

RESOLUTION 2020-089
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE A REVISED
INTERGOVERNMENTAL AGREEMENT WITH
COLORADO STATE UNIVERSITY RELATED TO CANVAS STADIUM

WHEREAS, on December 2, 2014, the City Council adopted Resolution 2014-109 approving a mitigation report for an on-campus stadium at Colorado State University (CSU) and indicating the City's desire to enter into an intergovernmental agreement with CSU identifying key impacts that could be caused by an on-campus stadium and mitigation strategies to lessen the impact of event day operations at an on-campus stadium; and

WHEREAS, the City Council also expressed a desire to, in such intergovernmental agreement, determine responsibilities for costs that might be incurred in addressing mitigation measures; and

WHEREAS, on March 17, 2015, the City Council adopted Resolution 2015-037 approving an intergovernmental agreement that addressed stadium impacts and mitigation, identified key stadium-related infrastructure improvements and CSU's financial responsibility for them, and also noted additional projects for which future shared responsibility could be considered (the "2015 IGA"); and

WHEREAS, CSU broke ground on Canvas stadium in September 2015, and the stadium opened in August 2017; and

WHEREAS, on May 16, 2017, the City Council adopted Resolution 2017-047 authorizing a first addendum to the 2015 IGA to update the details and costs of several infrastructure improvement projects related to the stadium; and

WHEREAS, since then the infrastructure improvements have been completed, and the 2015 IGA expired earlier this year; and

WHEREAS, CSU and the City wish to enter into a new, updated intergovernmental agreement (the "2020 IGA") to continue the established partnership related to managing the impacts of major events at the stadium; and

WHEREAS, the proposed 2020 IGA is attached hereto and incorporated herein as Exhibit "A"; and

WHEREAS, the revised IGA, which would be for an initial term of five years, does not require any financial contribution from 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 Council hereby authorizes the Mayor to execute the 2020 IGA in substantially the form attached hereto as Exhibit "A", together 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, provided such changes are materially consistent with the terms of this Resolution and the intended purpose of the 2020 IGA.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of October, A.D. 2020.



Mayor

ATTEST:



City Clerk



AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT
RELATED TO THE ON-CAMPUS STADIUM

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Agreement”), dated _____, 2020, is entered into by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (“City”), and THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, ACTING BY AND THROUGH COLORADO STATE UNIVERSITY (“CSU”). The City and CSU are referred to herein individually as a “Party” and collectively as the “Parties.”

A. On April 13, 2015, the Parties entered into an Intergovernmental Agreement, as later amended by a First Addendum dated June 22, 2017 (the “2015 IGA”).

B. The purpose of the 2015 IGA was to document plans and agreements developed by the Parties to identify and mitigate the impacts related to CSU’s construction and operation of an on-campus stadium facility at the CSU campus, including but not limited to operational planning, infrastructure improvements, transit operations, parking and traffic issues, law enforcement and security services and neighborhood relationships.

C. The Parties jointly identified the need and responsibility to evaluate and manage the existing pedestrian and bicycle traffic entering, exiting, and traversing campus, as well as the increase in such traffic created by the use of the stadium. The Parties also acknowledged the mutual goal of promoting bike and pedestrian safety both on- and off-campus. This responsibility, in conjunction with the Parties’ mutual commitment to reducing vehicle traffic, was achieved by the improvement of access points around campus, including both grade-separated crossings and same-grade crossings. The safety and management of pedestrian and bicycle traffic is further achieved by a multi-modal approach to event operations. By emphasizing public transit, as well as implementing best efforts to disperse and spread out peak arrival and departure flows, the Parties can avoid unnecessary infrastructure costs while maximizing the stadium’s benefit to CSU and the City.

D. Now that the major infrastructure improvements contemplated by the 2015 IGA have been completed, and the stadium has been operational for several seasons, the Parties wish to update the 2015 IGA with an amended agreement that reflects that Parties present intentions regarding stadium operations.

E. The precise impact of the use of the stadium on the surrounding campus, neighborhoods and public services and infrastructure cannot always be perfectly predicted. The Parties agree to continue to work together in good faith to identify impacts and common needs, and to develop plans for mitigating such impacts going forward.

