

COOPERATION AGREEMENT
AMONG FOUNDRY LOVELAND METROPOLITAN DISTRICT,
CITY OF LOVELAND, COLORADO AND
LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY

THIS COOPERATION AGREEMENT ("Agreement"), dated as of ~~February~~ ^{March} 7, 2019, is made and entered into among the FOUNDRY LOVELAND METROPOLITAN DISTRICT (the "District"), the CITY OF LOVELAND, COLORADO (the "City") and the LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY (the "DDA").

RECITALS

Any capitalized term which is used, but not defined, in these Recitals shall have the meaning given in the section entitled: DEFINITIONS.

WHEREAS, the District is a quasi-municipal corporation duly organized and existing as a metropolitan district pursuant to the Special District Act, Sections 32-1-101 *et seq.*, C.R.S.; and

WHEREAS, the City of Loveland, Colorado (the "City") is a Colorado home rule municipality with all the powers and authority granted pursuant to Article XX of the Colorado Constitution and its City Charter; and

WHEREAS, on July 2, 2002, the City Council of the City (the "City Council") established the Loveland Urban Renewal Authority ("LURA") by Resolution #R-44-2002; and

WHEREAS, LURA is a Colorado Urban Renewal Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 1, Colorado Revised Statutes (the "Urban Renewal Law");

WHEREAS, the City Council has heretofore approved the City of Loveland, Urban Renewal Plan dated October 1, 2002, as amended from time to time (the "Urban Renewal Plan") and the downtown urban renewal area described therein (the "Urban Renewal Area"); and

WHEREAS, the term of the Urban Renewal Plan is for 25 years from the date of adoption of the Urban Renewal Plan, and the Urban Renewal Plan has a provision relating to the division of taxes that will be effective for 25 years beginning on the date of the approval of the Urban Renewal Plan; and

WHEREAS, the DDA is a body corporate duly created, organized and authorized pursuant to Section 31-25-801, *et seq.*, C.R.S. by a vote of the majority of qualified electors within the DDA District at a special election held on February 10, 2015 and thereafter officially established by the City Council upon the passage of Ordinance No. 5927; and

WHEREAS, the DDA is a Colorado Downtown Development Authority, with all the powers and authority granted to it pursuant to Title 31, Article 25, Part 8, C.R.S. (the "DDA Act"); and

WHEREAS, on July 5, 2017, the City Council adopted Resolution #R-52-2017, which established the plan for the development or redevelopment of the DDA District (the “DDA Plan of Development”); and

WHEREAS, a majority of the qualified electors within the DDA District, at an election held on November 7, 2017 (the “2017 Election”), authorized the issuance of debt by the City to fund improvements to advance the objectives of the DDA Plan of Development; and

WHEREAS, the DDA Plan of Development provides that the primary objectives of the DDA are to promote the safety, prosperity, security, and general welfare of the DDA District and its inhabitants, to prevent deterioration of property values and structures within the DDA District, to prevent the growth of blighted areas within the DDA District, to assist the City in the development, redevelopment, and planning of the economic and physical restoration and growth of the DDA District, to approve the overall appearance, condition, and function of the DDA District, to encourage a variety of uses compatible with the artistic and cultural community, to sustain and improve the economic vitality of the DDA District, to promote the historic, artistic, and cultural elements of the DDA District, and to encourage pedestrian traffic and security in the DDA District; and

WHEREAS, the DDA Plan of Development contains a provision for division of taxes that will be effective for thirty years following approval of the DDA Plan of Development, or such longer period as authorized by the DDA Act; and

WHEREAS, pursuant to Article XIV of the Colorado Constitution and Title 29, Article 1, Part 2, C.R.S., the District, the City and the DDA are authorized to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each governmental entity; and

