

**INTERGOVERNMENTAL AGREEMENT
FOR WEST ELIZABETH CORRIDOR FINAL DESIGN**

THIS AGREEMENT (the “Agreement”) is made and entered into this __ day of April, 2023, by and between the **CITY OF FORT COLLINS, COLORADO, a Municipal Corporation**, (the City) and the **BOARD OF GOVERNORS of the COLORADO STATE UNIVERSITY SYSTEM, acting by and through COLORADO STATE UNIVERSITY** (the University) (collectively, the parties).

Recitals

- A. The City and the University are working together on a final design for the overall development of the section of the West Elizabeth Corridor from the University’s Foothills Campus, adjacent to Overland Trail, to the existing transit center on the University’s Main Campus and the MAX Bus Rapid Transit (BRT) Corridor. This design is intended to integrate current and proposed City and University multi-modal infrastructure into the overall West Elizabeth Corridor Concept Design, including improvements to the transit system, enhanced facilities for pedestrians and bicyclists, improved traffic safety, and coordination with all City and University Master Plans (the Project).
- B. The West Elizabeth Corridor provides a critical transportation connection for a growing business district; high-density housing area; and transit-dependent residents while serving as a link for students, faculty and staff accessing the CSU Main and Foothills Campuses. The corridor contains over 24,000 residents and supports 20,000 jobs. The corridor needs increased levels of transit capacity, contiguous sidewalks, and multi-modal infrastructure improvements.
- C. The parties desire to enter into this Agreement to collaborate concerning the financing for an effort to complete final design drawings for the Project (the Design).

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. **Long-Term Purpose.** The overall purpose of this Agreement is to establish and formalize a basic understanding between the parties regarding their efforts to develop the Design to be used for the benefit of the City and the University. The City and the University agree to collaborate on the development of the Design, including financing, award, and the overall requirements for submitting a Federal Transit Administration (FTA) Small Starts funding

grant (<https://www.transit.dot.gov/funding/grant-programs/capital-investments/about-program>) consistent with the following criteria:

- Total project cost is less than \$300 million and total Small Starts funding of less than \$100 million
- Project must:
 - Be located in a corridor that is at or over capacity or will be in five years
 - Increase capacity by 10%
 - "Not include project elements designated to maintain a state of good repair"
- New fixed guideway systems (light rail, commuter rail etc.)
- Extension to existing system
- Fixed guideway bus rapid transit (BRT) system
- Corridor-based BRT system
- Substantial corridor-based investment in existing fixed guideway system

The City and University, as part of this Agreement, also agree to collaborate on the long-term plans for development of the West Elizabeth Corridor.

2. **Immediate Purpose.** The goal of this immediate effort is to generate and fund a final design that will enable the parties to get cost estimates, pursue right-of-way acquisition and bid the project for construction. The City and University will then seek this additional funding, through the FTA, to execute the overall West Elizabeth Corridor Project.

3. **West Elizabeth Corridor Final Design Process.**

- a. The City agrees to include University personnel in regular (at least monthly) project meetings throughout the design process, including the final design effort. The City will share minutes of these meetings with the University.
- b. The University will provide committee members to support the review, rating, and selection of the consulting firm(s) chosen to deliver goals outlined in the General Purpose and the Immediate Purpose above.
- c. **Design coordination and reviews.** The City and University further agree to work together on detailed review and approval of design plans for the Corridor.
 - i. The City agrees to solicit University input during all design phases. The University agrees to provide input, including design standards and specifications as needed within the reasonable schedule provided by the City.
 - ii. Design plans will be routed for review by applicable University departments and review committees. This includes, but is not limited to, formal review by the University Facilities Management Department, Physical Development Committee, Design Review Committee, CSURF/STRATA, CSU Board of Governors, and the President's Executive Leadership Team.
 - iii. The University Primary Contact will be responsible for coordinating design review and approvals.

- iv. The University will designate project representatives to be involved in community engagement and public outreach efforts throughout the design process.

