

**INTERGOVERNMENTAL AGREEMENT
FOR AN
AFFORDABLE HOUSING MODULAR FACTORY**

This Intergovernmental Agreement for the construction of an Affordable Housing Modular Factory at 6500 East Arapahoe Avenue, Boulder, CO 80303 (this “Agreement”) is made this ____ day of _____ 202__, (the “Effective Date”) between the City of Boulder, a Colorado home rule city (the “City”), and the Boulder Valley School District No. RE-2, a political subdivision of the State of Colorado (“BVSD”). The City and the BVSD may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

- A. The City, in partnership with BVSD and Flatirons Habitat for Humanity (“FHFH”), has secured two grants of approximately \$3,800,000 and received a \$4,000,000 Section 108 loan from HUD (the “Loan”) for the purpose of constructing an Affordable Housing Modular Factory (“Factory”).
- B. The purpose of the Factory is to produce needed affordable housing for Boulder Valley residents and workers while providing workforce training for BVSD students (the “Project”).
- C. The Factory will be located at 6500 East Arapahoe Avenue, Boulder, CO 80302 (“Property”) as shown in **Exhibit A** within a building envelope as shown on **Exhibit B** (“Factory Premises”).
- D. The total anticipated cost of the Project is \$8,500,000. The additional funds required to complete the Project will be provided by the City in accordance with this Agreement.
- E. Each Party’s respective staff signed a Memorandum of Intent on April 26, 2021, that aligns the City, BVSD, and FHFH on the broad concepts for the construction and operation of the Factory on the Property as a precursor to this Agreement.
- F. Because only government agencies can apply for the Loan, the City is the recipient of the Loan and will use the Loan to fund the design and construction work for the Factory.
- G. In conjunction with the Project and prior City ordinances, BVSD has filed an application for annexation of the Property into the City. The process of annexation is proceeding concurrently with the design, permitting and construction of the Factory and one will not be contingent on the other.
- H. The Project will require ongoing collaboration between the City, BVSD and FHFH. This Agreement sets forth the rights and responsibilities between BVSD and the City. The City, BVSD, and FHFH will enter into a separate Agreement for the operation of the Factory by FHFH.

- I. Part 2, of Article 29 C.R.S. permits and encourages local governments to make the most efficient and effective use of powers and responsibilities by cooperating and contracting with other government entities.

NOW, THEREFORE, in consideration of the foregoing Recitals, incorporated by this reference, the terms, conditions and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Term.

- a. Subject to earlier termination as provided herein, the term of this Agreement shall be 10 years, commencing on _____, 202__ and continuing until 5:00 P.M. on _____, 203__. BVSD agrees to grant use of the Factory Premises (as identified on **Exhibit B**) to the City and FHFH in accordance with a site lease to be negotiated between the Parties. BVSD retains all rights to access the Factory Premises at its discretion.
- b. Beginning the first full month the Factory begins operations to produce homes, the City's Department of Housing & Human Services ("HHS") will make annual payments of \$60,000 per year to BVSD for the next five years (totaling \$300,000) as consideration to BVSD for a portion of the fees associated with BVSD's annexation of the Property (i.e., plant investments fees) unless the funds are not appropriated by the Boulder City Council.
- c. BVSD may terminate this Agreement for its convenience on or after _____, 20__, by providing the City and FHFH not less than six months prior written notice and paying the undepreciated cost of the construction of the Factory based upon a 10-year useful life. For example, if BVSD chooses to terminate this Agreement early, then BVSD will reimburse the City's affordable housing fund for the initial cost of constructing the Factory, as verified by the Parties, and will be prorated 10% per year for 10 years. For example, if BVSD terminates this Agreement at the end of year seven, BVSD will pay the City 30% of the actual cost of constructing the Factory. Reimbursement may be made by BVSD in equal annual payments over a term of five years.
- d. Following expiration of the term or early termination by BVSD as provided herein, the Factory and any permanent remaining fixtures will revert to full and exclusive ownership and use by BVSD without restrictions. Any remaining non-permanent fixture must be removed from the premises within three months or will also revert to BVSD ownership.
- e. Renewal: To the extent consistent with applicable law, the initial ten-year term of this IGA and any associated site lease may be extended or renewed subject to the approval of BVSD's Board of Education, in its sole discretion.

