

RESOLUTION 2019-107
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CONCERNING THE FORT COLLINS URBAN RENEWAL AUTHORITY AND
ITS TAX INCREMENT REVENUE REFUNDING BONDS (PROSPECT SOUTH),
SERIES 2019; DECLARING THE CITY COUNCIL'S PRESENT INTENT TO
APPROPRIATE FUNDS TO REPLENISH THE RESERVE FUND SECURING
SUCH BONDS, IF NECESSARY; AND AUTHORIZING A COOPERATION
AGREEMENT AND OTHER ACTIONS TAKEN IN CONNECTION THEREWITH

WHEREAS, the City Council (the "City Council") of the City of Fort Collins, Colorado (the "City") has heretofore created the Fort Collins Urban Renewal Authority ("Authority") as an urban renewal authority pursuant to Colorado Revised Statutes, Part 1 of Title 31, Article 25, as amended (the "Act"); and

WHEREAS, the City Council, by Resolution 2011-081 approved and adopted on September 6, 2011, has authorized and approved the "Midtown Urban Renewal Plan" as an urban renewal plan under the Act (the "Original Plan") for the area described therein (the "Original Plan Area"), and the urban renewal projects described therein; and

WHEREAS, on February 28, 2013, the City Council adopted Resolution 2013-014 which, among other things, ratified and reaffirmed the Original Plan, including the adoption of the Prospect South tax increment financing district; and

WHEREAS, on May 7, 2013, the City Council adopted Resolution 2013-043 approving modifications to the Original Plan (the "First Amended Plan"); and

WHEREAS, on December 1, 2015, the City Council adopted Resolution 2015-107 approving modifications to the First Amended Plan (the "Second Amended Plan"); and

WHEREAS, one of the modifications included in the Second Amended Plan is the removal of approximately 167.8 acres of land from the Original Plan Area thereby resulting in a new plan area (the "New Plan Area"); and

WHEREAS, Resolution 2015-107 provides that the Second Amended Plan is intended to supersede and replace in all respects the Original Plan and the First Amended Plan except that the previous Council findings and determinations in Resolutions 2011-081, 2013-014 and 2013-043 shall remain in full force and effect as applied to the New Plan Area except to the extent expressly superseded or updated in Resolution 2015-107, but the tax increment financing provisions in the Second Amended Plan shall continue to be in effect no later than twenty-five years after the adoption of the Original Plan; and

WHEREAS, the Second Amended Plan authorizes and describes an urban renewal project consisting of various undertakings and activities to be undertaken by the Authority to facilitate the elimination and prevention of blighted within the New Plan Area and to promote the redevelopment, conservation and rehabilitation of the New Plan Area (collectively, the "Project"); and

WHEREAS, in order to undertake certain urban renewal projects within the New Plan Area, the Authority has previously borrowed money from the City and entered into certain prior loan agreements with the City and executed certain prior promissory notes (collectively, the “Prior City Loans”) in connection therewith; and

WHEREAS, pursuant to an Indenture of Trust (the “Indenture”) between the Authority and U.S. Bank National Association, as trustee (the “Trustee”), the Authority is issuing its Tax Increment Revenue Refunding Bonds (Prospect South), Series 2019 (the “Series 2019 Bonds”) for the purpose of repaying the Prior City Loans made by the City to the Authority; and

WHEREAS, a reserve fund (the “Reserve Fund”) will be created under the Indenture to secure the payment of the Series 2019 Bonds and such Reserve Fund is required to be maintained in an amount equal to the Reserve Fund Requirement (as defined in the Indenture); and

WHEREAS, the Indenture provides that the Reserve Fund may either be cash funded or that a reserve fund insurance policy (a “Reserve Fund Policy”) may be deposited in the Reserve Fund; and

WHEREAS, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Reserve Fund or the repayment of any draws made under any Reserve Fund Policy, if necessary, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for any such appropriation to be presented to the City Council for consideration; and

