

EXHIBIT A TO RESOLUTION 2023-093

INTERGOVERNMENT AGREEMENT AUTHORIZING A GRANT UNDER THE CITY OF FORT COLLINS DIGITAL INCLUSION PROGRAM

THIS INTERGOVERNMENTAL AGREEMENT AUTHORIZING A GRANT UNDER THE CITY OF FORT COLLINS DIGITAL INCLUSION PROGRAM (this "Agreement") is entered into this ___ day of _____, 2023, by and between Poudre School District (the "Grantee") and the City of Fort Collins, a Colorado home rule municipality, (the "City"). The Grantee and City shall be referred to jointly herein as the "Parties" or individually as "Party".

RECITALS

WHEREAS, the City has established and is operating as a utility a fiber-optic broadband system known as Connexion that provides various telecommunication services, including Internet services; and

WHEREAS, related to the City's operation of Connexion, the City Council has recognized that because of economic inequality many residents of Fort Collins do not have access to affordable and reliable Internet services causing a gap in economic and educational opportunity for these residents and their children, often referred to as the "digital divide"; and

WHEREAS, to address this digital divide, the City Council approved in the City's annual budgets for fiscal years 2023-2024 (Neighborhood Livability and Social Health Budget Offer #11.2) and appropriated in the City's annual appropriation ordinances for 2023 and 2024, funds to be used through the City's Digital Inclusion Program (the "DI Program") to provide, among other things, grants to non-profit entities and other governments who will agree to use these grant funds to assist their economically disadvantage constituents with access to affordable Internet services and digital literacy; and

WHEREAS, the Grantee has been awarded a grant under the DI Program to be used to fund for the operational expenses of a Digital Literacy Liaison, a PSD staff member to support the technological literacy of PSD Family Liaisons and the digital literacy of those families served by PSD's Family Liaisons (the "Grant Work"); and

WHEREAS, the City has approved this application and agreed to provide the Grantee with a grant of \$85,000 for each of the calendar years of 2023 and 2024, for a total grant of \$170,000, to be used by the Grantee in accordance with the terms and conditions of this Agreement to fund its costs in these years for the Grant Work and the Grantee has agreed to so use the grant funds; and

WHEREAS, on October 17, 2023, the City Council approved this Agreement in Resolution 2023-XXX authorizing the City Manager to enter into this Agreement of the City's behalf: and

WHEREAS, Colorado governments are authorized in C.R.S. Section 29-1-105 to cooperate and contract with one another to provide any function, service, or facility each is lawfully authorized to provide; and

WHEREAS, the City and the Grantee are both lawfully authorized to assist their respective constituents who are economically disadvantaged with access to affordable and reliable Internet services.

AGREEMENT

NOW, THEREFORE, in consideration of the objectives, policies and findings expressed in the Recitals of this Agreement, which are hereby adopted by the Parties and incorporated by this reference, and the mutual promises contained in this IGA, the City and District agree as follows:

EXHIBIT A TO RESOLUTION 2023-093

1. Grant. Subject to the terms and conditions of this Agreement, the City agrees to pay the Grantee \$85,000 on or before each of the following dates: (i) December 31, 2023, and (ii) January 31, 2024 (collectively, the “Grant Funds”).

2. Use and Repayment of Grant Funds. The Grantee agrees to use the Grant Funds only for the Grant Work. In any year in which the Grantee does not perform the Grant Work in whole or part, the amount of the Grant Funds not used by the Grantee for the Grant Work as required by this Agreement shall be repaid by the Grantee to the City by February 1 of the year following the year in which Grant Work was not performed in whole or part.

3. Appropriation. To the extent this Agreement or any provision in it constitutes a multiple fiscal year debt or financial obligation of the City, it shall be subject to annual appropriation by City Council as required in Article V, Section 8(b) of the City Charter, City Code Section 8-186, and Article X, Section 20 of the Colorado Constitution. The City shall have no obligation to continue this Agreement in any fiscal year for which no such supporting appropriation has been made.

4. Accounting. At any time it deems necessary, the City may request an accounting from the Grantee of its expenditure of the Grant Funds under this Agreement. The Grantee agrees to promptly provide such accounting upon receiving the City’s written request for such accounting.

5. Amendments. This Agreement may be amended only by agreement of the Parties evidenced by a written instrument authorized and executed with the same formality as used for this IGA.

6. Notice. Any notice given under this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be sent by certified mail with return receipt requested and addressed to the following addresses:

City Manager
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522

With a copy to:

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

David Autenrieth, Interim Director of Language, Culture & Equity
Poudre School District
2407 Laporte Ave
Fort Collins, CO 80521

Notice given by certified mail shall be effective three (3) days after it is deposited in the United States mail depository correctly addressed and with sufficient postage for delivery.

7. Governing Law and Venue. This Agreement and the rights and obligations of the Parties under it shall be interpreted and construed in accordance with the laws of the State of Colorado,

EXHIBIT A TO RESOLUTION 2023-093

the City Code, and the City Charter (collectively, the "Controlling Laws"). In the event of any conflict between this Agreement and the Controlling Laws, the Controlling Laws shall control the interpretation of the Agreement and the Parties' performance of their obligations under it. Neither Party shall be obligated under this Agreement to take any action that would be a violation of or in conflict with any of the Controlling Laws. The Parties agree that venue for any judicial action to interpret, enforce, or seek damages under this Agreement shall be in the District Court of Larimer County, Colorado.

8. Severability. If this Agreement, or any portion of it, is for any reason held invalid or unlawful by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of the IGA.

9. Indemnity. To the full extent permitted by law, the Grantee agrees to indemnify and save harmless the City, its officers, agents and employees against and from any and all actions, suits, claims, demands or liability of any character whatsoever brought or asserted for injuries to or death of any person or persons, or damages to property arising out of, result from or occurring in connection with the Grantee's performance of the Grant Work and that of its officers and employees. However, nothing contained in this Agreement shall constitute any waiver by the City or the Grantee of any defenses, immunities, or limitations of liability available to them under the Colorado Governmental Immunity Act or available to them under any other applicable Colorado or federal law.

10. No Third-Party Beneficiaries. None of the terms, conditions, or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any third person or entity not a party hereto.

11. No Assignment. The rights, benefits and obligations of this Agreement shall not be assigned by either of the Parties without the other Party's prior written consent. Any assignment without such prior written consent shall be deemed null and void and of no effect.

12. Default. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either Party should fail or refuse to perform according to the terms of this Agreement, such Party may be declared in default thereof.

13. Remedies. In the event the either Party has been declared in default under this Agreement, they shall be allowed a period of ten (10) days after receiving written notice of the declared default within which to cure said default. In the event the default remains uncorrected after the ten (10) days, the non-faulting Party may elect to (a) terminate this Agreement and seek damages; (b) treat this Agreement IGA as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity.

14. Binding Effect. This Agreement shall inure to the benefit of and be binding on the Parties' respective successors and permitted assigns.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date stated above.

CITY OF FORT COLLINS, COLORADO

By _____
City Manager

ATTEST:

City Clerk

Date

EXHIBIT A TO RESOLUTION 2023-093

APPROVED AS TO LEGAL FORM:

Deputy City Attorney

ATTEST:

Secretary

POUDRE SCHOOL DISTRICT

By _____
David Autenrieth, Interim Director of
Language, Culture & Equity

Date