

## AGENDA ITEM SUMMARY

December 2, 2014

City Council

### STAFF

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Gerry Paul, Director of Purchasing & Risk Management

### SUBJECT

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Resolution 2014-108 Authorizing the Purchasing Agent to Lease Additional Equipment Under the City's Standard Master Lease Agreement with Pinnacle Public Financing, Inc. and to Enter Into a First Amendment to that Standard Master Lease Agreement.

### EXECUTIVE SUMMARY

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The purpose of this item is to request approval of the lease-purchase of vehicles and equipment for the cost of \$1,255,550 under the City's Master Lease Agreement with Pinnacle Public Finance (the "Agreement") and to approve a "First Amendment" to that Agreement. Quarterly Payments of \$66,551.14 at the 2.25% interest rate will not exceed \$266,205 in 2015. Money for 2015 lease-purchase payments is included and appropriated in the 2015 budget. A competitive process was used to select Pinnacle Public Finance for this Agreement. A 2014 Finance Department analysis of current and historical equipment lease financing arrangements showed that lease-purchase is in the best interest of the City given the interest rate offered for the lease. Staff believes acceptance of this lease rate is in the City's best interest.

### STAFF RECOMMENDATION

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Staff recommends adoption of the Resolution.

### BACKGROUND / DISCUSSION

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This Resolution authorizes the Purchasing Agent to enter into a lease-purchase transaction with Pinnacle Public Finance ("Pinnacle") at 2.25 % interest rate under a new "Schedule of Equipment" and to enter into a First Amendment to the Agreement with Pinnacle. The Agreement is for an original term from the execution date of the Agreement to the end of fiscal year 2015. The Agreement provides for renewable one-year terms thereafter, to a total term of five (5) years, subject to annual appropriation of funds needed for lease payments. The total lease terms, including the original and all renewal terms, will not exceed the useful life of the property. Each of the items acquired through this transaction has a useful life longer than five years. This lease-purchase financing is consistent with the financial policies of the City of Fort Collins.

The First Amendment to the Lease amends certain language in Section 1.2 of the Agreement to clarify the City's and Pinnacle's original (and current) intent with respect to the City being listed as the owner on the certificates of title for the leased motor vehicles. Specifically, the intent of this motor-vehicle-title language was and is not to change the lease-purchase nature of the Agreement, but solely for the purposes of establishing ownership of the leased motor vehicles for federal tax purposes, reducing Pinnacle's liability for any civil claims arising from the City's use of the motor vehicles, and for the City's administrative convenience in establishing clear title to the vehicles when the City exercise its option to purchase any of them.

The First Amendment also adds a new Section 1.4 to the Agreement to establish a process by which the State of Colorado certificates of title for the leased motor vehicles will be kept in the possession of a third-party escrow agent until either of the following occurs: (1) the City exercises its option to purchase a leased motor vehicle, in which event the escrow agent will deliver the title to the City; or (2) the Agreement terminates as the result of the City's nonappropriation, because the City is in default under the Agreement, or upon reaching the

end of a lease term, in which events the title will be delivered to Pinnacle.

All equipment shall be leased-purchased following the City's purchasing ordinances and procedures to ensure that the cost to the City is fair and reasonable as determined by a competitive purchasing process.

The vehicles and equipment financed under the Agreement will comply with applicable City policies, and will be in accordance with the goal of optimizing City resources without impacting service to the community.

An "Equipment Request" justifying the replacement of each vehicle or piece of fleet equipment is on file with Fleet Services. The fleet manager has researched each request, and approved them based on current and projected maintenance costs, fuel economy, downtime, and relevant safety factors. Other equipment purchases have been approved in accordance with departmental procedures.

## **FINANCIAL / ECONOMIC IMPACTS**

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Lease-Purchase: The City's lease-purchase policy provides that:

The City of Fort Collins uses lease-purchases for the provision of new and replacement equipment, vehicles and rolling stock in order to ensure the timely replacement of equipment and vehicles. This method may also be used to acquire real property. Members of the management staff have developed an equipment needs schedule for rolling stock which encompasses the demands of operating departments. This schedule is used to project equipment needs for each budget year.

