



Fort Lupton City Hall
130 S. McKinley Avenue
Fort Lupton, CO 80621
(303) 857-6694

AGENDA

**Fort Lupton Urban Renewal Authority
Regular Meeting
Tuesday, February 16, 2016
6:00 P.M.**

- 1. Call To Order – Roll Call**
- 2. Approval Of The Agenda**
- 3. Public Comment**
- 4. New Business**
 - a. AM2016-001: Approve a Resolution Authorizing the Execution of an Intergovernmental Agreement Between FLURA and Weld Re-8
 - b. AM2016-002: Approve a Resolution Authorizing the Execution of an Intergovernmental Agreement Between FLURA and the Fire District
 - c. AM2016-003: Approve a Resolution Authorizing the Execution of an Intergovernmental Agreement Between FLURA and Weld County
 - d. Bylaws & Mission Statement
 - e. Election of Officers
 - f. Direction on FLURA attorney
- 5. Old Business**
- 6. Staff Reports**
 - a. Executive Director
 - b. City Liaisons
- 7. Board Reports**
- 8. Adjournment**

AM 2016-001
SCHOOL DISTRICT IGA

AM 2016-001

RESOLUTION NO. 2016URAXXX AUTHORIZING THE CHAIR OF THE FORT LUPTON URBAN RENEWAL AUTHORITY TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH WELD COUNTY SCHOOL DISTRICT RE-8

I. **Agenda Date:** *Board Meeting – February 16, 2016*

II. **Attachments:**

- A. *Resolution No. 2016URAxXX*
- B. *FLURA/Weld RE-8 School District IGA with Exhibit*
- C. *Email from FLURA Attorney*

III. **Issue/Request:**

In 2015, FLURA was approached by Weld County School District RE-8 officials to discuss protecting the District's ability to pay back their voter-approved debts. Specifically, former Board of Education President, Mike Simone, and the District's Superintendent, John Hoag, asked FLURA to exclude current and future mill levy overrides and debt service mill levies, also known as ballot issues 3A and 3B, from the Fort Lupton Core Urban Renewal Plan.

Weld County School District RE-8's attorney drafted an IGA that was reviewed and approved by FLURA attorney Paul Benedetti on September 20, 2015.

IV. **Alternatives/Options:**

1. *The Board may authorize execution of the IGA as presented.*
2. *The Board may choose not to approve execution of the IGA and continue negotiating with Weld County School District RE-8.*

V. **Financial Considerations:**

Excluding the above-mentioned funds from the Fort Lupton Core Urban Renewal Plan will result in lower revenues for FLURA.

VI. **Legal / Political Considerations:**

The IGA has been reviewed and approved by both FLURA's and the District's legal counsel.

Politically, not authorizing execution of this IGA may create an unfavorable perception of FLURA within the community.

VII. **Staff Recommendation:**

Staff recommends approving resolution URA2016-XXX authorizing execution of an IGA with Weld County School District RE-8.

RESOLUTION NO. 2016URAxXX

A RESOLUTION OF THE FORT LUPTON URBAN RENEWAL AUTHORITY AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH WELD COUNTY SCHOOL DISTRICT RE-8.

WHEREAS, the Fort Lupton Urban Renewal Authority (FLURA) and Weld County School District Re-8 (School District Re-8) have negotiated the terms of an intergovernmental agreement to exclude current and future mill levy overrides and debt service mill levies, also known as ballot issues 3A & 3B, from the Fort Lupton Core Urban Renewal Plan; and

WHEREAS, the terms of the aforementioned intergovernmental agreement were reviewed and approved by both FLURA's attorney and School District RE-8's attorney.

NOW THEREFORE BE IT RESOLVED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY, AS FOLLOWS:

The FLURA Board hereby finds, determines and declares that this Resolution is necessary and that it serves a valid public purpose and authorizes the execution of the attached intergovernmental agreement between FLURA and School District Re-8.

APPROVED AND PASSED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY THIS 16th DAY OF FEBRUARY 2016.