WHEREAS, in connection with the issuance of the Series 2019 Bonds, it is necessary and in the best interests of the City to enter into a Cooperation Agreement (the “Cooperation Agreement”) between the City and the Authority; and

WHEREAS, there is attached hereto as Exhibit “A” the proposed form of the Cooperation Agreement; and

WHEREAS, the City and the Authority have previously entered into that certain “Intergovernmental Agreement Between the City of Fort Collins, Colorado and the Fort Collins Urban Renewal Authority” dated August 16, 2006, as amended by the parties in that certain “First Addendum to the Intergovernmental Agreement Between the City of Fort Collins, Colorado and the Fort Collins Urban Renewal Authority Regarding Operating Staff and Resources” approved by the City Council and the Authority’s Board by resolution on July 5, 2011 (jointly, the “IGA”); and

WHEREAS, the IGA sets forth the various services the City will provide to the Authority and addresses in Section 10 of the IGA that the Authority may provide its own public liability insurance and other insurance or the parties may agree that the Authority will be covered under the City’s insurance coverages and the Authority will reimburse the City for the additional cost of that coverage; and

WHEREAS, the City and the Authority wish, through the Cooperation Agreement, to amend Section 10 of the IGA to clarify and expressly provide that until April 1, 2020, the Authority

and its officers and employees are included under and covered by the City's purchased excess-insurance coverages and coverage under the City's self-insurance program and self-insurance fund as established, provided and described in Division 6 of Article VII in Chapter 2 of the City Code and in Division 3 of Article III in Chapter 8 of the City Code; and

WHEREAS, this amendment to Section 10 of the IGA is included in Section 5 of the Cooperation Agreement; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Indenture.

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

Section 1. Finding of Best Interests and Public Purpose. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State and the City's Charter, and in accordance with the foregoing recitals, that adopting this Resolution, entering into the Cooperation Agreement, and facilitating the issuance of the Series 2019 Bonds by the Authority to finance the Refunding Project are necessary, convenient, and in furtherance of the City's purposes and are in the best interests of the inhabitants of the City; and will serve the important public purpose of facilitating the repayment of the Prior City Loans by the Authority to the City.

Section 2. Replenishment of Reserve Fund; Declaration of Intent. To the extent that the Reserve Fund is cash funded, within 90 days after the City's receipt of the written notice from the Trustee of a draw on the Reserve Fund, to the extent that such draw has not been replenished by another source, as provided in Section 4.06 of the Indenture (the "Written Notice"), the City shall replenish the Reserve Fund to the Reserve Fund Requirement using legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such City payment (the "City Payment") shall be made directly to the Trustee for deposit in the Reserve Fund in immediately available funds pursuant to the instructions set forth in the Written Notice. It is the present intention and expectation of the City Council to appropriate the City Payment requested in any such Written Notice received by the City, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Payments shall constitute currently appropriated expenditures of the City.

In the event that a Reserve Fund Policy is deposited in the Reserve Fund and the City receives written notice from the Trustee that it has drawn on the Reserve Fund Policy and such draw has not been repaid by another source, the City shall repay the provider of the Reserve Fund Policy in the amount of such draw, plus any interest due thereon, from legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such payment shall be made directly to the provider of the Reserve Fund Policy. It is the present intention and expectation of the City Council to appropriate moneys to repay the provider of any Reserve Fund Policy in the event of a draw thereunder, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. Any such payments shall constitute currently appropriated expenditures of the City.

This Resolution shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Home Rule Charter or any constitutional debt limitation, including Article X, Section 20 of the Colorado Constitution. Neither this Resolution nor the issuance of the Series 2019 Bonds shall obligate or compel the City to make City Payments or to repay the provider of any Reserve Fund Policy in the event of a draw thereunder beyond those appropriated in the City Council's sole discretion.

