

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 61
Series of 2018

TITLE: A RESOLUTION CONCERNING THE PROPOSED DEVELOPMENT AT THE SOUTHWEST CORNER OF THE INTERSECTION OF INTERSTATE 70 AND COLORADO HIGHWAY 58 KNOWN AS CLEAR CREEK CROSSING, AND THE PROPOSED INCURRENCE OF A LOAN BY THE WHEAT RIDGE URBAN RENEWAL AUTHORITY TO BE SECURED BY CERTAIN PROPERTY TAX INCREMENT REVENUES; DECLARING THE CITY COUNCIL'S PRESENT INTENT TO APPROPRIATE FUNDS TO REPLENISH THE RESERVE FUND SECURING SUCH LOAN, IF NECESSARY; AND AUTHORIZING A COOPERATION AGREEMENT AND OTHER RELATED ACTIONS IN CONNECTION THEREWITH

WHEREAS, the City is a home rule municipality and political subdivision of the State of Colorado organized and existing under a home rule charter pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, the City Council of the City (the "City Council") established the Wheat Ridge Urban Renewal Authority d/b/a/ Renewal Wheat Ridge (the "Authority") on October 18, 1981, as an urban renewal authority pursuant to Colorado Revised Statutes, Part 1 of Title 31, Article 25, as amended; and

WHEREAS, the City Council has adopted the I-70/Kipling Corridors Urban Renewal Plan, as amended (the "Urban Renewal Plan" or the "Plan") for the area described therein (the "Urban Renewal Area"); and

WHEREAS, Evergreen-Clear Creek Crossing, L.L.C., an Arizona limited liability company (the "Developer") is the owner of approximately 109 acres of real property generally located at the southwest corner of the intersection of Interstate 70 and Colorado Highway 58 (the "Property"), which is in the Plan area; and

WHEREAS, the Developer has submitted a proposal to the City and the Authority to develop the Property in phases as a mixed-use commercial development (the "Project"); and

WHEREAS, the City has determined and hereby determines that it is in the best interests of the City and its citizens to assist in the development of the Project; and

WHEREAS, in connection with the development of the Project, the City, Longs Peak Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") and the Developer have entered into a Public Finance Agreement (the "City PFA") that sets forth the rights and responsibilities of each party with respect to the

financing and construction of certain public improvements for development of the Project, as set forth therein; and

WHEREAS, the Authority has determined that the development of the Project in order to remediate blight is consistent with and in furtherance of the purposes of the Authority and the Plan; and

WHEREAS, in connection with the development of the Project, the Authority has entered into a Public Finance Agreement with the District and the Developer (the "Authority PFA") that sets forth the rights and responsibility of each party with respect to the financing and construction of certain eligible improvements for development of the Project, as set forth therein; and

WHEREAS, the Urban Renewal Plan contemplates that a primary method of financing projects within the Urban Renewal Area will be through the use of property tax increment revenues; and

WHEREAS, the Plan adopted the utilization of property tax increment for the Property and authorizes the Authority to pledge such property tax increment revenues to finance public infrastructure that benefits the Urban Renewal Area pursuant to one or more Cooperation Agreements (as defined therein); and

WHEREAS, in order to finance certain eligible improvements for the Project, the Authority PFA provides that the Authority will use good faith efforts to enter into a loan in the maximum amount of \$6,375,000 (the "Loan") with BOKF, NA, d/b/a/ Colorado State Bank and Trust (the "Lender") with such Loan to be payable from property tax increment revenues to be generated from the TIF Area, which includes the area within the boundaries of the District; and

WHEREAS, the terms and provisions of the Loan will be set forth in a Loan Agreement (the "Loan Agreement") between the Authority and the Lender; and

WHEREAS, the Loan Agreement requires that the Loan will be secured by a reserve fund (the "Reserve Fund") that will be maintained in an amount equal to the Reserve Requirement (as defined in the Loan Agreement); and

WHEREAS, in connection with the closing on the Loan and in order to help facilitate the development of the Project, the City Council wishes to make a non-binding statement of its present intent with respect to the appropriation of funds for the replenishment of the Reserve Fund, if necessary, and to authorize and direct the City Manager to take certain actions for the purpose of causing requests for any such appropriation to be presented to the City Council for consideration; and

WHEREAS, in connection with the development of the Project and the incurrence of the Loan by the Authority, it is necessary and in the best interests of the City to enter into a Cooperation Agreement (the "Cooperation Agreement") between the City and the Authority; and