Fort Lupton Urban Renewal Authority

Barbara Kirkmeyer, Chair

Approved as to form:

Attest:

Andy Ausmus, Attorney

Nanette Fornof, Secretary

**INTERGOVERNMENTAL AGREEMENT FOR USE OF FLURA TIF REVENUES
FOR SCHOOL DISTRICT PURPOSES**

This Intergovernmental Agreement (“Agreement”), is entered into effective the _____ day of _____, 2016 (the “Effective Date”), between the **FORT LUPTON URBAN RENEWAL AUTHORITY** (“FLURA”) and the **WELD COUNTY SCHOOL DISTRICT RE-8** (“School District”) (collectively referred to as the “Parties”).

RECITALS

A. FLURA is a public body corporate and politic authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (“Act”).

B. The School District is a political subdivision of the State of Colorado.

C. FLURA’s and the City of Fort Lupton’s (“City”) jurisdictional boundaries lie within the boundaries of the School District, and the City’s resident children attend the School District’s schools located within and outside of the City.

D. On May 18, 2015, the Fort Lupton City Council adopted its Resolution [2014RXXX] approving the Urban Renewal Plan for the Fort Lupton Urban Renewal Area (“FLURA Plan”), which details the inclusion of the parcels described in the FLURA Plan for the purposes authorized in the Act, including utilizing tax increment financing (“TIF Financing”), as contemplated by C.R.S. § 31-25-107(9)(a), for the purposes authorized by the Urban Renewal Law.

E. TIF Financing provides that taxes levied after the effective date of the approval of the urban renewal plan upon taxable property in the area described therein, which for purposes of this Agreement includes the property within the FLURA Plan as described in Exhibit A, each year shall be divided for a period not to exceed twenty-five (25) years from the effective date of the urban renewal plan and that a portion of said property tax revenues (the “TIF Revenue”) shall be allocated to and paid into a special fund of FLURA to pay the principal of, interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by FLURA for financing an urban renewal project or to make payments pursuant to an agreement executed pursuant to C.R.S. § 31-25-107(11).

G. FLURA and the School District acknowledge that in 2012, the eligible electors of the School District approved ballot issue 3A for a mill levy override in accordance with Public School Finance Act of 1994, Colorado Revised Statutes Title 22, Article 54, Part 1 (the “Mill Levy Override”), and ballot issue 3B for the issuance of general obligation bonds to finance the construction, renovation, and repair of School District facilities (the “Debt Service Mill Levy”).

H. FLURA and the School District recognize that a division of taxes pursuant to C.R.S. § 31-25-107(9)(a) on property within the boundaries of the School District without an agreement concerning the sharing of TIF Revenue that result from the Mill Levy Override and the Debt

Service Mill Levy on taxable property in the FLURA Plan may hinder the effectuation of the Plan and urban renewal projects within the FLURA Plan and the School District's ability to provide School District services and facilities therein.

I. FLURA and the School District therefore desire to enter into this Agreement for the transfer to the School District of property tax revenues that FLURA receives from the Mill Levy Override and the Debt Service Mill Levy on taxable property in the FLURA Plan.

J. FLURA and the School District are authorized to enter into this Agreement pursuant to law, including without limitation C.R.S. § 31-25-112.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants, promises and agreements of each of the parties hereto, it is agreed by and among the parties hereto as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated into and made a part of this Agreement.

2. Mill Levy Override Allocation. FLURA and the School District acknowledge that in 2012, the eligible electors of the School District passed ballot issue 3A, approving a mill levy override for general fund purposes in accordance with the Public School Finance Act of 1994, Colorado Revised Statutes Title 22, Article 54, Part 1 (the "Mill Levy Override"). FLURA agrees to deposit into a separate account created for such purpose (the "Account"), all of the increase in property tax TIF Revenues calculated, produced, allocated and transferred to FLURA solely as a result of the levy by the School District of the Mill Levy Override upon taxable property within the FLURA Plan pursuant to and in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado (the "Mill Levy Override Allocation"). A mill levy override extension of ten years is also on the ballot for November 3, 2015. This would extend 3B passed in 2006 for an additional 10 years to 2026 and if approved, shall be treated in the same manner as the 2012 ballot issue.

