

**AGREEMENT BETWEEN THE CITY OF FORT COLLINS
AND THE SOUTH FORT COLLINS SANITATION DISTRICT
REGARDING INFRASTRUCTURE IMPROVEMENTS
IN AND AROUND THE COLLEGE AND TRILBY INTERSECTION**

This Agreement is made by and between the City of Fort Collins, Colorado, a Colorado municipal corporation (City), and the South Fort Collins Sanitation District, a political subdivision of the State of Colorado (District). This Agreement shall be effective upon the last date of its signing by all parties.

RECITALS

A. The City plans to reconstruct the intersection of Trilby Road and U.S. 287/College Avenue (the Project) in south Fort Collins. Plans for the Project involve roadway improvements; bicycle, pedestrian, and transit improvements; drainage improvements; urban design enhancements; and development-related work on and relocation of utilities in and around the intersection. Project construction involves gaining access to various utility infrastructure.

B. The District is a sanitation district that owns and operates sanitation utility infrastructure in the vicinity of the Project. The District's service area includes areas in and around the vicinity of the Project. The District desires to avail itself of the City's Project construction to develop and improve its infrastructure.

C. This Agreement concerns rights and responsibilities of the City and the District related to the design and construction work for the Project (defined and described below as: Project Work). The City has retained a contractor, Zak Dirt, Inc. (Contractor) to perform the Project Work pursuant to a contract and work order with the City for RFP 9621 CM/GC Services for Intersection Improvements at College & Trilby. The District will reimburse the City for the District's portion of the Project Work as described below.

D. This Agreement also concerns rights and responsibilities of the City and the District related to the acceptance and ownership of certain infrastructure related to the Project (defined and described below as: New Infrastructure).

E. Pursuant to Article XIV, Section 18 of the Constitution of the State of Colorado, Article II, Section 16 of the Charter of the City of Fort Collins, and C.R.S. §§29-1-203 and 32-1-1001, the parties may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government.

F. The parties have accordingly negotiated the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. **PROJECT WORK.**

a. **THE SCOPE OF THE PROJECT WORK.** The parties will meet to jointly develop and fully define the Project Work to be completed. Before the City issues a work order for the Contractor to begin the Project Work, each of the parties shall confirm in writing (such as by email or otherwise) that the Project Work is acceptable as fully defined. The jointly developed and fully defined Project Work shall be referred to by and incorporated into the work order and any change orders between the City and the Contractor and shall include:

- I. Design and plan for New Infrastructure to be installed, allocating ownership for all New Infrastructure;
- II. A total cost estimate, including rates for any change orders or project delays;
- III. A proportional allocation of costs to each party based on the amount of the Project Work attributed to each party's needs;
- IV. Timelines and deadlines for the agreed upon Project Work;
- V. Documentation of existing City and District rights-of-way and easements and any additional rights-of-way or easements needed;
- VI. Any other specifications or details to guide the Contractor's performance.

b. **COOPERATION WITH THE PROJECT WORK.** The District agrees to cooperate in good faith with the City for the Project Work, including: developing the scope and reviewing and providing comments on draft designs and plans generated by the City and Contractor. The District agrees to provide information needed to complete the Project Work to the City and Contractor, in a timely manner.

c. **CHANGE ORDER AFFECTING DISTRICT INFRASTRUCTURE.** Any change order the District requires once the Project Work is under way shall be an amendment to the Project Work, shall be required to be agreed to in writing and signed by the parties, and shall include itemized changes to the cost and schedule. The District shall be solely responsible for reimbursing the City in accordance with Paragraph 2.e. for the cost of any such change.

d. **ACCEPTANCE OF WORK.** The City shall notify the District of appropriate times and dates when the District shall inspect the construction pursuant to the Project Work. The District shall inspect the construction within two business days of such notification. Time is of the essence. If the District neglects to inspect the construction within the times and dates provided without agreeing with the City and Contractor on alternative arrangements, then the District shall pay a daily rate as set forth in the Project Work for delay of the Project. The parties acknowledge that the situation may arise when it is necessary for the District to inspect the construction immediately, such as a weather-related situation. In such a situation, the City agrees to notify the District of the urgency, and the District agrees to inspect the work within twelve hours of the notice.

e. **REIMBURSEMENT TO FORT COLLINS.** The District shall pay the City for the District's portion of the Project Work within thirty days of receiving an invoice from the City for the same. The District shall submit payment to the City Engineering Department (ATTN: Tracy Dyer), 281 N College, Fort Collins, CO 80524.

f. **TAXES.** The parties are exempt from Colorado State Sales and Use Tax as applicable. Taxes shall not be included in the amounts charged or paid under this Agreement. The City's Certificate of Exemption license number is 09804502. The District's Certificate of Exemption license number is 98-00968.

3. **NEW INFRASTRUCTURE.** The Project will install New Infrastructure as identified in the Project Work. Each party will own its own New Infrastructure as set forth in the Project Work and will be responsible for all future maintenance of its own New Infrastructure. The District shall pay the City for the District's portion of the materials and construction costs associated with installing the District's New Infrastructure as part of the Project Work as set forth in the Project Work and in Section 2 of this Agreement.