Section 3. Direction to City Manager. To the extent that the Reserve Fund is cash funded, within five (5) Business Days following a draw on the Reserve Fund to pay the debt service requirements on the Series 2019 Bonds, to the extent any such draw is not replenished from another source, the Trustee is required under Section 4.06 of the Indenture to provide Written Notice of such draw to the City. The Written Notice shall state the amount required to be paid by the City to restore the Reserve Fund to the Reserve Fund Requirement after replenishment from all other sources available under the Indenture. The Written Notice shall also include instructions for making the City Payment. Any such Written Notice is required to be sent to the City Manager. Upon receipt of a Written Notice by the City Manager, the City Council hereby authorizes and directs the City Manager to prepare and submit to the City Council a request for an appropriation of the amount set forth in the Written Notice. Such request shall be made in sufficient time to enable the City to make the City Payment within 90 days of receipt of the Written Notice as provided in Section 1 hereof.

In the event that a Reserve Fund Policy is deposited in the Reserve Fund and the City receives written notice from the Trustee that a draw has been made on the Reserve Fund Policy and such draw has not been repaid from another source, the City Council hereby directs the City Manager, upon receipt of such notice, to forthwith prepare and submit to the City Council a request for an appropriation in an amount sufficient to repay the provider of such Reserve Fund Policy for such draw, plus any interest due thereon.

Section 4. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds to make a payment as contemplated by Section 1 hereof, any amounts actually transferred by the City to the Trustee in accordance with the provisions of Section 1 or transferred by the City to the provider of a Reserve Fund Policy in accordance with the provisions of Section 1, shall be treated as an advance under the Cooperation Agreement and shall be repaid by the Authority in accordance with the provisions of the Cooperation Agreement, on a basis expressly subordinate and junior to that of the Series 2019 Bonds, any Additional Bonds and any other obligations or indebtedness that is secured or payable in whole or in part by the Pledged Revenues on a parity with the Series 2019 Bonds.

Section 5. Limitation to Series 2019 Bonds. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution shall apply only to the replenishment of the Reserve Fund originally established in the Indenture that secures the payment of the Series 2019 Bonds and shall not apply to any other reserve funds established in connection with the issuance of any other obligations.

Section 6. Approval of Cooperation Agreement. The Cooperation Agreement, in substantially the form attached hereto as Exhibit A, is in all respects approved, authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver the Cooperation

Agreement, for and on behalf of the City, in substantially the form and with substantially the same content as attached hereto as Exhibit A, provided that such document may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution. The execution of the Cooperation Agreement by the Mayor shall be conclusive evidence of the approval by the City Council of such document in accordance with the terms hereof and thereof.

Section 7. Direction to Act. The City Clerk of the City (the "City Clerk") is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Resolution and to place the seal of the City on any document authorized and approved by this Resolution. The Mayor, the Mayor Pro-Tem of the City, the City Manager, the Financial Officer, the City Clerk and other appropriate officials or employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to implement and carry out the transactions and other matters authorized by this Resolution.

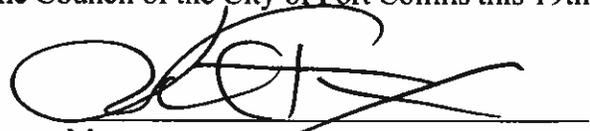
Section 8. Ratification. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the City Council or the officers, employees or agents of the City directed toward the issuance of the Series 2019 Bonds by the Authority and the execution and delivery of the Cooperation Agreement are hereby ratified, approved and confirmed.

Section 9. Severability. If any section, subsection, paragraph, clause or provision of this Resolution or the documents hereby authorized and approved shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution or such documents, the intent being that the same are severable.

Section 10. Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 11. Effectiveness. This Resolution shall take effect immediately upon its passage.