The type of lease that the City uses is termed a lease-purchase agreement. With each rental payment the City builds equity and assumes risk in the asset over the term of the lease. The annual installments are subject to appropriation by the Council each year.

Advantages of a lease-purchase over a cash purchase are:

- Decreasing the impact of inflation on the purchase of new and replacement equipment.
- Resolving the problem of capital replacement needs backlog.
- Conserving operating reserves.
- Reducing the initial impact of the cost to user departments by enabling costs to be spread over the useful life of the equipment.
- Safeguarding the opportunity to use cash assets to earn higher interest than the interest cost of lease-purchasing.

A 2014 Finance Department analysis of current and historical equipment lease financing arrangements showed that lease-purchase is in the best interest of the City given the interest rate offered for the lease and projected investment rate.

According to C.R.S. Section 29-1-103, local governments are required to identify as part of their budgets: (1) the total expenditures during the ensuing fiscal year for all lease purchase agreements involving real and personal property; and (2) the total maximum payment liability under all lease purchase agreements over the entire terms of the agreements, including all optional renewal terms.

Staff recognizes that the State does not include lease-purchase in the legal definition of debt; however, rating agencies include lease-purchases in calculating the City's debt burden.

The proposed Resolution authorizes the lease-purchase financing of the following under the Agreement, as amended by the First Amendment:

Description	Quantity	Cost
<b>Streets - Replacements</b>		
Pavement Milling Machine	1	660,000.00
Sidewalk Tractor with accessories	1	93,200.00
Dump Body for Plow truck	1	61,000.00
Streets Total:		<b>814,200.00</b>
<b>Transportation Fund Total:</b>		<b>814,200.00</b>
<b>Patrol - Officer Vehicle (KFCG)</b>		
Ford Utility Police Interceptor AWD	1	26,700.00
Patrol vehicle equipment & vinyl wrap	1	7,800.00
Patrol Officer Vehicle Total:		<b>34,500.00</b>
<b>Patrol - Officer Vehicle</b>		
Ford Utility Police Interceptor AWD	4	106,800.00
Patrol vehicle equipment & vinyl wrap	4	49,500.00
Patrol Officer Vehicle Total:		<b>156,300.00</b>
<b>General Fund Total:</b>		<b>190,800.00</b>
<b>Information Technology</b>		
Dell OptiPlex 9020 Minitower	25	22,000.00
Dell OptiPlex 9020 Small Form Factor	50	44,100.00
Dell Latitude E6440 CTO & case	91	126,100.00
Dell Venue 11 Tablets	10	13,500.00
Dell Latitude E6430 ATG	10	24,000.00
E Porte Plus	95	8,300.00
Dell 22 Monitor - P2214H	20	3,300.00
Dell 24 Monitor - P2414H	10	2,500.00
Computer accessories	1 lot	6,750.00
<b>MIS Fund:</b>		<b>250,550.00</b>
<b>Lease Total:</b>		<b>1,255,550.00</b>

Departments have appropriately justified the purchase of all new and replacement vehicles and equipment.

**ENVIRONMENTAL IMPACTS**

Due to improvements in emissions and engine technology, new vehicles and equipment will use less fuel and produce fewer emissions than the units being replaced. These vehicles are as fuel efficient as can be provided pursuant to the needs of patrol.

RESOLUTION 2014-108  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE PURCHASING AGENT TO LEASE ADDITIONAL EQUIPMENT  
UNDER THE CITY'S STANDARD MASTER LEASE AGREEMENT WITH  
PINNACLE PUBLIC FINANCING, INC. AND TO ENTER INTO A FIRST  
AMENDMENT TO THAT STANDARD MASTER LEASE AGREEMENT

WHEREAS, the City of Fort Collins (the "City") and Pinnacle Public Finance, Inc. ("Pinnacle") have previously entered into that certain "Standard Master Lease Agreement" dated February 15, 2011, (the "Agreement"); and

WHEREAS, the Agreement provides that Pinnacle will lease to the City certain "Equipment" as generally described in Section 1.1 of the Agreement and as specifically described in each "Schedule of Equipment" that is agreed to in the future and added to the Agreement as Exhibit A by the City and Pinnacle (collectively, the "Equipment"); and