3. Debt Service Mill Levy Allocation. FLURA and the School District acknowledge that in 2012, the eligible electors of the School District approved ballot issue 3B for the issuance of general obligation bonds to finance capital construction costs for School District facilities (the "Debt Service Mill Levy"). FLURA agrees to deposit into the Account all of the increase in property tax TIF Revenues calculated, produced, allocated and transferred to FLURA solely as a result of the levy by the School District of the Debt Service Mill Levy upon taxable property within the FLURA Plan pursuant to and in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado (the "Debt Service Mill Levy Allocation"). A bond issue for \$20.7 million is also on the ballot for November 3, 2015. If approved, it shall be treated in the same manner as the 2012 bond issue.

4. Accounting. Commencing with the month after the first month that TIF Revenues from the Mill Levy Override and the Debt Service Mill Levy are collected by FLURA, FLURA shall transfer to the School District, on or before the 15th day of each month, all revenues received into such Account through the preceding month.

5. Area Added to FLURA Plan. If area is subsequently included in the FLURA Plan by a modification of the Plan approved by the Fort Lupton City Council, and such modification results in property tax TIF Revenues from the Mill Levy Override or the Debt Service Mill Levy being allocated and transferred to FLURA for an additional period beyond twenty-five (25) years from the effective date of the Plan, then FLURA shall make the foregoing transfers to the District for such additional period.

6. Use of Transferred TIF Revenues. The School District agrees to use property tax TIF Revenues transferred to it by FLURA pursuant to this Agreement solely for paying or reimbursing the costs, expenses and/or indebtedness incurred for the provision of School District facilities and services in the FLURA Plan, which may include area subsequently included in the FLURA Plan; provided, however, that nothing in this Agreement shall be construed as permitting the use of disbursed funds for purposes of paying School District administrative or instructional expenses.

7. School District Authority. Nothing in this Agreement shall be construed to limit the authority of the School District's Board of Education to finally determine the location of schools and to construct and erect the necessary school buildings and structures.

8. Agreement Confined to Specified Revenue. This Agreement applies only to property tax TIF Revenue from the Mill Levy Override and the Debt Service Mill Levy, if any, that is calculated, produced, allocated and transferred to FLURA within the FLURA Plan in accordance with C.R.S. § 31-25-107(9)(a)(II) and the rules and regulations of the Property Tax Administrator of the State of Colorado, and does not include any other revenues of FLURA. Without limiting the foregoing, it is specifically agreed that this Agreement does not apply to or require the allocation of any TIF Revenues realized from any current mill levies of the School District or any mill levies imposed in the future for the refunding of any School District debt existing as of the Effective Date. Further, this Agreement applies only to the FLURA Plan and area subsequently included in the FLURA Plan by a modification of the Plan approved by the Fort Lupton City Council.

9. Subordination. By written consent of the School District, as evidenced by a resolution approved by the Board of Education of the School District, the obligation of FLURA to transfer revenues to the School District may be made subordinate to any payment of the principal of, the interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by FLURA for financing or refinancing, in whole or in part, any urban renewal project specified in the Plan.

10. Delays. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, acts of public enemy, acts of the Federal or state government, acts of any other party, acts of third parties, litigation concerning the validity of this Agreement or relating to transactions contemplated hereby, fire, floods, strikes, labor disputes, accidents, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party. Notwithstanding the foregoing, where any of the above events shall

occur which temporarily interrupt the ability of FLURA to transfer to the School District Mill Levy Override Allocation revenues or Debt Service Mill Levy Allocation revenues as provided in this Agreement, as soon as the event causing such interruption shall no longer prevail, FLURA shall transfer the total amount of the effected Allocation that has been received by FLURA that is then in the Account, as determined according to the provisions of this Agreement.

11. Termination and Subsequent Legislation. This Agreement may be terminated at any time upon the mutual written agreement of FLURA and the School District. In addition, in the event of termination of the FLURA Plan, including its TIF Financing component, FLURA may terminate this Agreement by delivering written notice to the School District. FLURA may also terminate this Agreement by delivering written notice to the School District if the School District no longer provides any District services within the City of Fort Lupton. The parties further agree that in the event legislation is adopted after the effective date of this Agreement that invalidates or materially effects any provisions hereof, the parties will in good faith negotiate for an amendment to this Agreement that most fully implements the original intent, purpose and provisions of this Agreement.

