

INTERGOVERNMENTAL AGREEMENT

RELATED TO THE SOUTHEAST COMMUNITY CENTER

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) dated _____, 2023, is entered into by and between THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (“City”), Poudre School District R-1, a statutory Colorado school district (“School District”) and the Poudre River Public Library District, a political subdivision of the State of Colorado (“Library”). The City, School District, and Library are referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. The City is a home-rule municipality that was settled by non-native homesteaders in the mid-1800’s, was originally platted as a town site in 1866, and became the seat of Larimer County government in 1868. In 1873 the town of Fort Collins was incorporated. Fort Collins has a current population of more than 174,000, having grown steadily over the last 60 plus years from a 1960 population of 25,000.
- B. The School District is a duly organized and validly existing school district, political subdivision and body corporate of the State of Colorado under the Constitution and laws of the State of Colorado.
- C. The Library is a Colorado Library District established by a citizen initiative in 2006 pursuant to the Colorado Library Law, Sections 24-90-101 et seq. C.R.S.
- D. The Colorado Constitution, Article XIV, Section §18, and §29-1-201, C.R.S., et seq. provide for and encourage political subdivisions of the State of Colorado to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with each other; and
- E. Section 29-1-203, C.R.S., as amended, authorizes any political subdivisions or agencies of the State of Colorado to cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting entities, including the sharing of costs, imposition of taxes, or incurring of debt; and
- F. The Parties have a lengthy history of working together to provide park, recreation and library facilities to the Fort Collins community.
- G. In April 2015 the voters of Fort Collins overwhelmingly approved Ordinance No. 013, 2015, extending for ten years a quarter-cent sales tax to be dedicated to the “Community Capital Improvement Program” capital projects and related operation and maintenance (“CCIP”). Ordinance No. 013, 2015 includes a requirement that the City construct a Community Center in southeast Fort Collins focused on innovation, technology, art, recreation and the creative process, including a “large outdoor leisure pool with water slides, sprays and jets, decks, a lazy

river and open swimming area,” as well as meeting spaces dedicated to innovation and creativity.

- H. The School District utilizes swim lanes within existing City recreation facilities for practices and meets of its multiple high school swim teams. Access to lanes for both the School District and public at large is constrained within the recreation system based on current capacity. Moreover, the School District is likely to add an additional swim team in the near future.
- I. The School District currently has approximately 10 acres of land (the “Land”, as defined below) available that, based on preliminary information, represents a suitable site for the construction of a new Community Center that includes all of the facility requirements contained in the 2015 ballot language in addition to an expanded library branch, and the construction of an indoor aquatics facility that would both serve the recreation needs of the Fort Collins community and allow the School District access to indoor lanes for its swim programs.
- J. Since the CCIP tax measure was approved by the voters, the Parties have participated in extensive discussions focused on planning, developing and establishing the Community Center to meet the needs and desires of the Fort Collins community.
- K. The City has secured funding for a currently estimated \$30-34 million of capital costs for the indoor Aquatics Facility. The Parties acknowledge that the School District plans to secure funding for the School District’s share of the indoor Aquatics Facility, and also contribute to the operation, maintenance, and replacement costs of the Aquatics Facility.
- L. On August 15, 2023, the Fort Collins City Council adopted resolution 2023-074, which stated the “City Council’s intent that access for [School District] students is conditional on the District’s and City’s agreement on the District’s share in the full cost of those swimming lanes,” and the School District has agreed to fund 15% of such costs.
- M. The Library is interested in constructing a southeast branch library as part of the Community Center.
- N. In the spirit of these stated objectives, the Parties seek by this Agreement to memorialize the terms on which they have agreed, in a collaborative manner and as partners, to develop and operate the Community Center, with the intent that their collaborative partnership shall continue for many years to come.
- O. This Agreement is conditional on the execution of a Purchase and Sale Agreement (“PSA”) for the Land, including any necessary approvals by the City and School District’s respective governing bodies. This Agreement will automatically terminate if the City and School District are unable to execute the PSA by April 30, 2024.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