4. **TERM AND TERMINATION.** This Agreement shall continue in effect until the Project Work is completed and the District has completed its final reimbursement to the City, unless terminated in accordance with the provisions of this Agreement, by court order, or by operation of law. Either party may terminate this Agreement at any time before installation of District's New Infrastructure, without cause or penalty by providing at least ten days written notice of termination to the other party, except that if the District is the terminating party it shall reimburse the City for any costs incurred as of the termination date including materials or construction costs attributable to the District's New Infrastructure.

5. **TIME IS OF THE ESSENCE.** The parties acknowledge that time is of the essence in the performance of this Agreement. If, by the time the City plans to proceed with the Project work order and construction, the parties do not agree on the Project Work as provided under Paragraph 2.a., then the City will proceed with the Project on its own without incorporating the District's New Infrastructure, and the District shall provide all reasonable coordination assistance for the City to complete the remaining Project Work.

6. **FISCAL CONTINGENCY.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the parties in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with each party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement.

7. **INSURANCE.** The District shall provide the City with its information for the City, provided it is reasonably feasible, to add the District as an additional named insured on the Contractor's insurance for the Project Work portion of the Project.

8. **FORCE MAJEURE.** Neither party shall be liable for any failure, default, or delay in any service provided for under this Agreement caused by strikes, acts of God, unavoidable accidents, or contingencies of any nature whatsoever beyond the party's control.

9. **DEFAULT/REMEDIES.** If any party fails to comply with the provisions of this Agreement, the other parties, after providing prompt written notification to the noncomplying party, and upon the failure of the noncomplying party to achieve compliance within ten days following receipt of such notice, may seek all such remedies available under Colorado law. Nothing in this paragraph or any other provision of this Agreement shall, however, be construed as a waiver of the

notice requirements, defenses, immunities, and limitations any of the parties may have under the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*, or any other defenses, immunities, or limitations of liability available by law. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed by law or regulation, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right, and remedy to which they apply.

10. **APPLICABLE LAW.** The laws of the State of Colorado and rules and regulations issued pursuant thereto and the City of Fort Collins Charter and Municipal Code will be applied in the interpretation, execution, and enforcement of this Agreement. Venue for any dispute between the parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for Larimer County.

11. **NOTICE.** Any notice, request, demand, consent or approval, or other communication required or permitted hereunder will be in writing and will be deemed to have been given when personally delivered or deposited in the United States mail with proper postage and address as follows:

City: City Manager
City Hall West
300 LaPorte Avenue; P.O. Box 580
Fort Collins, CO 80522-0580

And: City of Fort Collins
Tracy Dyer, Project Manager, Engineering
281 N College
Fort Collins, CO 80524
tdyer@fcgov.com

And: City of Fort Collins
Gerry S. Paul, Director, Purchasing
215 N Mason
Fort Collins, CO 80524
gspaul@fcgov.com

With copy to: Fort Collins City Attorney
300 LaPorte Avenue; P.O. Box 580
Fort Collins, Colorado 80522-0580
hjarvis@fcgov.com

District: General Manager
South Fort Collins Sanitation District
2560 East County Road 32
Fort Collins, CO 80528
engineering@sfcscd.net

12. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the parties regarding the matters addressed herein. This Agreement binds and benefits the parties and their respective successors. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the parties.

13. **NO THIRD-PARTY BENEFICIARY.** The terms and conditions of this Agreement, and all rights of action relating thereto, are strictly reserved to the parties, and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. Any person and/or entity, other than the parties to this Agreement, shall be deemed an incidental beneficiary only.

14. **NO WAIVER.** The waiver or delay of enforcement of one or more terms of this Agreement shall not constitute a waiver of the remaining terms. The waiver or delay in enforcement regarding any breach of this Agreement shall not constitute a waiver of any terms of the Agreement.

15. **RELATIONSHIP OF PARTIES.** This Agreement does not create and shall not be construed as creating a relationship of joint ventures, partners, or employer-employee, between the parties. The parties intend that this Agreement be interpreted as creating an independent contractor relationship. Pursuant to that intent, it is agreed that the conduct and control of the duties required by the Agreement shall lie solely with each party respectively, and each party shall be free to exercise reasonable discretion in the performance of its individual duties under this Agreement. Neither party shall, with respect to any activity, be considered an agent or employee of the other party.

16. **ASSIGNMENT.** No transfer or assignment of this Agreement or of any rights hereunder shall be made by either party without the prior written consent of the other, in its sole discretion.

17. **SEVERABILITY.** If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

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CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation

DocuSigned by:
By: Kelly DiMartino
Kelly DiMartino, City Manager

Date: 8/12/2024

ATTEST:

DocuSigned by:
By: Delynn Coldiron
Delynn Coldiron, City Clerk



APPROVED AS TO LEGAL FORM:

DocuSigned by:
By: Heather N. Jarvis
Heather N. Jarvis, Assistant City Attorney

SOUTH FORT COLLINS SANITATION DISTRICT, a political subdivision of the State of Colorado

DocuSigned by:
By: Eric Bailey
Eric Bailey, District Manager

Date: 7/23/2024

ATTEST:

DocuSigned by:
By: Randy Kenyon
Randy Kenyon, District Engineer