F. For the purposes of this Agreement the Parties have deemed the terms “campus” and “main campus” to mean generally the area bounded by Laurel Street, Shields Street, Prospect Road and College Avenue that is owned and used by CSU for academic purposes, administrative purposes and

other programs and activities associated with CSU. The terms “campus” and “main campus” are not intended to have a particular legal or interpretive significance as used in this Agreement.

G. As set forth in this Agreement, the City and CSU agree to take specific steps to mitigate the impacts of the on-campus multi-use stadium facility and, by continuing the 2015 IGA in this updated and restated form, agree to continue to collaborate and coordinate together in order to advance these objectives.

NOW, THEREFORE, the Parties agree as follows:

1. Term. The term of this Agreement will begin on the date it is fully executed by the Parties (the "Effective Date") and shall continue until June 30, 2025, provided that the Agreement shall be automatically extended for successive five (5) year terms until either party gives written notice to the other of its intent to terminate this Agreement at the end of its then-current term. Such notice shall be given at least sixty (60) days prior to the end of the then-current term. The Parties have agreed to review and update this Agreement as needed through the adoption of addenda, as more specifically described below.

2. Use of the Stadium.

A. *Uses.* CSU uses the on-campus stadium facility (the "Stadium") for several purposes, including but not limited to football practices and games, other CSU NCAA sports, club sports practices and games, intramural practices and games, band and cheerleading practices, athletic camps, as well as special events such as welcome and orientation events, graduation ceremonies, distinguished speakers, and occasional concerts, and various academic and student support purposes, many of which already occur in other CSU locations, including on the main campus.

B. *Major Events.* For purposes of this Agreement, a "Major External Event" is defined as a ticketed event, for which tickets are offered for sale to the public, featuring a performance external to CSU, at which attendance is anticipated to exceed 12,000 persons. For purposes of this Agreement, a "Major CSU Event" shall mean any event held at the Stadium that is expected to take place (and ultimately does take place) in the Stadium that, based on past experience, advance ticket sales or other reasonably accurate and publicly available information, is reasonably expected to attract 12,000 or more attendees who are primarily CSU students, faculty, staff, alumni, donors, or supporters and their respective family members and guests, including but not limited to CSU football games, commencement, or new student orientation.

CSU agrees not to hold more than three (3) Major External Events in any calendar year. CSU agrees to give the City notice of at least sixty (60) days prior to any Major External Event at the Stadium, and to review each Major External Event with the City, both before and after it occurs. If significant problems are discovered through good faith discussions, CSU agrees to discuss with the City a possible limit on the number or extent of future Major External Events.

3. Stadium Event Management.

A. *Regular Coordination.* CSU agrees to continue communicating and coordinating with the City and Larimer County and other relevant agencies for all Major CSU Events and Major External Events held at the Stadium (either referred to as a Major Event"). In addition, CSU has developed a Major Event Coordination and Operations Plan ("the Plan") to provide a framework for management of Major Events, based upon the size, nature and timing of such events. The Plan is intended to assist CSU and the City in establishing a framework for planning and coordinating other events that are not considered Major Events but are anticipated to alter the pattern or volume of pedestrian, transit or other traffic flows, or otherwise impact the public facilities serving the CSU campus. The Parties agree to work cooperatively to review and update the Plan from time to time in coordination to reflect the information developed through experience with events and operation of the Stadium. The Plan also identifies a process and mechanism for a game-day communications plan to provide for communication of game-day concerns and coordination, and generally identifies costs of operations expected to be incurred by the City and required in connection with Major Events, to facilitate discussion of and planning for reimbursement of those expenses by CSU.

B. *Law Enforcement and Security.* Consistent with Section 2(B) above, CSU will provide sixty (60) days' notice and will coordinate the provision of law enforcement and other security for Major Events at the Stadium. CSU agrees to be responsible for additional costs, if any, that are directly associated with the provision of law enforcement and security for Major Events, as set forth in writing for each specific Major Event. In addition, CSU agrees to consult with local law enforcement agencies about entering into a Special Event Mutual Assistance Agreement or other agreement intended to coordinate and arrange for cooperation in connection with Major Events at the Stadium or other events anticipated to result in significant law enforcement and security needs which exceed CSU's ability or desire to solely provide. In planning for and responding to emergencies on campus, including at the stadium, CSU utilizes a comprehensive Emergency Response Plan, which incorporates the National Incident Management System ("NIMS"), and coordinates with all other appropriate law enforcement agencies.