I. GENERAL TERMS

1. Definitions.

- a. Appraised Price: the agreed upon fair market value of the Land, as further described below in Section II.1(b).
- b. Aquatics Base: the total capital cost of designing and constructing the Aquatics Facility, including but not limited to the cost of constructing indoor lap lanes and deck, aquatic support (office space, pumping and filtration equipment and fixtures, lockers, and storage), Common Amenities, and Site Costs.
- c. Aquatics Facility: the indoor lap pool facility the City plans to construct as part of the Community Center, this facility does not include any indoor elements of the Leisure Pool.
- d. Common Amenities: means common areas of the Community Center that serve the Aquatics Facility or Library Branch as well as the City's other facilities, based on the 100% design of the Community Center.
- e. Community Center: the Southeast Community Center, to potentially include the Aquatics Facility, Library Branch, Leisure Pool, and other facilities to serve a community purpose.
- f. Effective Date: the date the Agreement is fully executed by all Parties.
- g. Land: Approximately 10 acres of the larger parcel, as depicted in Exhibit A attached, currently owned by the School District identified as Larimer County Assessor's Parcel No. 8604000904 that the City intends to acquire as part of this Agreement subject to the terms and conditions of a separate Purchase and Sale Agreement. The Parties agree that Exhibit A will be updated with additional information pertaining to the Land, including the legal description.
- h. Leisure Pool: all elements of an outdoor/indoor leisure pool with water slides, sprays and jets, decks, a lazy river and open swimming area specified in the CCIP ballot measure.
- i. Library Branch: a facility to serve as a public library meeting the definitions promulgated by the Office of Colorado State Librarian and providing community meeting spaces with access to information of all kinds and programming that fosters reading, lifelong learning, innovation and creativity.
- j. Purchase and Sale Agreement or PSA: the agreement to be entered into by the City and School District outlining the sale of the Land, as described above.

k. Project: the acquisition of land, planning, design, construction and furnishing of the facilities encompassing the Community Center.

2. Term and Termination. The term of this Agreement will begin on the Effective Date and shall continue for 7 years. The Parties have agreed to review and update this Agreement as needed and to engage in good faith negotiations regarding the need for potential term extensions. This Agreement is subject to early termination only as described herein.

II. COMMUNITY CENTER AND AQUATICS FACILITY

1. Land Acquisition

- a. Land. The City intends to acquire the Land from the School District, and both Parties will engage in good faith negotiations to reach agreement on and execute a Purchase and Sale Agreement on terms and conditions satisfactory to both Parties.
- b. Appraisal. The City and the School District agree that the Appraised Price of the Land is \$3,180,000. This is the amount at which the Land was appraised on July 26, 2023, by Jon Vaughan of CBRE.
- c. City Land Acquisition and Aquatics Facility Construction Funding. The School District intends to convey the Land to the City as an in-kind consideration as part of an overall capital commitment of 15% towards the Aquatics Base, in exchange for the City agreeing to build the Aquatics Facility and coordinate the School District's shared use of it for School District swim programs.
- d. The School District agrees that the City is under no obligation to build the Aquatics Facility unless the City and District secure sufficient funding as stated below. The City and District have identified the following potential funding sources for their respective shares of the Aquatics Facility construction costs:
 - i. On November 7, 2023, Fort Collins voters passed a ballot measure approving a .50% sales tax, with 50% of the revenues to be spent on replacement, upgrade, maintenance, and accessibility of parks facilities and for the replacement and construction of indoor and outdoor recreation and pool facilities. These revenues will provide funding for the Aquatics Facility. The City and the School District intend to sign a PSA for the Land by April 30, 2024, if not sooner, and close on the Land by November 30, 2024.
 - ii. The School District intends to seek voter approval of a November 2024 ballot measure to fund the School District's share of the Aquatics Facility.

- iii. The City and School District agree that they intend to close on the Land following the November 2024 election. If the School District's November 2024 ballot measure is approved by the voters, then at closing the School District will convey the Land to the City at no cost as part of the School District's share of funding for the Aquatics Facility.
 - iv. If the School District's November 2024 ballot measure is not approved by the voters, at closing the City will deposit the Appraised Price of the Land into an interest-bearing escrow account. The escrow agreement shall be in substantially the form attached as Exhibit B to this Agreement. This funding will remain in the escrow account until the expiration of the reimbursement obligation described below.
 - v. If the School District's November 2024 ballot is not approved but the School District secures a new source of funding after the execution of the PSA and conveyance of the Land to the City but before January 31, 2025, the escrowed funds and any accrued interest shall be released to the City as part of the School District's share of funding for the Aquatics Facility.
 - vi. If the School District's November 2024 ballot measure is not approved and the School District is not able to secure a new source of funding by January 31, 2025, the escrowed funds and any accrued interest shall be released to the School District, unless the City and School District mutually agree to extend the funding deadline. The City and School District agree that if funding cannot be secured by February 1, 2025, they intend to enter into good-faith negotiations in the future regarding an aquatics facility on the Land and the School District's use thereof.
- e. As of the execution of this Agreement the Parties do not have knowledge of any restrictions on the Land or title commitments.
 - f. The City will coordinate with the School District to arrange any site access required by the City or its contractors prior to closing on the Land.