2. Responsibilities of the Parties.

- a. BVSD.
 - i. As provided above, BVSD will designate the Factory Premises which will be a building envelope of land within the Property and BVSD will remain the underlying property owner through the term of this Agreement.

- ii. Will grant reasonable access to and from the Factory Premises, in a location designated by BVSD, for FHFH volunteers and employees, the delivery of materials, and the transport of modular homes from the Property. Such access rights will not unduly interfere with other BVSD operations.
 - iii. Will integrate students from BVSD's Construction Trades Education (CTE) program into the factory production as part of the requirements of that program. Construction of the Factory will include a space for a BVSD classroom and staff office.
 - iv. Will participate in design and construction meetings for the Factory and have an ongoing involvement in Factory operational meetings. Meetings shall include regular discussion of how BVSD CTE students are utilizing the facility for educational and training purposes and how the site remains safe for student use and training while construction of modular homes occurs.
 - v. May choose to enter into an agreement with FHFH for the shared use and operation of the Factory.
- b. City.
 - i. Will provide the necessary financial resources to build the Factory, currently estimated to be \$8,500,000. The City and FHFH will retain the necessary consultants for architectural design and permitting of the Factory.
 - ii. HHS will be responsible for up to \$35,000 in estimated consultant expenses and fees associated with the annexation of the Property.
 - iii. Will contribute HHS staff time to act as consultant to BVSD to coordinate the annexation process. This value is estimated at \$7,500. The City's in-kind and monetary contribution in the amount of \$42,500 for the annexation process is in addition to the consideration of \$300,000 to offset BVSD expenses associated with annexation plus the estimated cost of \$8,500,000 to construct the Factory.
 - iv. HHS staff will recommend to the Boulder City Council that the Factory serve as the required "Community Benefit" for annexation.
 - v. Will pay for any service/utility upsizing needed to operate the Factory.
 - vi. Will complete and pay for any needed repairs or replacement to the Factory or its components (including paved surfaces around the building) during the term of this Agreement.
 - vii. Will promptly repair and pay for any damage caused to BVSD property by Factory deliveries or operations during the term of this Agreement.
 - viii. Will be responsible for any financial obligations of FHFH related to the operation of the Factory in the event FHFH ends participation or is otherwise not able fulfill its financial commitments related to the Factory operations.
 - ix. Will pay all costs related to the design, construction, and operation of the Factory during construction of the Factory and the term of this Agreement along with the costs of production, delivery, and installation of the modular homes and any contractual obligations related thereto.
 - x. Will submit all plans and specifications (Schematic Design, Design Development, and Construction Documents) for the Factory to BVSD for

its approval at each stage, which will not be unreasonably withheld. The City shall manage the construction of the Factory including, without limitation, satisfying competitive bidding requirements and the awarding of a construction contract. The City will assure that BVSD operations on the Property are not disrupted during the progress of the work by the contractor, subcontractors or suppliers.

- xi. Will hire an acoustical engineer to measure the potential noise impact of Factory operations on the surrounding neighborhood and open space and will consider recommendations made by the engineer on noise reduction.
- xii. Will ensure that the Factory is operated according to the following conditions:
 - A. Factory Operating Hours: The Factory will operate no more than five days a week. The operating days will be Tuesday through Saturday, to accommodate volunteer schedules; and operating hours will be 8 am to 4 pm. The Factory will be closed for most federal holidays.
 - B. Factory Construction Hours: Work will be done to construct the Factory up to five days a week (Monday through Friday) between the hours of 7 am and 6 pm.
 - C. Quiet Hours: Quiet hours and noise levels will be observed at the Factory in consideration of neighbors and nearby open space in accordance with city/county regulations.
 - D. Back Up Alarms: Forklifts operated in and around the Factory will not be equipped with back up alarms unless required by state or federal rules. Truck deliveries and the pickup of modules will be routed around the Factory to avoid the use of back up alarms.
 - E. Trash and Recycling: Trash and recycling pickup will only occur during the Factory's operating hours.
 - F. Factory Staff and Volunteer Parking: All City and FHFH staff and volunteers will park in the paved parking area immediately north of the factory structure.
 - G. Factory Doors and Windows: Doors and windows will remain closed year-round (when not actively receiving a delivery or a modular unit is exiting) to reduce noise.
 - H. Deliveries: The Parties will ensure that deliveries to and from the Factory, including materials and supply deliveries and deliveries of completed modular housing units off site, will only occur on 65th Street during times when traffic impacts on BVSD operations and related safety risks for students, employees, parents, and other members of the public using that access are low. Deliveries to and from the Factory via 63rd Street will be minimized to the greatest extent possible. The Parties will work together in good faith to establish a delivery schedule to and from the Factory via 65th Street that minimizes traffic impacts on other BVSD operations.