C. *Traffic and Parking.* CSU and the City agree to encourage multi-modal methods of transportation, such as walking, bicycles, buses, and shuttles, as well as vehicles, to the Stadium for Major Events. CSU has developed a traffic management and campus parking plan for Major Events at the Stadium (the "Traffic/Parking Plan"), and CSU agrees to confer with the City about any amendments, additions or replacements of or to said Plan. The Parties agree to work together in good faith, in continuation of the spirit of current practices, regarding such approvals and such a Plan. The Parties acknowledge that any Traffic/Parking Plan will likely require modifications over time, depending upon attendance, traffic patterns, and the availability of public transportation, as well as the evaluation of impacts based on experience with events at the Stadium. The Parties agree to review and develop plans to address costs associated with heightened or special parking

enforcement in areas around the campus on Major Event days on an ongoing basis.

D. *City Public Transportation Services.*

- (1) On the days of Major Events during the 2020-21 school year (August 24, 2020 to May 14, 2021) City will provide the level of Transfort service that is standard for that day of the week at no cost to CSU.
- (2) For future school years, CSU and the City agree to assess and discuss on an annual basis what supplemental transportation services the City may expect to provide for Major Events at the Stadium (particularly additional services from Transfort, including MAX bus rapid transit service), to assist with managing the flow of people to and from such events, and how the costs for such supplemental services will be managed by the parties, taking into account any applicable legal or regulatory limits or requirements. As part of that assessment CSU and the City agree to also discuss financially feasible resource options for both parties.

E. *Game-Day Activities.* CSU has established and supports the ongoing efforts of the Game Day Agency Coordination Team (the “Coordination Team”): a working group comprised of CSU and City staff representatives in areas such as traffic, parking, transportation and public safety, as well as representatives from other emergency services providers such as fire and ambulance services. The Coordination Team evaluates and develops plans for the conduct of game-day events and activities, including tailgating, which CSU intends to encourage and provide opportunities for on the campus (rather than in adjacent neighborhoods). CSU agrees to convene the Coordination Team in the week before a game day. The Coordination Team will consult with the City regarding matters of shared interest and concern, and CSU will share plans for the conduct of game-day events and activities with the City and integrate those plans into the Major Event Coordination and Operations Plan.

4. Neighborhood Relationships. CSU and the City will work together in good faith to examine and respond to community impacts and interactions, especially in neighborhoods surrounding the CSU campus, related to use of the Stadium for Major Events. Relevant issues may include, but are not limited to, trash and litter, noise, intrusive lighting, traffic, and parking issues that may occur related to Major Events or other kinds of events at the Stadium. CSU is committed to working with the City and neighborhoods in the vicinity of the campus to identify and address such issues. In particular, CSU agrees to employ to the extent reasonably practicable, best practices and available technology concerning the mitigation of noise and lighting impacts, and agrees to strive to meet the City’s noise ordinances in connection with non-football game events at the Stadium.

5. Utilities. As agreed by CSU and the City, the City furnishes certain utility services to the Stadium and related improvements subject to compliance with all terms and conditions for utility service, payment of all applicable rates, fees and charges, and construction of any required infrastructure in accordance with applicable City standards and specifications.

6. Review Procedures and Updates. The Parties agree to meet in good faith for a periodic review of this Agreement and any procedures attendant thereto, at a time and place to be mutually agreed upon. Although the Parties agree to discuss any proposed amendments to the Agreement as part of any periodic review, neither Party is obligated to agree to any subsequent amendment to the Agreement and its provisions.

7. Existing Rights and Agreements. Nothing in this Agreement shall act to amend, modify, or supersede any annexations, any related agreements or any other agreements, rights, or legal positions by and between the City and CSU external to this Agreement, or to alter in any way their recourse under the same.

8. Liability. Only to the extent permitted by applicable law, each party will be responsible for its own negligent acts or omissions and that of its officers, employees, agents and contractors. Any liability of the City, CSU, or their officers and employees is subject to all the defenses, immunities, and limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (the "CGIA"), and to any other defenses, immunities, and limitations to liability available under the law. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by CSU or the City of its governmental and sovereign immunities, as an express or implied acceptance by CSU or the City of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the CGIA, as a pledge of the full faith and credit the State of Colorado, or as the assumption by any of the Parties of a debt, contract or liability of each other in violation of Article XI, Section 1 of the Constitution of Colorado.