WHEREAS, the Agreement contemplates an initial term of one year, with up to four additional one-year terms, not to exceed a total of five years; and

WHEREAS, Article V of the Agreement grants the City the option to purchase any or all of the Equipment in accordance with the provisions of Article V of the Agreement; and

WHEREAS, the Agreement also expressly provides that all of the City's obligations under the Agreement are subject to the City Council's annual appropriation of each year's lease payments and, if such appropriation does not occur, Pinnacle's sole remedy is to repossess the Equipment; and

WHEREAS, since entering into the Agreement, the City's Purchasing Agent has, after approval by the City Council, leased Equipment on the City's behalf from Pinnacle under seven separate schedules of equipment and corresponding payment schedules; and

WHEREAS, the Purchasing Agent has negotiated with Pinnacle the lease of additional Equipment under the Agreement as described in the "Schedule of Equipment No. 8" dated December 9, 2014, attached hereto as Exhibit "A" and incorporated herein by reference ("Schedule of Equipment No. 8"); and

WHEREAS, the Purchasing Agent has also negotiated with Pinnacle quarterly lease payments of Sixty Six Thousand Five Hundred Fifty One Dollars and Fourteen Cents (\$66,551.14) for five years for the Equipment being leased in Schedule of Equipment No. 8 as set forth in the parties' "Payment Schedule, Equipment Schedule #8" dated December 9, 2014, (the "Payment Schedule"); and

WHEREAS, the funds needed for the City's quarterly lease payments that will be owed to Pinnacle in 2015 for the Equipment being leased in Schedule of Equipment No. 8, have been budgeted and appropriated in the City's 2015 annual budget that was adopted by Council on November 18, 2014; and

WHEREAS, the Purchasing Agent and Pinnacle have also negotiated the “First Amendment to Master Lease Agreement” attached hereto as Exhibit “B” and incorporated herein by reference (the “First Amendment”); and

WHEREAS, the purpose of the First Amendment is to amend certain language in Section 1.2 of the Agreement to clarify the City’s and Pinnacle’s original (and current) intent with respect to the language in Section 1.2 that provides that the City is to be listed as the owner on the titles of motor vehicles included in the Equipment leased under Schedule of Equipment No. 8 and that have been leased under the previous seven schedules of equipment; and

WHEREAS, that such original (and current) intent of this motor-vehicle-title language was and is not to change the lease-purchase nature of the Agreement, but solely for the purposes of establishing ownership of the leased motor vehicles for federal tax purposes, reducing Pinnacle’s liability for any civil claims arising from the City’s use of the motor vehicles, and for the City’s administrative convenience in establishing clear title to vehicles when the City exercises its option to purchase any of them; and

WHEREAS, this intent is further supported in the First Amendment by the addition of a new Section 1.4 to the Agreement to establish a process by which the originals of the State of Colorado certificates of title for the leased motor vehicles will be kept in the possession of a third-party escrow agent until the City either exercises its option under the Agreement to purchase a leased motor vehicle, in which event the vehicle’s title will be delivered to the City, or the Agreement terminates as a result of nonappropriation, as a result of a default under the Agreement by the City, or upon reaching the end of the lease term, in which events the certificates of title will be delivered to Pinnacle; and

WHEREAS, the City is authorized in Section 8(c) of Article V of the City Charter, Article IV in Chapter 8 of the City Code, and in C.R.S. Section 31-15-801 to enter into multiple-year lease-purchase agreements provided each year’s lease payments are subject to annual appropriation; and

WHEREAS, the lease of the Equipment in Schedule of Equipment No. 8 under the Lease will not constitute a “multiple fiscal year direct or indirect debt or other obligation” of the City within the meaning of Section 20(4)(b) of Article X of the Colorado Constitution and, therefore, this lease of Equipment under Schedule of Equipment No. 8 can be entered into without voter approval; and

WHEREAS, the City Council has determined that it is in the City’s best interests to lease from Pinnacle all of the Equipment described in the Schedule of Equipment No. 8 in accordance with the terms and conditions of the Agreement; and

WHEREAS, the City Council has also determined that it is in the City’s best interests for the City to enter into the First Amendment.