3. **Construction Trades Education (CTE).**

- a. The City will support, through the construction design process, regular operational meetings, and in collaboration with FHFH, the establishment of safety

measures in the Factory to protect BVSD students participating in the CTE program at the Factory from harm while onsite. Such measures will include, but not be limited to, background checks for all City and FHFH staff working at the Factory site and other measures appropriate for volunteers and delivery personnel in accordance with BVSD procedures. Additionally, all applicable industry standard safety requirements shall be met in the design and operation of the Factory to ensure students working in the Factory are not subject to unsafe conditions.

- b. The operation of the Factory will allow CTE students and staff access to the Factory and provided sufficient hours of instruction on site to complete student coursework.
4. **Public Announcements.** Both Parties will agree on branding, media contacts and promotions in accordance with BVSD Board policy and regulation.
5. **Notices.** All notices provided for herein shall be in writing and shall be sent to the address set forth below (or such other address as a Party may hereafter designate by notice to the other Party as required hereby) of the Party for whom such notice or communication is intended:

If to the City: City of Boulder
Attn: Director of Housing & Human Services
1300 Canyon Blvd.
Boulder, CO 80302

If to BVSD: Boulder Valley School District
Attn: Assistant Superintendent of Operations
6500 Arapahoe
Boulder, CO 80302
6. **Governmental Immunity.** Each party and its officers and employees are relying on, and do not waive or intend to waive any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to each Party and its officers and employees.
7. **Waiver of Claims; Limitation of Liability.** Notwithstanding anything to the contrary in this Agreement, except with respect to gross negligence or willful misconduct, the Parties hereby waive any and all claims for any indirect, incidental, special or consequential damages of any nature whatsoever.
8. **Rights Cumulative.** The rights and remedies of the Parties under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement will not limit any of the Parties' legal or equitable remedies, or the period in which such remedies may be asserted, for negligent or defective performance.

9. **Binding Effect.** The City and BVSD each bind itself, its successors and assigns to the other Party to this Agreement with respect to all rights and obligations under this Agreement.
10. **No Assignment.** Neither this Agreement nor any of the rights or obligations of the Parties will be assigned by either Party without the written consent of the other.
11. **Relationship of the Parties.** Nothing in this Agreement will be construed to create a joint venture, partnership, employer/employee or other relationship between the Parties other than independent contracting parties. Except as permitted under the remedies provision hereunder, no Party will have the express or implied right to act for, on behalf of, or in the name of any other Party.
12. **No Multiple Fiscal Year Obligation/Appropriations.** Nothing herein will constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. The financial obligations of the Parties under this Agreement are subject to annual budgeting and appropriation by the Party in accordance with applicable law.
13. **Dispute Resolution.** The Parties have entered into this Agreement with the understanding and expectation that each Party will continue to collaborate on issues related to the Factory. The Parties will attempt to resolve any dispute arising out of or related to this Agreement through negotiations between designees of the Parties. If the matter is not resolved within 30 days of receipt of a written request to negotiate submitted by a Party, the Parties will attempt to resolve the dispute in good faith through an agreed-upon Alternative Dispute Resolution (“ADR”) procedure, or in default of agreement, through an ADR procedure as recommended to the Parties by a mutually agreed upon mediator. Nothing in this clause will be construed as prohibiting a Party from applying to a court for interim injunctive relief.
14. **No Third-Party Beneficiaries.** This Agreement does not create any rights in any individual not a party to this Agreement.
15. **Governing Law.** This Agreement will be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof will be brought in Boulder County, Colorado.
16. **No Waiver.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by either Party will not constitute a waiver of any of the other terms or obligations of this Agreement.
17. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof will remain in full force and effect.
18. **Entire Agreement.** This Agreement and the exhibits attached hereto and incorporated herein, constitutes the entire agreement of the Parties.