2. Funding and Construction of the Community Center

- a. Construction and Design. The City will design and construct the Community Center. The City and Library will jointly design and construct the Library Branch portion of the Project and the Library will have input on Common Amenities, as set forth in a separate Intergovernmental Agreement between the Library and the City described in Section III below. The City will consult with the School District, but will have final decision-making authority, on site planning for the

Community Center, and on the designs for the Aquatics Facility at the 50% design stage.

- b. Contracting. Contracting for the Project and related products and services shall be done by the City through its purchasing processes, and subject to applicable requirements of the City Code and City Purchasing Policies. The Parties acknowledge that, pursuant to the City's Charter, the City may not expend funds or enter into any contract for materials or services related to the Project unless the full amount of the funds necessary for such expenditure or contract has been appropriated to the Project by the City Council. The City and the Library will each designate a respective project manager through their standard processes, or may agree to hire a joint agent or project manager for the design process. The Parties understand that the construction of the Project is subject to approval through the City's development review process. The Project is expected to be designed to a LEED gold level.

- c. School District Cost Sharing.
 - i. The Parties agree that all cost sharing for the Project will be expressed as a percentage share of the cost categories, as established in Exhibit C. The cost sharing percentages will apply to the final design and construction costs rather than the current 2022/2023 cost estimates.

 - ii. The School District shall fund 15% of the total of the Aquatics Base upon the City's presentation to the School District of a pay application detailing the City's estimated costs at the time of groundbreaking on the Aquatics Facility, subject to a reconciliation of actual construction costs upon issuance to the City of a Certificate of Occupancy covering the Aquatics Facility. Upon reasonable notice, the School District shall have the right to audit the records of the City as they relate to the Aquatics Facility. School District payments to the City shall be due thirty (30) days from the date of the City's invoice to the School District.

 - iii. The Aquatics Base will include any change orders agreed to by the City and School District that relate to the total cost of the Aquatics Facility. The School District will pay 15% of any such change orders.

 - iv. The School District's 15% obligation is based on the current occupancy of the School District's swim teams in existing City aquatics facilities compared to the total annual lane-hour availability at such facilities, as established in Exhibit D. Per Section II.1c. above, if the School District gives the Land to the City as an in-kind contribution, the Appraised Price of the Land will count towards this 15% share. The remainder of the

School District's 15% share will be paid in cash as described in subparagraph ii above. Should the School District fail to make the required payment(s), the City may terminate this Agreement with respect to the obligations between the City and the School District. Such termination under this subsection will not affect the relationship and obligations between the Library and the City under this Agreement.

- v. Should the Appraised Price exceed the School District's 15% share of the Aquatics Base, upon completion of the Aquatics Facility the City will make a cash contribution to the School District equal to the difference between the Appraised Price and the 15% share. Upon receipt of this payment by the School District, the School District's cost share of the Aquatics Base will be considered fully satisfied.

- 3. Aquatics Facility Operation. The Aquatics Facility will be solely owned and maintained by the City. The School District's use of City pool facilities, including this Aquatics Facility, shall be governed by a separate Facility Use Agreement between the City and School District to be executed within 120 days after the School District's 2024 election.
- 4. School District Consideration for Use of Aquatics Facility. As further consideration for its use of the Aquatics Facility, subject to the successful execution of the Facility Use Agreement but separate and apart from the rights and obligations contained within the Facility Use Agreement, the School District shall pay the City \$150,000 annually, which the City will use for the operation and maintenance of the Aquatics Facility. The City shall establish a long-term equipment replacement fund associated with the Aquatics Facility and the School District agrees to also pay the City \$45,000 annually as its contribution to this fund. These payments shall be due to the City no later than January 31 of each year starting the first January following the public opening of the Aquatics Facility. The City and the School District intend that these annual payments will continue so long as the School District continues to use the Aquatics Facility. Following completion of the initial term of this Agreement the amounts are subject to adjustment as agreed to by the City and the School District.