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

Section 1. That all of the recitals set forth above in this Resolution are hereby adopted as the City Council's findings in support of this Resolution.

Section 2. That the First Amendment is hereby approved and the Purchasing Agent is authorized to enter into it on the City's behalf. The Purchasing Agent, in consultation with the City Attorney, may agree to modifications and amendments to the First Amendment as may be needed to protect the City's interests and that are consistent with the stated purposes of this Resolution.

Section 3. That the lease of the Equipment in Schedule of Equipment No. 8 under the Agreement, as amended in the First Amendment, and the Payment Schedule are hereby approved, and the Purchasing Agent is hereby authorized to enter into the Schedule of Equipment No. 8 and the Payment Schedule on the City's behalf. The Purchasing Agent may agree, in consultation with the City Attorney, to modifications and amendments to Schedule of Equipment No. 8 and the Payment Schedule as may be needed to protect the City's interests and that are consistent with the stated purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 2nd day of December, A.D. 2014.

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

Schedule of Equipment No. 8

December 9, 2014

RE: STANDARD MASTER LEASE AGREEMENT entered into as of February 15, 2011, ("Agreement"), between Pinnacle Public Finance ("Lessor") and the City of Fort Collins, Colorado ("Lessee"). All terms used and not otherwise defined herein have the meanings ascribed to them in the Agreement.

The following items of Equipment are hereby included under this Schedule to the Agreement:

Item	Department/ Fund	Description	Qty	Cost	Term
	Streets/ Transportation	Pavement Milling Machine	1	660,000.00	5 yrs
	Streets/ Transportation	Sidewalk Tractor with accessories	1	93,200.00	5 yrs
	Streets/ Transportation	Dump Body for Plow truck	1	61,000.00	5 yrs
	Police/ General	KFCG Ford Police Interceptor AWD	1	26,700.00	5 yrs
	Police/ General	Police Vehicle Equipment	1 lot	7,800.00	5 yrs
	Police/ General	Ford Police Interceptor AWD	4	106,800.00	5 yrs
	Police/ General	Police Vehicle Equipment	1 lot	49,500.00	5 yrs
	IT/ Data & Communications	Dell OptiPlex 9020 Minitower	25	22,000.00	5 yrs
	IT/ Data & Communications	Dell OptiPlex 9020 Small Form Factor	50	44,100.00	5 yrs
	IT/ Data & Communications	Dell Latitude E6440 CTO & case	91	126,100.00	5 yrs
	IT/ Data & Communications	Dell Venue 11 Tablets	10	13,500.00	5 yrs
	IT/ Data & Communications	Dell Latitude E6430 ATG	10	24,000.00	5 yrs
	IT/ Data & Communications	E Porte Plus	95	8,300.00	5 yrs
	IT/ Data & Communications	Dell 22 Monitor - P2214H	20	3,300.00	5 yrs
	IT/ Data & Communications	Dell 24 Monitor - P2414H	10	2,500.00	5 yrs
	IT/ Data & Communications	Computer accessories	1 lot	6,750.00	5 yrs
			<b>Total:</b>	1,255,550.00	5 yrs

Lessee hereby represents, warrants and covenants that its representations, warranties and covenants set forth in the Agreement are true and correct as though made on the Commencement Date of Payments under this Schedule. **The terms and provisions of the Agreement (other than to the extent that they relate solely to other Schedules or Equipment listed on other Schedules) are hereby incorporated into this Schedule by reference and made a part hereof.**

Lessee: the City of Fort Collins, Colorado

Lessor: Pinnacle Public Finance

By \_\_\_\_\_  
Gerry S. Paul  
Director of Purchasing & Risk Management

By \_\_\_\_\_  
Name \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **FIRST AMENDMENT TO STANDARD MASTER LEASE AGREEMENT**

This First Amendment to Standard Master Lease Agreement (this “Amendment”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between Pinnacle Public Finance, Inc. (“Lessor”) and the City of Fort Collins, Colorado, a home rule municipal corporation (“Lessee”). The Lessor and Lessee are hereafter sometimes jointly referred to as the “Parties”.