9. Default; Dispute Resolution. If any party defaults in its obligations under the terms of this Agreement, a non-defaulting party may give the defaulting party written notice specifying the nature of the default. If the defaulting party has not cured the default within thirty (30) days, or, for a default reasonably requiring more than thirty (30) days to effect a cure, has not commenced a cure within thirty (30) days and pursued it with diligence, the non-defaulting party may terminate this Agreement, provided that, if there is any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, the parties agree to attempt to resolve the dispute informally before terminating the Agreement. Accordingly, the Parties will first elevate the disputed issues to senior administration, and if the matters are not resolved, the Parties may then engage in mediation or other non-binding dispute resolution methods. The Parties agree that in the event of a breach of this Agreement by either party, except for any breach of the obligations set forth in Section 5(B) herein, the sole remedy of the non-breaching party shall be termination of this Agreement as set forth herein, and neither party shall be liable to the other for any money damages, expenses, costs or attorneys' fees, and neither party shall be entitled to seek and both Parties agree to waive the right to pursue any equitable remedies, including but not limited to injunctive relief or specific performance.

10. Notices. Any notice or other communication given by any party to another relating to this Agreement must be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other party at its respective addresses set forth below; and such notice or other communication will be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier:

If to the City:

City Manager
City of Fort Collins
Attn: Darin A. Atteberry
P.O. Box 580
Fort Collins, CO 80522

With a copy to:

City Attorney's Office
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

If to CSU:

Office of the President
Colorado State University
Attn: President Joyce McConnell
0100 Campus Delivery
Fort Collins, CO 80523-0100

With a copy to:

Office of the General Counsel
Colorado State University System
01 Administration Building
0006 Campus Delivery
Fort Collins, CO 80523-0006

11. Obligations Subject to Appropriation. The obligations of CSU and the City to commit or expend funds in any subsequent fiscal year are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by the Fort Collins City Council and the Board of Governors of the Colorado State University System, respectively, in the City and CSU's sole discretion. If the City Council or the Board of Governors does not appropriate funds necessary to carry out any such obligations, the City or CSU will notify the other party promptly of such non-appropriation. If such non-appropriation results in a material impairment of the City's or CSU's rights hereunder, such party may terminate the Agreement, with no further recourse against the other party, by providing thirty (30) days written notice.

12. General Provisions.

A. Words of the masculine gender include the feminine and neuter gender; and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice-versa.

B. This Agreement is to be construed according to its fair meaning and as if prepared by both Parties and is deemed to be and contain the entire understanding and agreement between the Parties. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties.

C. This Agreement cannot be modified or assigned except in writing signed by all parties.

D. Subject to the provisions hereof, the benefits of this Agreement and the burdens hereunder inure to and are binding upon the parties hereto and their respective heirs, administrators, successors, agents and permitted assigns.

E. This Agreement will be governed by and its terms construed under the laws of the State of Colorado. Any judicial proceedings commenced by a party to enforce any of the obligations, covenants, and agreements contained herein, must be commenced in the Larimer County District Court located in Fort Collins, Colorado.

F. Nothing contained herein is deemed or should be construed by the Parties nor by any third party as creating the relationship of principle and agent, a partnership or a joint venture between the Parties, or any employment relationship between the Parties.

G. This Agreement is made for the sole and exclusive benefit of the City and CSU, and it is not made for the benefit of any third party.

H. If any term or condition of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such a term or condition, will not in any way affect any of the other terms or conditions of this Agreement, provided that the invalidity of any such term or condition does not materially prejudice any party in their respective rights and obligations under the valid terms and conditions of this Agreement.

I. No party will be deemed in violation of this Agreement if prevented from performing any of its respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, rights, rebellions, sabotage, or any other circumstances for which it is not responsible or that are not within its control.

**THE CITY OF FORT COLLINS, COLORADO
a Municipal Corporation**

Date: _____

By: _____

ATTEST:

City Clerk

(Print name)

APPROVED AS TO FORM:

City Attorney

(Print name)

**THE BOARD OF GOVERNORS
OF THE COLORADO STATE UNIVERSITY
SYSTEM, ACTING BY AND THROUGH
COLORADO STATE UNIVERSITY**

Date: _____

By: _____
Joyce McConnell, President

Legal Review:

Date: _____

By: _____

Colorado State University System