WHEREAS, the City has entered into a Disposition and Redevelopment Agreement, dated December 13, 2016, as amended (collectively, as amended, the “DRA”) with Foundry Loveland, LLC, a Colorado limited liability company (the “Developer”) pursuant to which the Developer has agreed to acquire, develop, construct and install a mixed use project within the downtown area of the City that is known as the Foundry Project (the “Foundry Project”) as further set forth in the DRA; and

WHEREAS, the Foundry Project is located within the boundaries of the District and within the Urban Renewal Area and the DDA District; and

WHEREAS, LURA has heretofore determined that the acquisition, construction, installation and operation of the Foundry Project in the Urban Renewal Area will serve the public purposes and goals of the Urban Renewal Plan; and

WHEREAS, pursuant and subject to the terms and provisions of the DRA, the City has agreed to pay or reimburse the Developer for the acquisition, construction and installation of certain Eligible Public Improvements (as defined in the DRA) located within the Foundry Project; and

WHEREAS, pursuant to the District's Service Plan, the District is authorized to assist in the financing, construction, operation, and maintenance of public improvements for the redevelopment of the Project Area; and

WHEREAS, the District is expected to provide services and facilities to assist in the development and operation of the Foundry Project; and

WHEREAS, included in the Eligible Public Improvements being constructed by the Developer are a Parking Facility (the "Parking Facility") and a Public Plaza area (the "Public Plaza"); and

WHEREAS, as contemplated in the DRA and the Service Plan, the District will own, operate, and maintain the Public Plaza, and the City will own, operate, and maintain the Parking Facility; and

WHEREAS, as further contemplated in the DRA and the Service Plan, the District will impose an operations mill levy to generate revenues to allow the District to participate in providing for the operations and maintenance of the Eligible Public Improvements and to provide revenues for other budgeted general expenditures of the District (the "District O&M Mill Levy"); and

WHEREAS, the City and the District entered into that certain District Pledge Agreement, dated April 26, 2017, as amended, pursuant to which the District agreed to impose its District Debt Service Mill Levy in accordance with the provisions of the DRA, and (a) pledge certain revenues to the payment of debt service requirements on bonds issued by the City, or (b) at the written direction of the City, remit all or a portion of the pledged revenues to the City or its designee; and

WHEREAS, in order to ensure the District has sufficient funds to participate in the costs required to operate and maintain the Public Plaza, to finance the cost of constructing, operating, and maintaining additional public improvements for the Foundry Project, and to pay for the general operating expenditures of the District, the District intends to impose a mill levy, in excess of the District Debt Service Mill Levy, to the extent permitted by the District's Service Plan (as more particularly defined herein, the "Additional District Mill Levy"); and

WHEREAS, to further the objectives of the Urban Renewal Plan, the District and LURA entered into a Cooperation Agreement, dated January 15, 2019, pursuant to which LURA agreed to remit to the District all property tax increment revenues collected as a result of the District's imposition of the Additional District Mill Levy on property within the Foundry Project; and

WHEREAS, following termination of the Urban Renewal Plan, the property tax increment revenues resulting from ad valorem property taxes levied on property within the Foundry Project will no longer be remitted to LURA, but will be remitted to the City in accordance with the DDA Act and the DDA Plan of Development; and

WHEREAS, any Property Tax Increment Revenues received by the City pursuant to the DDA Plan of Development and the DDA Act will be held by the City in a special fund (the "Special Fund") as required by the DDA Act and applied in accordance with the DDA Plan of Development, the DDA Act and the 2017 Election; and

WHEREAS, the District has requested that, following termination of the Urban Renewal Plan, the City agree to remit to the District all Property Tax Increment Revenues generated by the District's imposition of the Additional District Mill Levy and deposited in the Special Fund; and

WHEREAS, the City has determined and now hereby determines that the acquisition, construction, installation and operation of the Foundry Project in the DDA District will serve the public purposes and goals of the DDA Plan of Development; and

WHEREAS, the Board of the DDA (the "Board") has determined, and now hereby determines, that the Foundry Project constitutes a development project in the DDA District within the meaning of the DDA Act and that the development and redevelopment of the Foundry Project furthers the DDA Plan of Development; and

WHEREAS, this Agreement acknowledges, ratifies and confirms the understanding and agreement among the District, the City and the DDA relating to the use of Property Tax Increment Revenues generated as a result of the imposition of the Additional District Mill Levy to the extent any such revenues are received by the City and deposited in the Special Fund.

