RESOLUTION 2020-052
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE ASSIGNMENT OF THE CITY’S PRIVATE ACTIVITY BOND
ALLOCATION FOR 2020 TO HOUSING CATALYST AND MERCY HOUSING TO
FINANCE THE NEW CONSTRUCTION AND REHABILITATION OF AFFORDABLE
HOUSING UNITS

WHEREAS, the City of Fort Collins is authorized and empowered under the laws of the
State of Colorado (the “State”) to issue revenue bonds for purposes including the financing of
multi-family rental housing projects for low- and moderate-income persons and families; and

WHEREAS, the Internal Revenue Code of 1986, as amended (the “Code”), restricts the
amount of tax-exempt bonds (“Private Activity Bonds” or “PAB”) which may be issued in the
State (the “State Ceiling”); and

WHEREAS, pursuant to the Code, the Colorado General Assembly adopted the Colorado
Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado
Revised Statutes (the “Allocation Act”), providing for the allocation of the State Ceiling among
various State and local governmental units, and further providing for the assignment of such
allocations from such governmental units to any entity or person with the authority to issue
bonds; and

WHEREAS, pursuant to an allocation under Section 24-32-1706 of the Allocation Act,
the City has received a direct allocation of the 2020 State Ceiling for the issuance of Private
Activity Bonds in the aggregate principal amount of $8,885,119 (the “2020 Allocation”); and

WHEREAS, if the City does not issue bonds or assign its annual allocation to another
entity by September 15 of each year, its allocation is relinquished to the statewide balance; and

WHEREAS, the City received four application for the 2020 Allocation seeking PAB
capacity for a total of nine housing projects; and

WHEREAS, the City’s PAB Committee, consisting of staff from staff representatives
from the City’s Social Sustainability, Economic Health and Finance departments, reviewed the
applications and recommends assigning $3,885,119 of the 2020 Allocation to Housing Catalyst,
and $5,000,000 of the 2020 Allocation to Mercy Housing, pursuant to Section 24-32-1706 of the
Allocation Act; and

WHEREAS, Housing Catalyst would use its portion of the 2020 Allocation for
renovation of existing affordable housing units as well as construction of new affordable units at
the Villages on Swallow in conjunction with CARE Housing, and construction of new affordable
units at 140 Oak Street (the “HC Projects”); and

WHEREAS, Mercy Housing would use its portion for construction of new affordable
units at Northfield (the “Mercy Project”); and
WHEREAS, both Housing Catalyst and Mercy Housing have expressed their willingness to attempt to issue Revenue Bonds in an amount equal to or greater than the 2020 Allocation; and

WHEREAS, the City Council finds that the 2020 Allocation can be utilized most efficiently by assigning it to Housing Catalyst to issue Private Activity Bonds for financing the HC Projects and to Mercy Housing for financing the Mercy Project, and that such assignments will advance the City’s objective of increasing the availability of adequate affordable housing for low- and moderate-income persons and families within the City; and

WHEREAS, the Council wishes to assign $3,885,119 of the 2020 Allocation to Housing Catalyst and $5,000,000 of the 2020 Allocation to Mercy Housing, which assignments are to be evidenced by Assignment of Allocation agreements between the City and each of the applicants; and

WHEREAS, the form of proposed Assignment of Allocation for each applicant are attached as Exhibits “A” and “B” and incorporated herein by reference.

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 Council hereby approves assignment to Housing Catalyst of $3,885,119 of the City’s 2020 Allocation for the HC Projects as described herein.

Section 3. That the City Council hereby approves assignment to Mercy Housing of $5,000,000 of the City’s 2020 Allocation for the Mercy Project as described herein.

Section 3. That the City Council hereby authorizes the Mayor to execute an Assignment of Allocation with Housing Catalyst in substantially the form attached as Exhibit “A,” and an Assignment of Allocation with Mercy Housing in substantially the form attached as Exhibit “B”, along with such other terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of June, A.D. 2020.

[Signature]
Mayor

ATTEST:

[Signature]
City Clerk
ASSIGNMENT OF ALLOCATION

THIS ASSIGNMENT (the “Assignment”), dated __________, 2020 is between the City of Fort Collins, Colorado, a municipal corporation (the “Assignor”), and Housing Catalyst, a body corporate and politic (the “Assignee”).

RECITALS

A. The Assignee intends to finance (i) the construction of 44 new units of rental housing and rehabilitation of 40 additional units at Village on Swallow/CARE Swallow, located at 1303 and 1403 West Swallow Road, and (ii) the construction of 78 new units of rental housing at 140 Oak Street, all for households with incomes ranging from 0% to 60% of area median income (the “Projects”). The Projects will each be designed to qualify as a “project” within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the “Act”).

B. The Assignee intends to provide for the issuance of its Multifamily Housing Revenue Bonds (the “Proposed Bonds”), pursuant to the provisions of the Act for the purpose of financing the Projects.