19. **Amendments.** This Agreement may only be modified upon written agreement of the Parties.
20. **Authority of Signatories.** The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the Effective Date.

**Boulder Valley School District No. RE-2,
a Colorado public school district**

Kathy Gebhardt, President
Board of Education

Attest:

APPROVED AS TO FORM:

_____ DATE: _____

**City of Boulder,
a Colorado home rule city**

Nuria Rivera-Vandermyde,
City Manager

Attest:

APPROVED AS TO FORM:

_____ DATE: _____

EXHIBIT A:

Property

BVSD 6500 ARAPAHOE ROAD

6/10/21

LAND DESCRIPTION

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 35, TOWNSHIP 1 NORTH, RANGE 70 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 35; THENCE ALONG THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 35, S89°58'13"W A DISTANCE OF 1542.94 FEET; THENCE S01°01'47"E A DISTANCE OF 57.00 FEET TO A POINT ON THE EASTERLY LINE OF THE PARCEL RECORDED AT RECEPTION NO. 3265607 AND THE SOUTHERLY RIGHT-OF-WAY LINE OF ARAPAHOE ROAD AS RECORDED AT RECEPTION NO. 3158424 TO THE POINT OF BEGINNING;

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE THE FOLLOWING NINE (9) CONSECUTIVE COURSES:

- 1) N89°58'13"E A DISTANCE OF 529.67 FEET;
- 2) THENCE S00°01'47"E A DISTANCE OF 23.00 FEET;
- 3) THENCE N89°58'13"E A DISTANCE OF 118.53 FEET;
- 4) THENCE N00°01'47"W A DISTANCE OF 23.00 FEET;
- 5) THENCE N89°58'13"E A DISTANCE OF 279.72 FEET;
- 6) THENCE 585.57 FEET ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A RADIUS OF 9630.59 FEET, A CENTRAL ANGLE OF 03°29'02", AND A CHORD WHICH BEARS S88°17'16"E A DISTANCE OF 585.48 FEET;
- 7) THENCE 283.34 FEET ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 4659.94 FEET, A CENTRAL ANGLE OF 03°29'01", AND A CHORD WHICH BEARS S88°17'16"E A DISTANCE OF 283.29 FEET;
- 8) THENCE N00°07'19"W A DISTANCE OF 3.00 FEET;
- 9) THENCE S89°56'14"E A DISTANCE OF 225.18 FEET TO A POINT ON THE WESTERLY LINE OF THE PARCEL RECORDED AT RECEPTION NO. 3751678;

THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) CONSECUTIVE COURSES:

- 1) S54°52'09"W A DISTANCE OF 99.37 FEET;
- 2) THENCE S39°34'09"W A DISTANCE OF 147.40 FEET;
- 3) THENCE S63°14'09"W A DISTANCE OF 171.00 FEET;
- 4) THENCE S26°45'09"W A DISTANCE OF 99.00 FEET;
- 5) THENCE S24°20'09"W A DISTANCE OF 82.30 FEET TO THE NORTHWEST CORNER OF LOT 5, BLOCK 1, RIDGLEA HILLS SUBDIVISION;

THENCE ALONG THE WESTERLY LINE OF SAID LOT 5, S17°37'39"E A DISTANCE OF 289.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 5;

THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF MEADOW LARK LANE, S37°58'21"W A DISTANCE OF 182.00 FEET TO A POINT ON THE NORTHERLY LINE OF THE PARCEL RECORDED AT RECEPTION NO. 2021878;

THENCE ALONG SAID NORTHERLY LINE THE FOLLOWING TWENTY TWO (22) CONSECUTIVE COURSES:

- 1) N55°14'24"W A DISTANCE OF 147.48 FEET;
- 2) THENCE N75°14'13"W A DISTANCE OF 89.07 FEET;
- 3) THENCE N86°34'37"W A DISTANCE OF 88.44 FEET;
- 4) THENCE S49°31'20"W A DISTANCE OF 57.70 FEET;
- 5) THENCE S05°50'30"W A DISTANCE OF 398.14 FEET;
- 6) THENCE N84°09'21"W A DISTANCE OF 520.31 FEET;
- 7) THENCE N41°03'45"W A DISTANCE OF 177.74 FEET;

8) THENCE N87°29'33"W A DISTANCE OF 93.92 FEET;
9) THENCE N54°09'28"W A DISTANCE OF 58.64 FEET;
10) THENCE N64°41'19"W A DISTANCE OF 100.01 FEET;
11) THENCE N83°18'34"W A DISTANCE OF 63.64 FEET;
12) THENCE N78°46'50"W A DISTANCE OF 59.89 FEET;
13) THENCE N87°03'04"W A DISTANCE OF 17.89 FEET;
14) THENCE S00°08'43"E A DISTANCE OF 209.57 FEET;
15) THENCE S89°51'17"W A DISTANCE OF 202.57 FEET;
16) THENCE N00°08'43"W A DISTANCE OF 220.00 FEET;
17) THENCE S87°55'23"W A DISTANCE OF 156.75 FEET;
18) THENCE N79°56'29"W A DISTANCE OF 59.44 FEET;
19) THENCE N62°48'34"W A DISTANCE OF 40.31 FEET;
20) THENCE N46°31'33"W A DISTANCE OF 57.48 FEET;
21) THENCE N71°39'43"W A DISTANCE OF 42.57 FEET;
22) THENCE N82°28'22"W A DISTANCE OF 764.85 FEET TO A POINT ON THE WESTERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 35;
THENCE ALONG SAID WESTERLY LINE, N00°31'48"W A DISTANCE OF 65.38 FEET;
THENCE S89°44'56"E A DISTANCE OF 60.00 FEET TO THE SOUTHWEST CORNER OF THE PARCEL RECORDED AT RECEPTION NO. 3499044;
THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL RECORDED AT RECEPTION NO. 3499044 THE FOLLOWING FOUR (4) CONSECUTIVE COURSES:
1) N83°46'39"E A DISTANCE OF 170.64 FEET;
2) THENCE S67°56'41"E A DISTANCE OF 30.34 FEET;
3) THENCE S82°11'48"E A DISTANCE OF 198.50 FEET;
4) THENCE N00°09'00"W A DISTANCE OF 74.35 FEET TO THE SOUTHWEST CORNER OF THE PARCEL RECORDED AT RECEPTION NO. 3265607;
THENCE ALONG THE SOUTHERLY AND EASTERLY LINE OF SAID PARCEL RECORDED AT RECEPTION NO. 3265607 THE FOLLOWING TWO (2) CONSECUTIVE COURSES:
1) S81°49'47"E A DISTANCE OF 644.67 FEET;
2) THENCE N00°12'47"W A DISTANCE OF 671.95 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 1,859,026 SQUARE FEET (41.677 ACRES) MORE OR LESS.

ALL LINEAL DIMENSION ARE IN U.S. SURVEY FEET.

BASIS OF BEARING: BEARINGS ARE BASED ON THE NORTHERLY LINE OF THE NORTHWEST QUARTER OF SECTION 35, T1N, R70W OF THE 6TH P.M. BEARING N89°58'13"E AND BEING MONUMENTED BY A FOUND 3 ¼" ALUMINUM CAP PLS # 26953 IN RANGE BOX AT THE NORTHWEST CORNER AND AT THE NORTH QUARTER CORNER.

PREPARED BY RICHARD A. NOBBE, PLS
FOR AND ON BEHALF OF: MARTIN / MARTIN, INC.
12499 W. COLFAX AVE.
LAKEWOOD, CO 80215
303 431-6100
JOB NO. 18.1215.



EXHIBIT B

Factory Premises