III. COMMUNITY CENTER AND LIBRARY BRANCH

- 1. The Library is under no obligation to participate in the Project. If the Library participates in the Project, it will share in design and construction costs; and will equip and operate a Library Branch consisting of at least 30,000 square feet including meeting rooms and programming spaces to foster research, reading, lifelong learning innovation and creativity.
- 2. The Library and the City intend to negotiate and enter into a separate Intergovernmental Agreement memorializing their partnership in the Project before the commencement of any land and building design. The Intergovernmental Agreement will include but not be limited to:

- a. The form of the Library's interest in the real property;
- b. Designation of the Parties Project Managers;
- c. Whether the Library Branch will be a stand-alone structure or part of a larger facility;
- d. Cost sharing of land acquisition, design, and construction costs; and
- e. Ongoing maintenance and operations of the real property and facilities.

IV. ADDITIONAL TERMS AND CONDITIONS

1. Obligations Subject to Appropriations. The obligations of the Parties to commit or expend funds in any subsequent fiscal year are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by each Party's respective governing body in its sole discretion. If any Party's governing body does not appropriate funds necessary to carry out any such obligations, such Party will notify the other Parties promptly of such non-appropriation. If such non-appropriation results in a material impairment of any of the Parties' rights hereunder, such Party may terminate the Agreement, with no further recourse against the other Parties, by providing thirty (30) days written notice.
2. Liability. Only to the extent permitted by applicable law, each Party will be responsible for its own negligent acts or omissions and that of its officers, employees, agents and contractors. Any liability of the City, School District, Library, or their officers and employees is subject to all the defenses, immunities, and limitations of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended (the "CGIA"), and to any other defenses, immunities, and limitations to liability available under the law. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the City, School District, or Library of its governmental and sovereign immunities, as an express or implied acceptance by the City, School District, or Library of liabilities arising as a result of actions which lie in tort or could lie in tort in excess of the liabilities allowable under the CGIA, as a pledge of the full faith and credit of the State of Colorado, or as the assumption by any of the Parties of a debt, contract or liability or each other in violation of Article XI, Section 1 of the Constitution of Colorado.
3. Existing Rights and Agreements. Nothing in this Agreement shall act to amend, modify, or supersede any related agreements or any other agreements, rights, or legal positions by and between the City, School District, and the Library external to this Agreement, or to alter in any way their recourse under the same, unless specifically agreed upon herein.
4. Default; Dispute Resolution. If any Party defaults in its obligations under the terms of this Agreement, a non-defaulting Party may give the defaulting Party written notice specifying the nature of the default. If the defaulting Party has not cured the default within thirty (30) days, or, for a default reasonably requiring more than thirty (30) days to effect a cure, has not commenced a cure within thirty (30) days and pursued it with diligence, the non-defaulting Party may terminate this Agreement—provided that, if there is any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination

or invalidity thereof, the Parties agree to attempt to resolve the dispute informally before terminating the Agreement. Accordingly, the Parties will first elevate the disputed issues to senior administration, and if the matters are not resolved, the Parties may then engage in mediation or other non-binding dispute resolution methods. The Parties agree that in the event of a breach of this Agreement by any Party, that is not resolved through the means described in this section, the non-breaching Party or Parties shall be entitled to pursue any available legal or equitable remedies, including but not limited to injunctive relief or specific performance. In any dispute between the Parties, each Party will bear its own attorney's fees and costs.

5. **Notices.** Any notice or other communication given by any Party to another relating to this Agreement must be e-mailed, hand-delivered, or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed to such other Party at its respective addresses set forth below. A Party may update its address(es) for giving notice at any time by notifying the other Parties in writing. Any notice or other communication provided under this Section will be deemed given when so e-mailed or hand-delivered, or three (3) business days after so mailed, or the next business day after being deposited with an overnight commercial courier:

If to the City:

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

With a copy to:

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

If to the School District:

Finance Department
2407 Laporte Avenue
Fort Collins, CO 80521

With a copy to:

General Counsel
2407 Laporte Avenue
Fort Collins, CO 80521

If to the Library:

V. MISCELLANEOUS PROVISIONS

1. Words in the singular include the plural and vice-versa.
2. This Agreement is to be construed according to its fair meaning and as if prepared by all Parties and is deemed to be and contain the entire understanding and agreement between the Parties. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties.
3. Except as otherwise described herein, this Agreement cannot be modified or assigned except in writing signed by all Parties.
4. Subject to the provisions hereof, the benefits of this Agreement and the burdens hereunder inure to and are binding upon the Parties and their respective, administrators, successors, agents and permitted assigns.
5. This Agreement will be governed by and its terms construed under the laws of the State of Colorado. Any judicial proceedings commenced by a party to enforce any of the obligations, covenants, and agreements contained herein, must be commenced in the Larimer County District Court located in Fort Collins, Colorado.
6. Nothing contained herein is deemed or should be construed by the Parties nor by any third party as creating the relationship of principal and agent, a partnership or a joint venture between the Parties, or any employment relationship between the Parties.
7. This Agreement is made for the sole and exclusive benefit of the Parties, and it is not made for the benefit of any third party.
8. If any term or condition of this Agreement is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such a term or condition, will not in any way affect any of the other terms or conditions of this Agreement, provided that the invalidity of any such term or condition does not materially prejudice any party in their respective rights and obligations under the valid terms and conditions of this Agreement.
9. No Party will be deemed in violation of this Agreement if prevented from performing any of its respective obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of energy or materials, acts of God, acts of public enemies, acts of superior governmental authorities, weather conditions, riots, rebellions, sabotage, or any other circumstances for which it is not responsible or that are not within its control.
10. The Parties agree that this Agreement and related documents may be subject to disclosure under the Colorado Open Records Act ("CORA").

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of the most recent signatory.

THE CITY OF FORT COLLINS, COLORADO

Date: _____

By: _____
Jeni Arndt, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Sr. Assistant City Attorney

POUDRE SCHOOL DISTRICT R-1

Date: _____

By: _____
Chair of the Board

ATTEST:

Board Secretary

**POUDRE RIVER PUBLIC LIBRARY DISTRICT
Board of Trustees**

Date: _____

By: _____
President

ATTEST:

Secretary

Exhibit A – Land Depiction



	<p>Site: Fossil Ridge High School</p>	<p>Title: 10 Acre Site Appraisal</p>		<p>Date Produced: 7/7/2023</p> <p><small>Disclaimer: This map is for informational use only and may contain inaccuracies due to the age of the data. Fossil Ridge School District assumes no responsibility for any loss or damage of this map. Please contact the Planning, Design, and Construction Department with any questions.</small></p>	<p>Author: MAB</p> <p>PLANNING, DESIGN, & CONSTRUCTION</p>
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Exhibit B – Draft Escrow Agreement

ESCROW AGREEMENT [DRAFT]

THIS AGREEMENT is entered into this _____ day of _____, 20____, by and between the City of Fort Collins, Colorado, a Colorado home rule municipality (“City”) and Poudre School District R-1, a statutory Colorado school district (“School District”), and _____ (“Escrow Holder”). City and School District may be referred to hereafter as a “Party” or “Parties.”

City shall deposit with Escrow Holder on or before _____, 20____, cash in the amount of \$ _____ .00 (the “Escrow Deposit Funds”), to be held and distributed by Escrow Holder subject to the general terms and conditions hereof and the Special Instructions set forth below.

GENERAL PROVISIONS

1. Amendments. These instructions may not be altered, amended, modified, or revoked except by a writing signed by the parties hereto and approved by the Escrow Holder.
2. Form of Notice. Any notice, instruction or demand required or desired to be given to the Escrow Holder or by the Escrow Holder to any other party must be in writing and may be delivered personally, by U.S. or private mail or courier to the addresses listed below, or by telefax or telegram.

If to City:

If to School District:

3. Reliance on Notice. Escrow Holder may act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument, and may assume that any person purporting to give any writing, notice, advice or instruction in connection with the provisions hereof has been duly authorized to do so.
4. Disbursement Time Requirements. Any notice to Escrow Holder hereunder shall be given not later than 24 hours prior to the date and time for action by Escrow Holder. Escrow Holder agrees to act upon all notices given to it that are fully approved by all appropriate parties and are not conditioned upon any event other than Escrow Holder’s actions, not later than 5:00 p.m. on the business day next following the date upon which such notice was received.
5. Laws of Escheat. All Parties are hereby advised that unclaimed funds may be payable to the State of Colorado at some future date pursuant to the laws of escheat, and should Escrow Holder so pay any such funds held in the Escrow, Escrow Holder shall be released from all further responsibility under this Agreement and shall not be liable to

any Party so long as such payment was made pursuant to the statutes of Colorado or regulations of the Colorado Department of Revenue.