C. The Assignee has requested that the Assignor assign to the Assignee $3,885,119 of the Assignor’s 2020 allocation (the “Allocation”) under the bond ceiling for the State of Colorado and its issuing authorities (“the State Ceiling”) computed under Section 146(d) of the Internal Revenue Code of 1986 (the “Code”) as provided for the Assignor as a “designated local issuing authority” under part 17 of article 32 of title 24, Colorado Revised Statutes (the “Allocation Act”), for use in connection with the financing of the Projects.

D. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, $3,885,119 of the Assignor’s 2020 allocation from the State Ceiling.

ASSIGNMENT

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee $3,885,119 of the Assignor’s 2020 Allocation from the State Ceiling for private activity bonds. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the “Statewide Balance” as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2020, or (b) Section 24-32-1706(3)(c), C.R.S., applies.

2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.
3. The Assignee hereby:

   (a) accepts the assignment of $3,885,119 of the Assignor’s Allocation from the State Ceiling described above;

   (b) agrees to use its best efforts to issue and use the Proposed Bonds for the purpose of financing the Projects; and

   (b) agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such Allocation.

4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute a debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado, nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

[The remainder of this page is intentionally left blank]
IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF FORT COLLINS, COLORADO,
as Assignor

____________________________
Wade O. Troxell, Mayor

ATTEST:

APPROVED AS TO FORM:

____________________________
City Clerk
(print name)

____________________________
Assistant City Attorney
(print name)

HOUSING CATALYST, as Assignee

By: ___________________________
Its: ___________________________

ATTEST:

By: ___________________________
Its: ___________________________
ASSIGNMENT OF ALLOCATION

THIS ASSIGNMENT (the “Assignment”), dated ______________, 2020 is between the City of Fort Collins, Colorado, a municipal corporation (the “Assignor”), and Mercy Housing Mountain Plains, a Colorado nonprofit corporation (the “Assignee”).

RECITALS

A. The Assignee intends to finance the construction of 84 new units of rental housing at Northfield, for households with incomes ranging from 30% to 70% of area median income (the “Project”). The Project will be designed to qualify as a “project” within the meaning of Title 29, Article 4, Part 2, Colorado Revised Statutes, as amended (the “Act”).

B. The Assignee intends to provide for the issuance of its Multifamily Housing Revenue Bonds (the “Proposed Bonds”), pursuant to the provisions of the Act for the purpose of financing the Projects.

C. The Assignee has requested that the Assignor assign to the Assignee $5,000,000 of the Assignor’s 2020 allocation (the “Allocation”) under the bond ceiling for the State of Colorado and its issuing authorities (“the State Ceiling”) computed under Section 146(d) of the Internal Revenue Code of 1986 (the “Code”) as provided for the Assignor as a “designated local issuing authority” under part 17 of article 32 of title 24, Colorado Revised Statutes (the “Allocation Act”), for use in connection with the financing of the Projects.

D. Subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept, $5,000,000 of the Assignor’s 2020 allocation from the State Ceiling.

ASSIGNMENT

In exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Assignor hereby assigns and transfers to the Assignee $5,000,000 of the Assignor’s 2020 Allocation from the State Ceiling for private activity bonds. The Assignor and the Assignee understand that such assigned allocation shall automatically be relinquished to the “Statewide Balance” as defined under the Allocation Act unless (a) the Proposed Bonds are issued by the Assignee on or before September 15, 2020, or (b) Section 24-32-1706(3)(c), C.R.S., applies.

2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.

3. The Assignee hereby:
(a) accepts the assignment of $5,000,000 of the Assignor’s Allocation from the State Ceiling described above;

(b) agrees to use its best efforts to issue and use the Proposed Bonds for the purpose of financing the Project; and

(b) agrees to abide by each of the terms and conditions of this Assignment in connection with the use of such Allocation.

4. The Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all or any portion of the assignment set forth herein as an allocation for a project with a carryforward purpose.

5. This Assignment shall not constitute a debt or indebtedness or financial obligation of the Assignor within the meaning of the constitution or statutes of the State of Colorado, nor give rise to a pecuniary liability or charge against the general credit or taxing power of the Assignor.

[The remainder of this page is intentionally left blank]
IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF FORT COLLINS, COLORADO,

as Assignor

____________________________________

Wade O. Troxell, Mayor

ATTEST:               

APPROVED AS TO FORM:

____________________________

____________________________

City Clerk

(attach name)

____________________________

____________________________

Assistant City Attorney

(print name)

MERCY HOUSING MOUNTAIN

PLAINS, as Assignee

By: ______________________________

Its: ______________________________

ATTEST:

By: ______________________________

Its: ______________________________

[Signature Page to Assignment of Allocation]