### **RECITALS**

**WHEREAS**, the Lessor and Lessee have previously entered into that certain “Standard Master Lease Agreement” dated February 15, 2011 (the “Agreement”); and

**WHEREAS**, each “Schedule of Equipment” attached as Exhibit “A” to the Agreement and each corresponding “Payment Schedule” attached as Exhibit “B” to the Agreement, together constitute a “Schedule”; and

**WHEREAS**, each Schedule and the terms and provisions of the Agreement, together with all exhibits attached thereto and any amendments and modifications to the Agreement, are incorporated by reference into each such Schedule and constitute under the Agreement a separate and independent lease and installment purchase of the Equipment therein described and are referred to as a “Lease” in the Agreement; and

**WHEREAS**, under each Lease, the Lessor leases to the Lessee certain “Equipment” as identified in Section 1.1 of the Agreement, which Equipment includes motor vehicles; and

**WHEREAS**, Article V of the Agreement also grants the Lessee the option to purchase any or all of the Equipment in accordance with the provisions of Article V of the Agreement; and

**WHEREAS**, Sections 1.3, 2.4, and 3.3 of the Agreement expressly provide that all of the Lessee’s obligations under each Lease are subject to annual appropriation by the Lessee’s City Council (the “Council”) for the funds needed to meet those obligations, which appropriation is entirely within the Council’s sole discretion; and

**WHEREAS**, Section 3.3 of the Agreement provides that if the Council has not appropriated the needed funds and the Lessee has not otherwise exercised its option to purchase the Equipment, the Lessor is entitled to take possession of such Equipment; and

**WHEREAS**, consistent with the lease-purchase nature of each Lease, Section 1.2 of the Agreement provides that during the term of each Lease, title to the Equipment will be in the Lessor subject to any transfer of that title upon the Lessee’s exercise of its option to purchase any or all of the Equipment as provided in Article V of the Agreement; and

**WHEREAS**, notwithstanding this statement in Section 1.2 of the Agreement that the Lessor holds title to the Equipment, Section 1.2 also states: “Lessor and Lessee agree that the Lessee shall be listed as owner on vehicle titles and shall be treated as the owner for all purposes and it will not be necessary for Lessor to be listed as lienholder on vehicle titles”; and

**WHEREAS**, the Lessee and Lessor now wish to clarify in this Amendment, that their original (and current) intent in the Agreement for this motor-vehicle-title language in Section 1.2 was agreed to by the Parties solely for the purposes of: (1) establishing ownership of the Equipment for federal tax purposes; (2) reducing the likelihood of the Lessor's liability for any civil claims that might arise from the Lessee's use of the leased motor vehicles under the Lease; and (3) for the Lessee's administrative convenience in establishing clear title to such motor vehicles when the Lessee does exercise its option under the Agreement to purchase any or all such motor vehicles; and

**WHEREAS**, it is also not the Parties' intention by entering into this Amendment to now modify, change or in any way diminish the lease-purchase nature of the the Agreement and each Lease with respect to the motor vehicles leased under a Lease or to do so with respect to the contingent nature of the Lessee's obligations under each Lease being subject to Council's annual appropriation or to do so with respect the Lessee's fully vested title ownership of the motor vehicles being complete when the Lessee has exercised its option to purchase them under the Agreement; and

**WHEREAS**, the capitalized words and terms used herein shall have the same meaning given to them in the Agreement, except as expressly provided herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises of the Parties contained in this Amendment and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the following terms and conditions of this Amendment.

## **AGREEMENT**

**Section 1.** That all of the recitals set forth above in this Amendment are hereby incorporated into this Amendment and the Agreement, as amended by this Amendment, as though fully set forth in the body hereof.