4. Finance. The cost of the final design will be paid by a combination of funding sources. The overall cost to develop the final design drawings for the Project is \$2,500,000. Of this total, \$1,232,248 is being funded by the Colorado Department of Transportation (CDOT) through award to the City of a Multimodal Options Fund Grant in the amount of \$1,232,248 (the MOF Grant). The MOF Grant will be made to the City, with funding available immediately, and requires a 50% “local match” as well as a “local overmatch” of \$35,504. Of the required \$1,232,248 local match funding for the final design, the University agrees to pay \$616,124, and the City agrees to pay \$616,124, plus the \$35,504 for the “local overmatch.” The parties shall seek appropriation of all funding to be made available before the City signs the MOF Grant award that requires commitment on the part of the parties to provide the \$1,232,248 in local matching funds. The University agrees to pay its contribution of \$616,124 in two installments: the first installment shall be paid to the City upon completion of this Agreement between the parties, and the second installment shall be paid to the City by no later than October 1, 2023.

5. Completion of Improvements. The Project, as defined herein, does not include the construction or final completion of improvements to the West Elizabeth Corridor, and no portion of the combined contributions of the parties shall be used for construction unless otherwise agreed by the parties in writing. The parties have discussed, and it is anticipated, that upon completion of the Project, the parties may, by amendment to this Agreement or by a separate agreement, establish mutually agreeable terms upon which the parties will later cooperatively provide for the final planning, construction and completion of proposed improvements to the West Elizabeth Corridor consistent with the Project.

6. Appropriation. All financial obligations of the City or the University arising under this Agreement are contingent upon funds for that purpose being annually appropriated, budgeted, or otherwise made available by the governing bodies of the City or the University, and do not establish debts or other multi-fiscal year obligations thereof.

7. Assignment. Neither party may assign any rights or delegate any duties under this Agreement without the written consent of the other party.

8. Jurisdiction/Severability. This Agreement shall be governed in all respects by the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Larimer County, Colorado. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other

provision of this Agreement. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the parties in entering into this Agreement.

9. Miscellaneous.

- a. Other than the final design funding commitment and its attendant coordination, either party shall have the right to terminate any obligations hereunder for convenience upon ninety (90) days written notice.
- b. For the purpose of this Agreement, the University designates Aaron Fodge (contact information below) as its representative. The City designates Spencer M. Smith (contact information below) as its representative. If either representative receives communication from the other, they shall respond within five business days.
- c. All notices, certificates or other communications to be given hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified, registered or overnight mail, postage prepaid, addressed as follows:

If to Colorado State University:

Ashraf Fouad
Assistant Director for Engineering and Capital Construction
Campus Delivery 6030
Fort Collins, CO 80523-6030
(970) 837-6402
ashraf.fouad@colostate.edu

With Copy to:

Office of the General Counsel
Campus Delivery 0006
Fort Collins, CO 80523-0006

If to Fort Collins:
Spencer M. Smith, P.E.
Special Projects Engineer, City of Fort Collins
281 North College Avenue
Fort Collins, CO 80524

970-416-8054

smsmith@fcgov.com

- d. Except as otherwise provided in this Agreement, any modifications to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved by the designated representative for each party with the requisite signature authority.
- 10. Headings.** The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.
- 11. No Partnership or Agency.** Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.
- 12. No Third-Party Beneficiaries.** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person or entity other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.
- 13. Governmental Immunity.** Nothing in this Agreement or in any actions taken by the parties or their respective elected officials, directors, officers, agents and employees pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, et seq., C.R.S.
- 14.No Personal Liability.** No elected official, director, officer, agent or employee of the parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.
- 15. No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

- 16. Binding Contract.** This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.
- 17. Entire Contract.** This Agreement constitutes the entire agreement between the Parties with regard to the Project as defined above and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the Project are of no force and effect.
- 18. Counterpart Execution.** This Agreement may be executed in multiple counterparts; all counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

[SIGNATURE PAGE FOLLOWS]

CITY OF FORT COLLINS, COLORADO

By: _____
Kelly DiMartino, City Manager

ATTEST:

By: _____
Anissa Hollingshead, City Clerk

Approved as to form:

By: _____
Heather N. Jarvis, Assistant City Attorney

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

Date: _____

By: _____
Amy Parsons, President

Legal Review:

Date: _____

By: _____
Grant N. Calhoun, Associate Legal Counsel
Colorado State University System