e. **Scope of Services:** NIC provides the following scope of services for each selected School:
 - NIC staff facilitation of the Project through a dedicated project manager
 - A design of the Project from a competent landscape designer or other professional, as applicable, including construction plans
 - The construction of the Project through a City-selected and District approved contractor, including hardscape, plant material, irrigation, and other project features
 - Coordination with school staff on student planting days

Poudre School District and City of Fort Collins, Nature in the City

- NIC Interpretive signage
 - Monitoring of the site for the warranty period, and repair and replacement of warranted items within the Learning Habitat
- f. Based on project scope, NIC provides design, materials and labor for the installation and completion of a Learning Habitat, with the understanding that there are project budgets to meet and adhere to regarding removal and replacement of site surfacing. The District and NIC may request to negotiate the final design to fit the Project budget and constraints of each site. NIC has final approval on variance from baseline product.

9. General Provisions:

- a. **License:** The District grants NIC permission to use designated space for the Learning Habitat ("Designated Areas") at participating schools for purposes of the initiative. The use of Designated Areas shall not interfere with the operations of the District or any other party in the Schools. Neither NIC, nor its volunteers, employees, or agents, shall acquire a property interest or otherwise be entitled to use any other portion of the Schools. Volunteers, employees and agents of NIC shall be vetted by any applicable District volunteer process and/or background checks, and will only access Designated Areas after the school day at a given school, or by mutual agreement of the Parties. The District shall have the right to close the Schools for routine maintenance and repairs or other reasonable purposes. NIC shall not use or occupy the Schools, or cause or permit the Schools to be used or occupied, for any conduct or activity which violates any statutes, ordinances, orders, regulations or rules of federal, state, county or municipal authorities, or for any conduct or activity which the District, in its reasonable discretion, deems inconsistent with the operation of the Schools. The District shall have the right to eject from the schools any person(s) whom the District, in its reasonable discretion, believes is objectionable or represents a threat to the School, District students, employees, guests or agents.
- b. **Amendments:** Either party may request changes to this Agreement. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by and between the Parties to this Agreement shall be incorporated by written instrument, and effective when executed and signed by all Parties to this Agreement.
- c. **Entirety of Agreement:** This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

Poudre School District and City of Fort Collins, Nature in the City

- d. **Severability:** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either Party may renegotiate the terms affected by the severance.
- e. **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.
- f. **No Assignment:** Except as otherwise provided herein, neither Party shall assign this Agreement or its rights or duties hereunder without the express written consent of the other Party.
- g. **Notice:** Notices shall be in writing and delivered in person or by certified mail, postage prepaid, to the District's Contract Administrator or to NIC, or such address as specified by either Party in a notice under this paragraph. Notice shall be deemed given at the time of personal delivery or five (5) days after the date of mailing if sent by certified mail.

If to the City:
 City of Fort Collins
 Natural Areas Program
 P.O. Box 580
 Fort Collins CO 80522-0580

If to the District:
 Poudre School District
 Contract Administrator
 2407 LaPorte Avenue
 Fort Collins CO 80521

- h. **No Third-Party Beneficiaries:** Nothing in this Agreement shall be construed to create or extend any rights to any third parties as third-party beneficiaries.
- i. **Insurance:** Each Party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of each party is at all times herein strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. §§ 24-10-101, et seq. as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act. Each Party represents and warrants it maintains comprehensive general liability insurance and all coverages required by law sufficient for the purpose of carrying out the duties and obligations arising under this Agreement. A Party will furnish the other Party a certificate evidencing such insurance upon written request.
- j. **Independent Contractor:** The Parties agree the City's relationship to the District shall be that of an independent contractor and not as an agent, employee, partner, or joint venture and that the employees or agents of the City shall not be deemed or construed to be employees of the District for any purposes whatsoever.

Poudre School District and City of Fort Collins, Nature in the City

- k. **Appropriation Required.** The financial obligations of the Parties under this Agreement are from year to year only and shall not constitute a multiple-fiscal year debt or other financial obligation or fiscal obligation of any kind payable in any Fiscal Year beyond the Fiscal Year for which funds are so appropriated for the payment of current expenditures.
- l. **Survival.** The provisions of this Agreement that, by their sense and context, are intended to survive performance by either or both parties also survive the completion, expiration, termination or cancellation of this Agreement.

10. Signatures:

In witness whereof, the Parties to this Agreement through their duly authorized representatives have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Agreement as set forth herein.

[The remainder of this page intentionally left blank.]

Poudre School District and City of Fort Collins, Nature in the City

The effective date of this Agreement is the date of the signature last affixed to this page.

Signature/Title

Date

Darin Atteberry, City Manager
City of Fort Collins, Colorado

Attest:

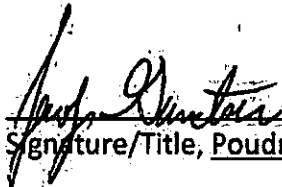
Approved as to form:

City Clerk

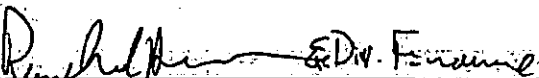
Assistant City Attorney

(Print name)

(Print name)

 Jeffrey Winters - Director of Facilities
Signature/Title, Poudre School District

3 / 7 / 2019
Date

 Edw. F. ...
Signature/Title, Poudre School District

3 / 7 / 2019
Date

Poudre School District and City of Fort Collins, Nature in the City