12. Entire Agreement. This instrument embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. No modification to this Agreement shall be valid unless agreed to in writing by the parties hereto.

13. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors in interest.

14. No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

15. No Waiver of Immunities. Nothing contained herein shall be construed as a waiver, in whole or in part, by any party hereto of the rights, protections, and privileges afforded under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. or under any other law, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement.

16. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality or unenforceability, the parties will in good faith negotiate for an amendment to this Agreement that achieves to the greatest degree possible the intent of the affected provision of this Agreement.

17. No Assignment. No party may assign any of its rights or obligations under this Agreement without the express written consent of the other party. Any attempted assignment in violation of this provision shall be null and void and of no force and effect.

18. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

19. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

20. Governing Law. This Agreement and the provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado.

21. No Presumption. The parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the party causing the Agreement to be drafted.

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

Fort Lupton Urban Renewal Authority
Attention: City Administrator

Weld County School District RE-8
Attn: Superintendent
301 Reynolds Street
Fort Lupton, CO 80621

Notice given by mail shall be effective upon mailing.

23. Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

24. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the parties shall not be deemed to be

partners or joint venturers, and no party shall be responsible for any debt or liability of any other party.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement effective as of the day and year first above written.

ATTEST: WELD COUNTY SCHOOL DISTRICT RE-8

By: _____
Secretary

By: _____
President of the Board

ATTEST: FORT LUPTON URBAN RENEWAL
AUTHORITY

By: _____
Recording Secretary

By: _____

Exhibit A
Legal Description of Area within the FLURA Plan

4820-0408-0678, v. 1

AM 2016-002
FIRE DISTRICT IGA

AM 2016-002

RESOLUTION NO. 2016URAxXX AUTHORIZING THE CHAIRPERSON OF THE FORT LUPTON URBAN RENEWAL AUTHORITY TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH THE FORT LUPTON FIRE PROTECTION DISTRICT

- I. **Agenda Date:** *Board Meeting – February 16, 2016*
- II. **Attachments:**
- A. *Resolution No. 2016URAxXX (Both Versions)*
 - B. *FLURA/Fort Lupton Fire Protection District IGA (FLURA Attorney Version)*
 - C. *FLURA/Fort Lupton Fire Protection District IGA (Fire District Attorney Version)*

III. **Issue/Request:**

In 2015, FLURA was approached by Fort Lupton Fire Protection District officials to discuss concerns about protecting the District's ability to pay back their voter-approved debts and address other perceived negative financial impacts associated with FLURA's Core Urban Renewal Plan (Core Plan) area.

Specifically, Fire Chief Phil Tiffany, Fire District Board members, Larry Leinweber, Arlen Ingbarth, and the Fire District's attorney, John Dent, asked FLURA to completely exclude current and future voter approved general obligation bonds, also known as the Fire District Debt Service Mill Levy, from the Fort Lupton Core Urban Renewal Plan. In addition, the Fire District officials asked FLURA to offer a "seat at the table" to one of their respective board members so their District's concerns would be heard. Finally, the Fire District wanted to ensure that in the event so-called "Greenfield" parcels included in the Core Plan develop and create a substantial need for new equipment or increased staffing, that they would have an opportunity to work with FLURA to offset the negative impacts.

After considering the Fire District's requests/concerns, the 2015 FLURA Board, formally led by Fort Lupton City Council members, tentatively agreed to exclude the Fire District's Debt Service Mill Levy, reserve a seat on the FLURA Board for a Fire District Board member, and include a section in the intergovernmental agreement that would give the Fire District the ability to negotiate with FLURA to obtain relief for "significant and quantifiable disproportionate impacts" tied to the development of large vacant parcels or "Greenfields" in the Core Plan. FLURA's attorney, Paul Benedetti, drafted an IGA that included these key elements.

The Fire District received the FLURA attorney's IGA and the Fire District's attorney chose to create a new IGA that contained similar provisions to protect the Fire District's Debt Service Mill Levy and reserve a seat on the FLURA Board for a Fire District Board Member. The primary difference between the two versions of the IGAs is the Fire District's inclusion of a paragraph that states, "There will be a 50% Pass-through if the TIF revenue received by FLURA from the 6 large parcels of land that are largely undeveloped, but surrounded by urban level development as defined in the Act (C.R.S. 31-25-107), The Fire District shall receive a 50% pass through each

year as to those vacant land parcels or any vacant land parcels added to the FLURA boundaries...”