NOW, THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the District, the City and the DDA agree as follows:

1. DEFINITIONS. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the DRA. As used herein, unless the context expressly indicates otherwise, the words defined below and capitalized in the text of this Agreement shall have the respective meanings set forth below:

"Additional District Mill Levy" means, collectively, all ad valorem property tax levies (including general fund mill levies, debt service mill levies, and the O&M Mill levy) imposed by the District, *excluding* the District Debt Service Mill Levy, it being acknowledged that such levies are subject to the limitations of the Service Plan.

"DDA District" means the area within the boundaries of the DDA in which the DDA may exercise its statutory powers, as such area was established pursuant to City Council Ordinance No. 5927, adopted on April 7, 2015, and as subsequently modified by City Council Ordinance No. 5957, adopted on September 1, 2015 and by City Council Ordinance No. 6115, adopted on May 16, 2017.

"District Debt Service Mill Levy" means a property tax imposed by the District in an amount equal to twenty-five (25) mills levied by the District on the taxable property within the District in accordance with the District Pledge Agreement. The District Debt Service Mill Levy rate shall be adjusted as set forth in the Service Plan to take into account legislative or constitutionally imposed adjustments in assessed values or their method of calculation so that, to the extent possible, the revenue produced by such District Debt Service Mill Levy is neither diminished nor enhanced as a result of such changes.

"District Pledge Agreement" means the District Pledge Agreement dated April 26, 2017, between the City and the District, as the same may be amended from time to time.

“Project Area” means the Foundry Project area that is part of the DDA District as described and depicted in Exhibit A. The Project Area is also located within the District and within the Urban Renewal Area.

“Property Tax Base Amount” means the assessed value of property subject to ad valorem property taxes, located within the boundaries of the DDA District and in the Project Area last certified prior to the effective date of approval of the DDA Plan of Development, as reasonably determined by the City based upon data provided by the Larimer County Assessor. The Property Tax Base Amount and increment value shall be calculated and adjusted from time to time by the Larimer County Assessor in accordance with the DDA Act and the rules and regulations of the Property Tax Administrator of the State of Colorado.

“Property Tax Increment Revenues” means, after the termination of the Urban Renewal Plan, the annual ad valorem property tax revenue received by the City from the Larimer County Treasurer in excess of the amount produced by the levy of the District against the Property Tax Base Amount in accordance with the DDA Act and the regulations of the Property Tax Administrator of the State of Colorado, but not including any offsets collected by the Larimer County Treasurer for return of overpayments or any reserve funds retained by the DDA for such purposes in accordance with Section 31-25-807(3)(a)(III) off the DDA Act, and credited to the Special Fund.

“Special Fund” means the special fund of the City established pursuant to the DDA Act into which the Property Tax Increment Revenues are deposited.

“Urban Renewal Area” means the urban renewal area described in the Urban Renewal Plan as the Urban Renewal Area for Downtown Loveland, within which the tax increment provisions of Section 31-25-107(9), C.R.S. apply.

2. AGREEMENT TO REMIT CERTAIN TAXES.

(a) Following termination of the Urban Renewal Plan, and in order to further the development of the Foundry Project, the City hereby agrees and covenants that, except as hereinafter provided, the City shall remit all Property Tax Increment Revenues received by the City as a result of the imposition of the Additional District Mill Levy to the District. The City hereby pledges such Property Tax Increment Revenues generated as a result of the imposition of the Additional District Mill Levy to the District, subject to the terms and provisions hereof. Such revenues shall be remitted to the District as soon as practicable after receipt thereof by the City, but in any event within thirty (30) days of receipt thereof. The City’s obligation to remit such Property Tax Increment Revenues is subject to the terms and provisions of the authorization conferred to the City pursuant to the 2017 Election.