WHEREAS, there has been filed with the City Clerk of the City (the “City Clerk”) the proposed form of the Cooperation Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, that:

Section 1. Finding of Best Interests and Public Purpose. The City Council hereby finds and determines, pursuant to the Constitution, the laws of the State and the City’s home rule charter (the “Charter”), and in accordance with the foregoing recitals, that adopting this Resolution, entering into the Cooperation Agreement, and facilitating the issuance of the Loan by the Authority to finance the development of the Project are necessary, convenient, and in furtherance of the City’s purposes and are in the best interests of the inhabitants of the City.

Section 2. Replenishment of Reserve Fund: Declaration of Intent. To the extent that the Authority enters into the Loan with the Lender in accordance with the terms and provisions of the Loan Agreement and the Loan is secured by a Reserve Fund, the following provisions shall apply. The Loan Agreement shall provide that in the event of a draw on the Reserve Fund the Authority shall, within 90 days of such draw, replenish the Reserve Fund up to the Reserve Requirement, from available Pledged Revenue. In the event that there are not sufficient Pledged Revenues to replenish the Reserve Fund up to the Reserve Requirement, the Authority shall provide written notice to the Lender and the City Manager setting forth the amount of any deficiency (the “Written Notice”). Within 90 days after the City’s receipt of the Written Notice, to the extent that such deficiency has not been replenished by another source, the City shall replenish the Reserve Fund to the Reserve Requirement from legally available funds of the City, subject to appropriation by the City Council in its sole discretion. Any such City payment (the “City Payment”) shall be deposited in the Reserve Fund in immediately available funds pursuant to the instructions set forth in the Written Notice. It is the present intention and expectation of the City Council to appropriate the City Payment requested in any such Written Notice received by the City, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon the City Council or any future City Council in any future fiscal year. The City Payments shall constitute currently appropriated expenditures of the City.

This Resolution shall not create a general obligation or other indebtedness or multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of its Charter or any constitutional debt limitation, including without limitation Article X, Section 20 of the Colorado Constitution. Neither this Resolution nor the issuance of the Loan by the Authority shall obligate or compel the City to make City Payments in the event of a draw on the Reserve Fund beyond those appropriated in the City Council’s sole discretion.

Section 3. Direction to City Manager. In the event of a draw on the Reserve Fund that has not been replenished from another source, the Authority shall submit the Written Notice to the City Manager, with such Written Notice setting forth the amount required to be paid by the City to restore the Reserve Fund to the Reserve Requirement after replenishment from all other available sources. The Written Notice shall also include instructions for making the City Payment. Upon receipt of a Written Notice by the City Manager, the City Council hereby authorizes and directs the City Manager to prepare and submit to the City Council a

request for an appropriation of the amount set forth in the Written Notice. Such request shall be made in sufficient time to enable the City to make the City Payment within 90 days of receipt of the Written Notice as provided in Section 2 hereof.

Section 4. Repayment of Amounts Appropriated. In the event that the City Council appropriates funds to make the City Payment as contemplated by Section 2 hereof, any amounts actually transferred by the City to the Reserve Fund in accordance with the provisions of Section 2, shall be treated as an advance under the Cooperation Agreement and shall be repaid by the Authority in accordance with the provisions of the Cooperation Agreement, on a basis expressly subordinate and junior to that of the Loan and any other obligations or indebtedness that are secured or payable in whole or in part by the Pledged Revenues on a parity with the Loan.

Section 5. Limitation to Loan. Unless otherwise expressly provided by a subsequent resolution of the City Council, the provisions of this Resolution relating to the replenishment of the Reserve Fund shall apply only to the replenishment of the Reserve Fund that secures the payment of the Loan and shall not apply to any other reserve funds established in connection with the issuance of any other obligations.

Section 6. Approval of Cooperation Agreement. The Cooperation Agreement, in substantially the form on file with the City Clerk, is in all respects approved, authorized and confirmed. The Mayor is hereby authorized and directed to execute and deliver the Cooperation Agreement, for and on behalf of the City, in substantially the form and with substantially the same content as is on file with the City Clerk, provided that such document may be completed, corrected or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution. The execution of the Cooperation Agreement by the Mayor shall be conclusive evidence of the approval by the City Council of such document in accordance with its terms.