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



Mayor

ATTEST:



City Clerk



**COOPERATION AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND
THE FORT COLLINS URBAN RENEWAL AUTHORITY**

THIS COOPERATION AGREEMENT (this “Agreement”) dated as of _____, 2019, is made and entered into between the CITY OF FORT COLLINS, COLORADO (the “City”) and the FORT COLLINS URBAN RENEWAL AUTHORITY (the “Authority”).

WHEREAS, the City is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, the Authority is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (“C.R.S.”) (the “Urban Renewal Law”); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City Council of the City (the “City Council”), by Resolution No. 2011-081 approved and adopted on September 6, 2011, has authorized and approved the “Midtown Urban Renewal Plan” as an urban renewal plan under the Act (the “Original Plan”) for the area described therein (the “Original Plan Area”), and the urban renewal projects described therein; and

WHEREAS, on February 28, 2013, the City Council adopted Resolution 2013-014 which, among other things, ratified and reaffirmed the Original Plan, including the adoption of the Prospect South tax increment financing district; and

WHEREAS, on May 7, 2013, the City Council adopted Resolution 2013-043 approving modifications to the Original Plan (the “First Amended Plan”); and

WHEREAS, on December 1, 2015, the City Council adopted Resolution 2015-107 approving modifications to the First Amended Plan (the “Second Amended Plan”); and

WHEREAS, one of the modifications included in the Second Amended Plan is the removal of approximately 167.8 acres of land from the Original Plan Area thereby resulting in a new plan area (the “New Plan Area”); and

WHEREAS, Resolution 2015-107 provides that the Second Amended Plan is intended to supersede and replace in all respects the Original Plan and the First Amended Plan except that the previous Council findings and determinations in Resolutions 2011-081, 2013-014 and 2013-043 shall remain in full force and effect as applied to the New Plan Area except to the extent expressly superseded or updated in Resolution 2015-107, but the tax increment

financing provisions in the Second Amended Plan shall continue to be in effect no later than twenty-five years after the adoption of the Original Plan; and

WHEREAS, the Second Amended Plan authorizes and describes an urban renewal project consisting of various undertakings and activities to be undertaken by the Authority to facilitate the elimination and prevention of blighted within the New Plan Area and to promote the redevelopment, conservation and rehabilitation of the New Plan Area (collectively, the “Project”); and

WHEREAS, pursuant to C.R.S. Section 31-25-112, the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Second Amended Plan; and

WHEREAS, the City and the Authority have previously entered into that certain “Intergovernmental Agreement Between the City of Fort Collins, Colorado and the Fort Collins Urban Renewal Authority” dated August 16, 2006, as amended by the parties in that certain “First Addendum to the Intergovernmental Agreement Between the City of Fort Collins, Colorado and the Fort Collins Urban Renewal Authority Regarding Operating Staff and Resources” approved by the City Council and the Authority’s Board by resolution on July 5, 2011 (jointly, the “IGA”); and

WHEREAS, the IGA sets forth the various services the City will provide to the Authority and addresses in Section 10 of the IGA that the Authority may provide its own public liability insurance and other insurance or the parties may agree that the Authority will be covered under the City’s insurance coverages and the Authority will reimburse the City for the additional cost of that coverage; and

WHEREAS, the City and the Authority wish to amend in this Agreement Section 10 of the IGA to clarify and expressly provide that until April 1, 2020, the Authority and its officers and employees are included under and covered by the City’s purchased excess-insurance coverages and coverage under the City’s self-insurance program and self-insurance fund as established, provided and described in Division 6 of Article VII in Chapter 2 of the City Code and in Division 3 of Article III in Chapter 8 of the City Code; and

WHEREAS, the Authority is issuing its Fort Collins Urban Renewal Authority, Tax Increment Revenue Refunding Bonds (Prospect South), Series 2019 (the “Series 2019 Bonds”) for the purpose of refinancing certain obligations owing by the Authority to the City that financed certain urban renewal activities in the New Plan Area; and

WHEREAS, the City Council has adopted a Resolution declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Fund