Of note, at a recent meeting with Phil Tiffany, John Dent and Larry Leinweber, the Fire District offered the FLURA Board \$75,000 if they would completely exclude the Fire District from the Core Plan. This option may still be available and subject to further negotiations with the Fire District.

IV. Alternatives/Options:

- 1. The Board may authorize execution of the FLURA attorney’s version of the IGA as presented.*
- 2. The Board may authorize execution of the Fire District attorney’s version of the IGA as presented.*
- 3. The Board may choose not to approve execution of either IGA and continue negotiating with Fort Lupton Fire Protection District.*
- 4. The Board may have the option to accept a cash payout from the Fire District to exclude their revenues from the Fort Lupton Core Urban Renewal Plan.*

V. Financial Considerations:

Excluding the above-mentioned funds from the Fort Lupton Core Urban Renewal Plan will result in lower revenues for FLURA.

VI. Legal / Political Considerations:

The IGAs have been reviewed by both FLURA’s and the Fire District’s attorneys.

Politically, not authorizing execution of an IGA or other agreement with the Fire District may create an unfavorable perception of FLURA within some segments of the community.

VII. Staff Recommendation:

Staff does not have a recommendation and is choosing to stay neutral on this topic.

FLURA Attorney Version

RESOLUTION NO. 2016URAxXX

A RESOLUTION OF THE FORT LUPTON URBAN RENEWAL AUTHORITY AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE FORT LUPTON FIRE PROTECTION DISTRICT

WHEREAS, the Fort Lupton Urban Renewal Authority (FLURA) and the Fort Lupton Fire Protection District (Fire District) have negotiated the terms of an intergovernmental agreement to exclude current and future Fire District Debt Service Mill Levies from the Fort Lupton Core Urban Renewal Plan; and

WHEREAS, the terms of the aforementioned intergovernmental agreement reserve a seat on the FLURA Board for a Fire District Board member; and

WHEREAS, the intergovernmental agreement honors FLURA's stated intent that the Fire District shall suffer no quantifiable impacts as a result of implementation of the Fort Lupton Core Urban Renewal Plan with respect to the six large parcels of land that are largely undeveloped but surrounded by urban level development as defined in the Act; and

WHEREAS, in the event that significant and quantifiable disproportionate impacts on Fire District services or revenue related to the development of such parcels are identified and quantified by the District, after taking into account anticipated increases in District revenue based on valuation increases, FLURA and the Fire District agree to negotiate in good faith any additions to Fire District TIF Revenue that may be required to address such impacts.

NOW THEREFORE BE IT RESOLVED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY, AS FOLLOWS:

The FLURA Board hereby finds, determines and declares that this Resolution is necessary and that it serves a valid public purpose and authorizes the execution of the attached intergovernmental agreement between FLURA and the Fire District.

APPROVED AND PASSED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY BOARD THIS 16th DAY OF FEBRUARY 2016.

Fort Lupton Urban Renewal Authority

Barbara Kirkmeyer, Chair

Approved as to form:

Attest:

Andy Ausmus, Attorney

Nanette Fornof, Secretary

**COOPERATION AGREEMENT BETWEEN
THE FORT LUPTON URBAN RENEWAL AUTHORITY AND
THE FORT LUPTON FIRE PROTECTION DISTRICT**

1.0 PARTIES. The parties to this Agreement (the “Agreement”) are the FORT LUPTON URBAN RENEWAL AUTHORITY (the “Authority”) and the FORT LUPTON FIRE PROTECTION DISTRICT (the “District”). The parties are called herein collectively the “Parties” and individually a “Party”.

2.0 RECITALS. The following Recitals to this Agreement are incorporated herein by this reference as though fully set forth in the body of this Agreement.

2.1 The Authority. The Authority is a body corporate and politic of the State of Colorado, organized and existing pursuant to the Colorado Urban Renewal Law, Sections 31-25-101, et seq., C.R.S. (the “Act”).

