

RESOLUTION 2020-094  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING A PARTIAL REASSIGNMENT OF THE CITY'S  
PRIVATE ACTIVITY BOND ALLOCATION FOR 2020 FROM  
MERCY HOUSING TO HOUSING CATALYST

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

WHEREAS, the City's PAB Committee reviewed the applications and recommended assigning \$3,885,119 of the 2020 Allocation to Housing Catalyst, and \$5,000,000 to Mercy Housing, pursuant to Section 24-32-1706 of the Allocation Act; and

WHEREAS, on June 2, 2020, the City Council adopted Resolution 2020-052 making assignments as recommended by the PAB Committee; and

WHEREAS, Mercy Housing would use its portion of the 2020 Allocation for construction of new affordable units at Northfield (the "Mercy Project"), but City staff has since learned that Mercy Housing does not have authority to issue tax exempt bonds, and so cannot directly receive a portion of the City's 2020 Allocation; and

WHEREAS, Housing Catalyst has the authority to issue bonds and has agreed to collaborate with Mercy Housing on the Mercy Project and to attempt to issue bonds on Mercy Housing's behalf in an amount equal to or greater than \$5,000,000; and

WHEREAS, the City Council finds that the portion of the 2020 Allocation previously assigned to Mercy Housing can be utilized most efficiently by assigning it to Housing Catalyst to issue Private Activity Bonds for financing the Mercy Project, and that such assignment 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 State Department of Local Affairs (DOLA) has advised staff that this approach is acceptable, subject to approval by DOLA of an administrative reallocation; and

WHEREAS, the Council wishes to revoke the prior assignment to Mercy Housing and reassign \$5,000,000 of the 2020 Allocation to Housing Catalyst to be used for the Mercy Project, which assignment is to be evidenced by an Assignment of Allocation agreement between the City and Housing Catalyst; and

WHEREAS, a draft of the proposed Assignment of Allocation is attached as Exhibit "A" and incorporated herein by reference.

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

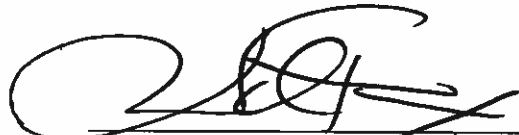
Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby rescinds its prior assignment to Mercy Housing of \$5,000,000 of the City's 2020 Allocation for the Mercy Project as described herein and reassigns such portion of the City's 2020 Allocation to Housing Catalyst for the benefit of the Mercy Project.

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," 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.

Section 4. That the City Council also authorizes the Mayor to execute such documents as are necessary to terminate the prior Assignment of Allocation with Mercy Housing.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 20th day of October, A.D. 2020.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk / Chief Deputy



**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. On June 2, 2020, the Fort Collins City Council adopted Resolution 2020-052 making assignments 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").

B. Such Resolution assigned \$5,000,000 of the Allocation to Mercy Housing Mountain Plains, a Colorado nonprofit corporation ("Mercy Housing") 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".)

C. Mercy Housing does not have authority to issue tax exempt bonds, and Assignee has agreed with Mercy Housing to issue the bonds for financing Mercy's Housing's project.

D. On October 20, 2020, the Fort Collins City Council adopted Resolution 2020-\_\_\_ rescinding its prior assignment to Mercy Housing and reassigning Mercy Housing's portion of the Allocation to Assignee.

E. On behalf of Mercy Housing 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 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").

C. The Assignee has requested that the Assignor assign to the Assignee \$5,000,000 of the for use in connection with the financing of the Projects.

D. Subject to the terms and conditions set forth herein, and subject to approval of an administrative reallocation by the State Department of Local Affairs (DOLA), 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, or (c) DOLA approves an administrative reallocation.

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 arrange with Mercy Housing to 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.

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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

\_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
(print name)

\_\_\_\_\_  
(print name)

HOUSING CATALYST, as Assignee

By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

[Signature Page to Assignment of Allocation]