Section 7. Direction to Act. The City Clerk is hereby authorized and directed to attest all signatures and acts of any official of the City in connection with the matters authorized by this Resolution and to place the seal of the City on any document authorized and approved by this Resolution. The Mayor, the City Manager, the City Clerk, the City Attorney, and all other appropriate officials or employees of the City are hereby authorized and directed to execute and deliver for and on behalf of the City any and all additional certificates, documents, instruments and other papers, and to perform all other acts that they deem necessary or appropriate, in order to facilitate the development of the Project and implement and carry out the transactions and other matters authorized by this Resolution.

Section 8. Ratification. All actions (not inconsistent with the provisions of this Resolution) heretofore taken by the City Council or the officers, employees or agents of the City directed toward the development of the Project, the issuance of the Loan by the Authority, and the execution and delivery of the City PFA and the Cooperation Agreement are hereby ratified, approved and confirmed.

Section 9. Severability. If any section, subsection, paragraph, clause or provision of this Resolution or the documents hereby authorized and approved shall for any

reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution or such documents, the intent being that the same are severable.

Section 10. Repealer. All prior resolutions, or parts thereof, inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 11. Effectiveness. This Resolution shall take effect immediately.

DONE AND RESOLVED this 24th day of September 2018.



[SEAL]

Bud Starker
Bud Starker, Mayor

Attest:

Janelle Shaver
Janelle Shaver, City Clerk

**COOPERATION AGREEMENT
BETWEEN THE CITY OF WHEAT RIDGE AND
WHEAT RIDGE URBAN RENEWAL AUTHORITY**

THIS COOPERATION AGREEMENT (this "Agreement") dated as of September 24, 2018, is made and entered into between the CITY OF WHEAT RIDGE, COLORADO (the "City") and the WHEAT RIDGE URBAN RENEWAL AUTHORITY d/b/a/ RENEWAL WHEAT RIDGE (the "Authority").

WHEREAS, 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 home rule charter (the "Charter"); and

WHEREAS, the Authority 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 ("C.R.S.") (the "Urban Renewal Law"); and

WHEREAS, pursuant to Article XIV of the Colorado Constitution, and Title 29, Article 1, Part 2, C.R.S., the City and the Authority 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 Council of the City (the "City Council") has previously adopted the I-70/Kipling Corridors Urban Renewal Plan, as amended (the "Urban Renewal Plan" or the "Plan") for the area described therein (the "Urban Renewal Area"); and

WHEREAS, Evergreen-Clear Creek Crossing, L.L.C., an Arizona limited liability company (the "Developer") is the owner of approximately 109 acres of real property generally located at the southwest corner of the intersection of Interstate 70 and Colorado Highway 58 (the "Property"), which is in the Plan area; and

WHEREAS, the Developer has submitted a proposal to the City and the Authority to develop the Property in phases as a mixed-use commercial development (the "Project"); and

WHEREAS, the Project is being undertaken to facilitate the elimination and prevention of blighted areas; and

WHEREAS, pursuant to section 31-25-112, C.R.S., the City is specifically authorized to do all things necessary to aid and cooperate with the Authority in connection with the planning or undertaking of any urban renewal plans, projects, programs, works, operations, or activities of the Authority, to enter into agreements with the Authority respecting such actions to be taken by the City, and appropriating funds and making such expenditures of its funds to aid and cooperate with the Authority in undertaking the Project and carrying out the Plan; and

WHEREAS, in connection with the development of the Project, the City, Longs Peak Metropolitan District, a quasi-municipal corporation and political subdivision of the State of

Colorado (the “District”) and the Developer have entered into a Public Finance Agreement that sets forth the rights and responsibilities of each party with respect to the financing and construction of certain public improvements for development of the Project, as set forth therein; and

WHEREAS, the Authority has determined that the development of the Project in order to remediate blight is consistent with and in furtherance of the purposes of the Authority and the Plan; and

WHEREAS, in connection with the development of the Project, the Authority has entered into a Public Finance Agreement with the District and the Developer (the “Authority PFA”) that sets forth the rights and responsibility of each party with respect to the financing and construction of certain eligible improvements for development of the Project, as set forth therein; and