6. Interest Earned on Escrow Deposit Funds. Deposits of less than \$1,000 shall not bear interest. Deposits of \$1,000 to \$100,000 shall bear interest at the rate paid by the financial institution (the "Institution") where deposited. Deposits of \$100,000 or more may be directed by the Parties to other types of investments. Under no circumstances shall Escrow Holder be liable for loss of funds due to bank, savings and loan association or other Institution failure, or for acts or omissions of the employees or agents of such Institution, suspension or cessation of business, or any action or inaction on the part of the bank, savings and loan association or other Institution, or any delivery service transporting funds to and from such Institution.
7. Receipt and Deposit of Proceeds. The Escrow Deposit Funds will be deposited in a federally insured banking institution. If the Escrow Deposit Funds exceed \$100,000, Escrow Holder may invest the Escrow Deposit Funds in Government Repurchase Agreements for U.S. Treasury obligations. Escrow Holder shall not be responsible for maximizing the yield on the Escrow Deposit Funds. All Parties shall execute and deliver to Escrow Holder all forms required by Federal, state, or other governmental agencies relative to taxation matters and Escrow Holder will file appropriate 1099 or other required forms.
8. Fees and Expenses of Escrow Holder. The Escrow Holder shall be entitled to reimbursement in full, or may demand payment in advance, for all costs, expenses, charges, fees or other payments made or to be made by Escrow Holder in the performance of Escrow Holder's duties and obligations under this Agreement. _____ shall be liable for the payment to Escrow Holder of all Fees and Expenses. Escrow Holder is authorized and directed to disburse up to 50% of the Fees to itself in payment of Fees or Expenses from the Escrow Deposit Funds whether from principal or interest or both, at any time and from time to time.
9. Non-Liability of Escrow Holder. Escrow Holder shall not be liable for any mistakes of fact, or errors of judgment, or for any acts or omissions of any kind unless caused by the willful misconduct or gross negligence of Escrow Holder. Escrow Holder shall not be liable for any taxes, assessments, or other governmental charges which may be levied or assessed upon the Escrow Deposit Funds or any part thereof, or upon the income therefrom. Escrow Holder may rely upon the advice of counsel and upon statements of accountants, brokers or other person reasonably believed by it in good faith to be expert in the matters upon which they are consulted, and for any reasonable action taken or suffered in good faith based upon such advice or statements. Escrow Holder shall not be liable to anyone, except as set forth in the above and foregoing.
10. Compliance with Orders. Except as provided in section 3 above, the Escrow Holder is hereby expressly authorized and directed to disregard any and all notices or warning given by any of the parties hereto, or by any other person or corporation, excepting only orders or process of court, and is hereby expressly authorized to comply with and obey

any and all orders, judgments, or decrees of any court, and in case Escrow Holder obeys or complies with any such order, judgment, or decrees of any court, it shall not be liable to any of the parties hereto or to any other persons, firm or corporation by reason of such compliance.