The District acknowledges it shall not receive any Property Tax Increment Revenues that are generated as a result of the imposition of the District Debt Service Mill Levy. The District further acknowledges that so long as the Urban Renewal Plan is in full force and effect in the Project Area, that LURA will receive the property tax increment revenues generated from the Additional District Mill Levy and that during such time the City will not receive any Property Tax Increment Revenues.

(b) The Parties acknowledge that incremental property taxes that are remitted to the City for deposit in the Special Fund are based on the annual valuation of all properties located within the DDA District, and not on a parcel by parcel basis. Therefore, property tax increment revenues are calculated and remitted to the DDA in the aggregate for the entire DDA District and the Property Tax Administrator will not calculate or determine those property tax increment revenues that are attributable to the Project Area. The City agrees that it will establish a reasonable methodology for determining the amount of property tax increment revenues on deposit in the Special Fund that are allocable to the Project Area. Such calculation of the Property Tax Increment Revenues attributable to the Project Area by the City shall be binding on the parties, absent manifest error.

(c) The City hereby elects to apply all the provisions of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. to this Agreement. In accordance with Section 11-57-208(2) C.R.S., upon termination of the Urban Renewal Plan, the Property Tax Increment Revenues pledged pursuant to this Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities, except as may otherwise be provided herein. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the City irrespective of whether such persons have notice of such liens.

3. GENERAL PROVISIONS.

(a) Development Project. The DDA hereby confirms that the Foundry Project constitutes a development project in the DDA District within the meaning of the DDA Act and that the development and redevelopment of the Foundry Project furthers the DDA Plan of Development. The Board hereby further determines that it is appropriate for the City to remit Property Tax Increment Revenues generated by the District's imposition of the Additional District Mill Levy to the District in order to finance or refinance a portion of the costs of the Foundry Project.

(b) No Third Party Beneficiaries. The City shall not be obligated or liable under the terms of this Agreement to any person or entity not a party hereto.

(c) Modifications. No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the City and the District. This Agreement may be modified without the prior written consent of the DDA, provided that the City or the District shall provide written notice of any such amendment to the Executive Director of the DDA on or prior to such amendment taking effect. Memoranda of understanding and correspondence shall not be construed as amendments to this Agreement.

(d) Entire Agreement. This Agreement shall represent the entire agreement among the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations or agreements, either written or oral, among the parties relating to the subject matter of this Agreement and shall be independent of and have no effect upon any other contracts.

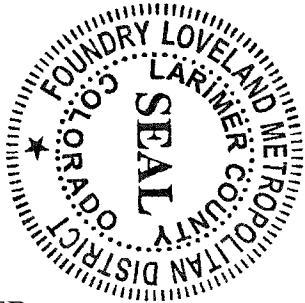
(e) Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

(f) Assignment. This Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other.

(g) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce, at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof.

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IN WITNESS HEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the date above.



(SEAL)

FOUNDRY LOVELAND METROPOLITAN DISTRICT

Shannon Stearman
Shannon Stearman, President

ATTESTED:

Ashley Davidson
Ashley Davidson, Secretary



(SEAL)

CITY OF LOVELAND, COLORADO

Stephen C. Adams
Stephen C. Adams, City Manager

ATTEST:

Patti Garcia
Patti Garcia, City Clerk

APPROVED AS TO FORM:

Moses Garcia
Moses Garcia, City Attorney

LOVELAND DOWNTOWN DEVELOPMENT AUTHORITY, a Colorado Downtown Development Authority

By: Sam J. [Signature]
Title: Executive Director

Exhibit A

(Project Area)