Requirement or to repay the provider of any reserve fund insurance policy in the event of a draw thereunder (the “Replenishment Resolution”) as defined in the Indenture of Trust (the “Indenture”), between the Authority and U.S. Bank National Association, as trustee (the “Trustee”); and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Indenture.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. **LOAN.** If the City Council appropriates funds pursuant to the Replenishment Resolution, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

2. **PAYMENT.**

(a) All amounts payable by the Authority to the City hereunder shall constitute “Subordinate Debt” for purposes of the Indenture. The Authority shall cause such amounts to be paid from and to the extent of Pledged Revenues (as defined in the Indenture) available for the payment of Subordinate Debt in accordance with the terms of the Indenture including, in particular, Section 4.04(c) thereof.

(b) The Authority agrees to pay the City interest on the principal balance of any amounts designated as a loan hereunder at a rate to be determined based upon applicable City policies in effect at the time of any such loan.

3. **FURTHER COOPERATION.**

(a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Second Amended Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to assist the Authority and the Trustee by pursuing all lawful procedures and remedies available to it to collect and transfer to the Authority on a timely basis all Pledged Revenues for deposit into the Revenue Fund. To the extent lawfully possible, the City will take no action that would have the effect of reducing tax collections that constitute Pledged Revenues.

(c) The City agrees to pay to the Authority any Pledged Property Tax Revenues when, as and if received by the City, but which are due and owing to the Authority pursuant to the Second Amended Plan.

(d) In connection with the issuance of the Series 2019 Bonds, the Authority agrees that so long as the Series 2019 Bonds are outstanding, the Authority shall submit to the City

Manager by February 15 of each year a report in substantially the form set forth as Exhibit B to the Indenture. The City Manager agrees to submit such report to the City Council at its first regular meeting in March in each year. Notwithstanding the foregoing, failure by the Authority to provide the report required by this Section 3(d) of this Agreement and Section 5.13 of the Indenture or failure by the City Manager to submit such report to the City Council shall not constitute a default under this Agreement or under the Indenture.

4. **SUBORDINATION.** The Authority's obligation under this Agreement to repay the City for the loan referred to in Section 1 hereof is subordinate to the Authority's obligations for the repayment of the Series 2019 Bonds, any Additional Bonds and any other obligations or indebtedness that is secured or payable in whole or in part by the Pledged Revenues on a parity with the Series 2019 Bonds.

5. **AMENDMENT OF IGA SECTION 10.** Section 10 of the IGA is hereby amended to read in full as follows:

10. Insurance. The URA and the City agree that the URA and its officers and employees shall be included in and covered under the excess-insurance coverage the City purchases each year for itself and its officers and employees. The URA and its officers and employees shall also be included in and covered under the City's self-insurance program and self-insurance fund as established, provided and described in Division 6 of Article VII in Chapter 2 of the City Code and in Division 3 of Article III in Chapter 8 of the City Code. The URA shall annually reimburse the City for any additional costs the City incurs to so insure the URA and its officers and employees. The City and the URA also agree that the City's obligation under this section to provide insurance coverages to the URA and its officers and employees shall terminate on April 1, 2020. Before such termination date, the parties agree to discuss and decide whether to continue these coverages by the City from and after April 1, 2020, or whether the URA should separately obtain its own insurance coverages.

6. **GENERAL PROVISIONS.**

(a) **Separate Entities.** Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(b) **Third Parties.** Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, other than the Trustee.

(c) **Modifications.** No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in

writing by both parties and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(d) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

(e) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(f) Assignment. Except for the pledge under the Indenture, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other and of the Bank.

(g) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date above.

CITY OF FORT COLLINS, COLORADO

Wade Troxell, Mayor

(SEAL)

ATTESTED:

City Clerk

FORT COLLINS URBAN RENEWAL
AUTHORITY

[SEAL]

By _____
Chairperson, Board of Commissioners

Attest:

By _____
Executive Director