2.2 The District. The District is a quasi-municipal corporation and political subdivision of the State of Colorado, organized and existing as a fire protection district under the constitution and laws of the State of Colorado to provide fire suppression, fire prevention, and emergency medical services (the “Emergency Services”).

2.3 Tax Increment Financing. The Act provides that an urban renewal plan may contain a provision that taxes levied after the effective date of the approval of the plan upon taxable property in an urban renewal area each year shall be divided for a period not to exceed twenty-five (25) years from the effective date of the plan and that a portion of said property taxes shall be paid into a special fund of the authority to pay the principal of, interest on, and any premiums due in connection with bonds of, loans or advances to or indebtedness incurred by an authority.

2.4 The Urban Renewal Plan. The City of Fort Lupton (the “City”) has approved and the Authority is carrying out the Fort Lupton Core Urban Renewal Plan (the “Plan”), which was approved by the City Council of the City on May 18, 2015. The Plan contains tax increment financing provisions described in Section 2.3.

2.5 Cooperation to Provide Emergency Services. The District is cooperating with the City and the Authority to carry out the Plan and the Urban Renewal Project (the “Urban Renewal Project”) described in the Plan. In furtherance of the Plan and the Urban Renewal Project, the Parties desire to enter into this Agreement to facilitate the provision of Emergency Services in the Urban Renewal Area described in the Plan.

3.0 TERMS AND CONDITIONS. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as set forth in this Agreement.

4.0 DISTRICT ACCOUNT. After deducting zero percent (0.00%) from the following revenue for administrative purposes, beginning on January 1, 2016, the Authority agrees to calculate and

deposit into a separate account created for such purpose (the “Fire District TIF Account”), one hundred percent (100%) of the revenue calculated, produced, and allocated to the Authority as a result of any debt service mill levy of the District on the tax increment portion of the property tax assessment roll in the Urban Renewal Area for so long as the District’s property tax increment revenue is allocated to the Authority by and in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado (the “Fire District TIF Revenue”).

4.1 Transfer of Fire Rescue District Property TIF Revenue. The Authority agrees to hold and earn interest on the amounts deposited in the Fire District TIF Account in accordance with its policies applicable to all other TIF revenue it holds. From time to time, in its reasonable discretion, the District (or a designee or assignee of the District approved by the Authority in accordance with Section 7.0, hereof) may request in writing payment of all or part of the Fire District TIF Revenue from the Fire District TIF Account. Such payment shall be made by the Authority within thirty (30) business days from the date upon which the Authority receives such request; provided, however, the District agrees to withdraw all of the revenue in the Fire District TIF Account on or before one year after the date of the last deposit that the Authority is required to make in the Fire District TIF Account pursuant to Section 4.0, above. Any amounts remaining in the Fire District TIF Account after such date shall become the sole and exclusive property of the Authority and may be withdrawn and applied to any lawful use by the Authority.

4.2 Use of Revenue. The District shall use the Fire District TIF Revenue for payment of any voter-approved debt service obligation of the District. Such amounts as are paid to the District from time to time under this Agreement are deemed by the Parties to represent the fair value of the costs and expenses of such Emergency Services.

5.0 CERTAIN VACANT LAND. The area described in the Plan contains six large parcels of land that are largely undeveloped but surrounded by urban level development as defined in the Act. It is the Authority’s stated intent that the District shall suffer no quantifiable impacts as a result of implementation of the Plan with respect to such undeveloped parcels. In the event that significant and quantifiable disproportionate impacts on District services or revenue related to the development of such parcels are identified and quantified by the District, after taking into account anticipated increases in District revenue based on valuation increases pursuant to Section 31-25-107(9)(e) and Section 31-25-107(9)(g) of the Act, the Parties agree to negotiate in good faith (as required by Section 24 of this Agreement) any additions to Fire District TIF Revenue that may be required to address such impacts.

6.0 REPRESENTATION ON AUTHORITY BOARD. To the extent permitted by law, it is the intention of the Parties that the District shall be represented by a Fire District Board member appointed in accordance with the applicable provisions of the Act.