11. Indemnity of Escrow Holder. The Parties, severally, on a 50%-50% basis and to the extent permitted by law, agree to release and indemnify Escrow Holder as to any liability by reason of this Escrow Agreement, or in connection herewith and to reimburse Escrow Holder for all its expenses, including, but not necessarily limited to, attorney's fees and court costs incurred in connection herewith, except for Escrow Holder's own misconduct or negligence. However, with respect to any third-party claims against the Parties, nothing herein shall be deemed a waiver of the notice requirements, defenses, immunities and limitations to the liability available to the Parties and their respective officers and employees under the Colorado Governmental Immunity Act (C.R.S. 24-10-101 et. seq.) or under any other law.
12. Disputes. In the event of any dispute between the Parties as to either law or fact as to any such demand or other matter, such dispute shall be between the Parties and Escrow Holder shall be excused from further responsibility and the Parties hereby agree, to the extent permitted by law, to hold Escrow Holder harmless from any and all damages, liability, costs and fees in connection therewith.
13. Request for Written Instructions. Escrow Holder may at any time, and from time to time, request the Parties to provide written instructions concerning the propriety of a proposed payment of funds on deposit, distribution of documents, or other action or refusal to act by Escrow Holder. Should the Parties fail to provide such written instructions within a reasonable time, Escrow Holder may take such action, or refuse to act, as it may deem appropriate and shall not be liable to anyone for such action or refusal to act. Notwithstanding the foregoing, should the terms of the Escrow Agreement be complied with, in the judgment of the Escrow Holder, then the Escrow Holder may disburse any funds, distribute any documents, or take such action without specific further written instructions from any Party.
14. Resignation of Escrow Holder. Escrow Holder may resign under this Agreement by giving written notice to all of the Parties, effective 30 days after the date of the notice. Upon the appointment by the Parties of a new escrow holder or custodian, or upon written instructions to Escrow Holder for other disposition of the Escrow Deposit, Escrow Holder shall, after retention of its accrued escrow fees and expenses, if any, deliver the Escrow Deposit within a reasonable period of time as so directed, and shall be relieved of any and all liability.
15. Applicable Law. This Agreement shall be governed by the laws of the State of Colorado.
16. Obligations Subject to Appropriation. The obligations of the Parties to commit or expend funds in any subsequent fiscal year are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by each

Party's respective governing body in its sole discretion. If such non-appropriation results in a material impairment of the Escrow Holder's rights hereunder, the Escrow Holder may terminate the Agreement, with no further recourse against the Parties, by providing 30 days written notice to the Parties.

SPECIAL INSTRUCTIONS

1. The purpose of this Escrow is to ensure payment by the City to the School District for real property conveyed by the School District to the City simultaneously with this Escrow for the "Project", which is defined as the planning, design, construction and furnishing of a new Southeast Community Center (the "Facility"), as required by the language of the Community Capital Improvement Program ballot measure approved by Fort Collins voters in April, 2015, if the School District is not able to secure funding by January 31, 2025, to add to the Project an indoor aquatics facility including swim lanes that the School District would be able to use (the "Aquatics Facility").

2. If the City, on or before January 31, 2025, notifies the Escrow Holder in writing that it is satisfied the School District has secured funds sufficient and intended for design and construction of the Aquatics Facility, the Escrow Holder shall release the Escrow to the City.

3. If the City does not notify the Escrow Holder in writing before the close of business on January 31, 2025, that it is satisfied the School District has secured funds sufficient and intended for design and construction of the Aquatics Facility, and the Parties have not negotiated an extension to this Agreement, the Escrow Holder shall release the Escrow to the School District.

CITY OF FORT COLLINS
A Colorado municipal corporation

By: _____
Kelly DiMartino,
City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM

Assistant City Attorney

POUDRE SCHOOL DISTRICT R-1
A statutory Colorado school district

By: _____
Chair of the Board

ATTEST:

Board Secretary

Accepted:

Escrow Agent

By: _____

Title: _____

Date: _____

Exhibit C– School District Cost Share

Capital Cost Category	PSD
Common areas as determined @ 100% Design -- anticipated to be Entry, Offices, Lounge, Gymnasium	5%* (15% of 33.33%)
Community Center -- Creation Space / Art Studio / Library Branch	0%
Outdoor Leisure Pool	0%
Indoor 10-Lane Lap Pool	15%*
Indoor Leisure Pool	0%
Indoor Aquatic Support (Offices, Lockers, Storage, Mechanical)	7.5%* (15% of 50%)
Site Costs as determined at 100% design	5%* (15% of 33.33%)
Land (contributed capital)	100%*

*PSD overall capital contribution is limited to 15% of the attributable Aquatics Base, including any change orders agreed upon by the City and School District. Cash contributions over and above the Land would be billed according to Exhibit E.

Exhibit D – School District Lane Usage

PSD Utilization*		
Number of teams utilizing facility	3	teams
Lanes used	5	lanes
Hours used per team	2	hours
Lane hours utilized at facility per day	30	
Overall Community + PSD Pool Utilization - Peak	70.0%	A
Overall Community + PSD Pool Utilization - Off-peak	30.0%	
PSD usage of gross available lane-hours	20.0%	
PSD usage per day of available peak lane-hours	42.9%	B
PSD overall utilization during swim season	30%	A x B
6-month swim season	50%	Calendar year
PSD weighted average utilization of annual lane-hours	15.0%	To be applied to capital share

*Information current as of the Effective Date of the IGA