WHEREAS, in accordance with the terms and provisions of the Authority PFA and in order to finance certain eligible improvements for the Project, the Authority is entering into a loan with BOKF N.A. d/b/a/ Colorado State Bank and Trust (the “Lender”) in the principal amount of \$6,375,000 (the “Loan”) pursuant to a Loan Agreement between the Authority and the Lender (the “Loan Agreement”) with such Loan to be payable from property tax increment revenues to be generated from the TIF Area (as defined in the Loan Agreement), which includes the area within the boundaries of the District; and

WHEREAS, the Loan will be secured by a reserve fund (the “Reserve Fund”) that will be maintained in an amount equal to the Reserve Fund Requirement (as defined in the Loan Agreement); and

WHEREAS, in order to help facilitate the development of the Project, the City Council has adopted Resolution No. 61, Series of 2018 (the “Replenishment Resolution”) declaring its nonbinding intent and expectation that it will appropriate any funds requested, within the limits of available funds and revenues, in a sufficient amount to replenish the Reserve Fund to the Reserve Fund Requirement in the event of a draw thereunder, to the extent that Pledged Revenues of the Authority are not available to fully replenish the Reserve Fund; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Loan Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the Authority agree as follows:

1. **LOAN.** If the City Council appropriates funds pursuant to the Replenishment Resolution to replenish the Reserve Fund as set forth therein, such funds shall be a loan from the City to the Authority to be repaid as provided herein.

2. **PAYMENT.** All amounts payable by the Authority to the City hereunder shall be repaid from and to the extent of available Pledged Revenues, or from other available revenues of the Authority, provided that any such repayment from Pledged Revenues shall be made on a

basis expressly subordinate and junior to the payments due on the Loan and any other obligations or indebtedness that are secured or payable in whole or in part by the Pledged Revenues on a parity with the Loan.

3. **FURTHER COOPERATION.**

(a) The City shall continue to make available such employees of the City as may be necessary and appropriate to assist the Authority in carrying out any authorized duty or activity of the Authority pursuant to the Urban Renewal Law, the Plan, or any other lawfully authorized duty or activity of the Authority.

(b) The City agrees to pay to the Authority any Pledged Property Tax Increment Revenues when, as and if received by the City, but which are due and owing to the Authority pursuant to the Plan and the Urban Renewal Law.

4. **GENERAL PROVISIONS.**

(a) Separate Entities. Nothing in this Agreement shall be interpreted in any manner as constituting the City or its officials, representatives, consultants, or employees as the agents of the Authority, nor as constituting the Authority or its officials, representatives, consultants, or employees as agents of the City. Each entity shall remain a separate legal entity pursuant to applicable law. Neither party shall be deemed hereby to have assumed the debts, obligations, or liabilities of the other.

(b) Third Parties. Neither the City nor the Authority shall be obligated or liable under the terms of this Agreement to any person or entity not a party hereto, provided, however, that the Lender is a third party beneficiary to the provisions hereof related to the collection and remittance to the Authority of the Pledged Property Tax Increment Revenues.

(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 both parties and incorporated as a written amendment to this Agreement. Memoranda of understanding and correspondence shall not be construed as amendments to the Agreement.

(d) Entire Agreement. This Agreement shall represent the entire agreement between the parties with respect to the subject matter hereof and shall supersede all prior negotiations, representations, or agreements, either written or oral, between 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. Except for the pledge under the Loan Documents, this Agreement shall not be assigned, in whole or in part, by either party without the written consent of the other.

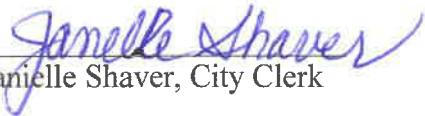
(g) Waiver. No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach or of such provision. Failure of either party to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The remedies reserved in this Agreement shall be cumulative and additional to any other remedies in law or in equity.

IN WITNESS WHEREOF, this Agreement is executed by the Parties as of September 27, 2018.

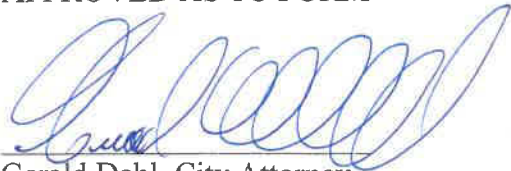
CITY OF WHEAT RIDGE, COLORADO



By: 
Bud Starker, Mayor


Janielle Shaver, City Clerk

APPROVED AS TO FORM


Gerald Dahl, City Attorney

WHEAT RIDGE URBAN RENEWAL AUTHORITY



Tim Rogers, Chair

ATTEST:



Steve Art, Executive Director