7.0 AGREEMENT SPECIFIC TO URBAN RENEWAL AREA. This Agreement applies only to the Urban Renewal Area included in the Plan and does not include any property tax revenues

produced by the levy of the District in urban renewal areas where the provisions of the Act described in Section 2.3 are in effect pursuant to any other urban renewal plan that has been approved and adopted by the City or any other urban renewal plan that may be adopted or amended in the future.

8.0 NOTICES. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if personally served or if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the other Party or Parties. Such notice shall be deemed to have been given when deposited in the mail of the United States Postal Service.

9.0 ASSIGNMENT. This Agreement and any rights and obligations herein shall not be assigned or otherwise transferred by any Party without the prior written consent of the other Party.

10.0 DELAYS. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.

11.0 DEFAULT. Time is of the essence, subject to Section 10.0, above. If any payment or any other material condition, obligation, or duty is not timely made, tendered, or performed by either Party, then either Party may exercise any and all rights available at law or in equity, including damages, but such damages shall be limited to the actual amount that such Party is entitled to receive or retain under this Agreement. No special or punitive damages shall be payable hereunder. No commissioner, council member, official, employee, attorney, or agent of the Authority or the City shall be personally liable under this Agreement. In the event of a breach of this Agreement, the parties agree to submit the matter to mediation as a condition precedent to litigation.

12.0 PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

13.0 ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

14.0 INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties with respect to the subject matter and there are no oral or collateral agreements or understandings with respect to the subject matter. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision hereof shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

15.0 WAIVER OF BREACH. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

16.0 GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the District Court in Weld County, Colorado.

17.0 BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

18.0 EXECUTION IN COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

19.0 NO THIRD-PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.

20.0 NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.

21.0 SEVERABILITY. If any provision of this Agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.

22.0 EXECUTION REQUIRED. This Agreement shall not be binding upon any Party hereto unless and until the Parties have each executed and delivered to the other this Agreement.

23.0 DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

24.0 GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

25.0 PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and neither Party shall be deemed to be partners or joint venturers, and neither Party shall be responsible for any debt or liability of the other Party.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of _____, 2016.

THE AUTHORITY:

**FORT LUPTON URBAN RENEWAL
AUTHORITY**

ATTEST:

Secretary

Chair
130 S. McKinley
Fort Lupton, CO 80621

THE DISTRICT:

**FORT LUPTON FIRE PROTECTION
DISTRICT**

ATTEST:

Secretary

By: _____
President of the Board of Directors
1121 Denver Avenue
Fort Lupton, CO 80621

**Fire District Attorney
Version**

RESOLUTION NO. 2016URAxXX

A RESOLUTION OF THE FORT LUPTON URBAN RENEWAL AUTHORITY AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE FORT LUPTON FIRE PROTECTION DISTRICT

WHEREAS, the Fort Lupton Urban Renewal Authority (FLURA) and the Fort Lupton Fire Protection District (Fire District) have negotiated the terms of an intergovernmental agreement to exclude current and future Fire Districts Debt Service Mill Levies from the Fort Lupton Core Urban Renewal Plan; and

WHEREAS, the terms of the aforementioned intergovernmental agreement reserve a seat on the FLURA Board for a Fire District Board member; and

WHEREAS, the intergovernmental agreement honors the Fire District's request to have a 50% pass through of the TIF revenue received by FLURA from the 6 large parcels of vacant land included in the Fort Lupton Core Urban Renewal Plan area.

NOW THEREFORE BE IT RESOLVED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY, AS FOLLOWS:

The FLURA Board hereby finds, determines and declares that this Resolution is necessary and that it serves a valid public purpose and authorizes the execution of the attached intergovernmental agreement between FLURA and the Fire District.

APPROVED AND PASSED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY BOARD THIS 16th DAY OF FEBRUARY 2016.

Fort Lupton Urban Renewal Authority

Barbara Kirkmeyer, Chair

Approved as to form:

Attest:

Andy Ausmus, Attorney

Nanette Fornof, Secretary

**INTERGOVERNMENTAL AGREEMENT FOR USE OF FLURA TIF REVENUES
FOR FIRE DISTRICT PURPOSES**

This Intergovernmental Agreement (“Agreement”), is entered into effective the ____ day of _____ ~~October~~, 201~~6~~5 (the “Effective Date”), between the **FORT LUPTON URBAN RENEWAL AUTHORITY** (“FLURA”) and the **FORT LUPTON FIRE PROTECTION DISTRICT** (“Fire District”) (collectively referred to as the “Parties”).