**Section 2.** That Section 1.2 of the Agreement is hereby amended to read in full as follows:

### **1.2 Title**

During the term of each Lease, title to the Equipment will be in Lessor subject to the transfer to Lessee upon Lessee's purchase of the Equipment as provided herein. Upon the termination of the Lease for any reason other than Lessee's purchase of the Equipment, title to any Equipment not purchased by Lessee at the time of termination shall remain in Lessor. Lessor at all times will have access to the Equipment for the purpose of inspection, alteration and repair. Notwithstanding that Lessor holds naked legal title under each Lease until title has fully vested in Lessee, Lessee and Lessor agree Lessee shall be the owner of the Equipment for federal tax purposes and that during the Lease Term, Lessee shall have all the beneficial and equitable rights of ownership and the associated obligations and liabilities including but not limited to insurance, taxes, and maintenance associated with the Equipment. Lessee and Lessor further

agree that Lessee shall be listed as “Owner” on the vehicle titles and shall be treated as the owner for all the purposes stated herein. It will not be necessary for Lessor to be listed as lienholder on vehicle titles. Upon the payment of all rent payable pursuant to Section 4.1 for the original term and all renewal terms, or exercise of the option to purchase as specified herein, Lessor shall immediately transfer title to any Equipment so purchased to Lessee, and Lessor’s interest in such Equipment shall terminate. Following a non-appropriation of funds by Lessee or an event of default by the Lessee under any Lease, the Lessee will, at the Lessee’s expense, execute and deliver such additional instruments, certificates or documents, and will take all such actions as the Lessor may reasonably request for the purposes of implementing or effectuating the provisions of such Lease with respect to title in the Equipment vesting in Lessor or for the purpose of more fully completing, perfecting, continuing, preserving or renewing the rights of the Lessor with respect to the Equipment.

**Section 3.** That a new Section 1.4 is hereby added to the Agreement to read in full as follows:

**1.4 Title to Leased Motor Vehicles.**

Notwithstanding the provision in Section 1.2 of the Agreement that the titles of the motor vehicles leased by the Lessee under the Agreement will list the Lessee as the owner, the Lessee and Lessor acknowledge that naked legal title of each such motor vehicle shall remain in the Lessor unless and until the Lessee exercises its option to purchase the motor vehicles in accordance with Article V of the Agreement. To further clarify that this is the intent of the Parties, the Lessee agrees to promptly deposit with First National Wealth Management, a division of First National Bank of Omaha, the “Escrow Agent” identified in Exhibit “D” (“Escrow Agent”), the original of all of the State of Colorado motor vehicle certificates of title now in the Lessee’s possession for the motor vehicles leased under the Agreement and all original certificates of title the Lessee receives in the future for motor vehicles it hereafter leases under the Agreement. Lessor and Lessee shall also enter into an escrow agreement with the Escrow Agent which shall instruct the Escrow Agent to safely keep and maintain all of the motor vehicle certificates of title delivered into its possession. The escrow agreement shall also provide the following: (1) in the event the Lessee notifies the Lessor under Section 3.3 of the Agreement of a non-appropriation by the Lessee’s City Council of funds needed for any or all of the motor vehicles leased under the Agreement, that the Escrow Agent shall have the Lessee’s power-of-attorney to execute on behalf of the Lessee the assignments of title for each of the certificates of title of the motor vehicles leased hereunder for which funds have not been so appropriated; or (2) in the event that the Lessee has exercised its option to purchase any or all of the motor vehicles leased under the Agreement, the Escrow Agent shall return the original certificates of title for those motor vehicles to the Lessee and the Lessee’s original power of attorney for each such motor vehicle. Lessee agrees to be responsible for all costs incurred with the Escrow Agent with respect to the escrow agreement.

**Section 4.** That except as expressly amended in this Amendment, the Parties agree that all of the other terms, conditions and provisions of the Agreement shall remain unchanged and in full force and effect.

**IN WITNESS WHEREOF**, this Amendment has been executed by the Parties as of the date and year first stated above.

PINNACLE PUBLIC FINANCE, INC.

By: \_\_\_\_\_  
Cathy Jimenez, Managing Director/SVP

ATTEST:

\_\_\_\_\_

(Corporate Seal)

THE CITY OF FORT COLLINS, COLORADO

By: \_\_\_\_\_  
Gerry Paul  
Director of Purchasing & Risk Management

ATTEST:

Lessee:

\_\_\_\_\_  
Wanda Nelson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
John R. Duval  
Senior Assistant City Attorney