RECITALS

A. FLURA is a public body corporate and politic authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (“Act”).

B. The Fire District is a political subdivision of the State of Colorado, organized and exercising its powers under and pursuant to the Colorado Special District Act, Part 1 of Title 32, C.R.S. (the Act).

C. FLURA’s and Fort Lupton’s (“City”) jurisdictional boundaries lie within the boundaries of the Fire District, and the City’s residents rely on the Fire District to provide public safety and general fire protection services, including fire protection, ambulance, EMT, and rescue services pursuant to C.R.S. 32-1-100 and 1002 within the Fire District and including the City of Fort Lupton.

D. On May 18, 2015, the Fort Lupton City Council adopted its Resolution [20145RXXX] approving the Urban Renewal Plan for the Fort Lupton Urban Renewal Area (“FLURA Plan”), which details the inclusion of the parcels described in the FLURA Plan for the purposes authorized in the Act, including utilizing tax increment financing (“TIF Financing”), as contemplated by C.R.S. § 31-25-107(9)(a), for the purposes authorized by the Urban Renewal Law.

E. TIF Financing provides that taxes levied after the effective date of the approval of the urban renewal plan upon taxable property in the area described therein, which for purposes of this Agreement includes the property within the FLURA Plan as described in Exhibit A, each year shall be divided for a period not to exceed twenty-five (25) years from the effective date of the urban renewal plan and that a portion of said property tax revenues (the “TIF Revenue”) shall be allocated to and paid into a special fund of FLURA to pay the principal of, interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by FLURA for financing an urban renewal project or to make payments pursuant to an agreement executed pursuant to C.R.S. § 31-25-107(11).

G. FLURA and the Fire District acknowledge that in 2002, the eligible electors of the Fire District approved a ballot issue for the issuance of general obligation bonds to finance the construction, renovation, and repair of Fire District facilities (the “Fire District Debt Service Mill Levy”).

H. FLURA and the Fire District recognize that a division of taxes pursuant to C.R.S. § 31-25-107(9)(a) on property within the boundaries of the Fire District without an agreement concerning sharing or allocation of TIF revenues that results from Fire District Debt Service Mill Levy, and from the 6 undeveloped parcels described in Paragraph 3 on taxable property in the FLURA Plan may hinder the effectuation of the Plan and urban renewal projects within the FLURA Plan and the Fire District's ability to provide Fire District services, including personnel, equipment, and facilities therein.

I. FLURA and the Fire District therefore desire to enter into this Agreement for the transfer to the Fire District of 100% of the property tax revenues that FLURA receives from the Fire District Debt Service Mill Levy on taxable property in the FLURA Plan.

J. FLURA and the Fire District are authorized to enter into this Agreement pursuant to law, including without limitation C.R.S. § 31-25-112.

NOW THEREFORE, in consideration of the foregoing recitals and the covenants, promises and agreements of each of the parties hereto, it is agreed by and among the parties hereto as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated into and made a part of this Agreement.

2. Representation on Authority Board. To the extent permitted by law, it is the intention of the Parties that the District shall be represented by a Fire District Board member appointed in accordance with the applicable provisions of the Act.

3. There will be a 50% Pass-through of the TIF revenue received by FLURA from the 6 large parcels of land that are largely undeveloped, but surrounded by urban level development as defined in the Act (C.R.S. 31-25-107), The Fire District shall receive a 50% pass through each year as to those vacant land parcels or any vacant land parcels added to the FLURA boundaries. Because of the Fire District's almost exclusive reliance on property taxes for services, operations, equipment, staffing, and capital improvement, FLURA acknowledges and recognizes the natural impact on the Fire District associated with development of such parcels, including but not limited to those situations requiring specialized fire or safety equipment. The pass-through shall be transferred on or before the 15th day of the first month following receipt by FLURA of such funds.

4. Fire District Debt Service Mill Levy Allocation. FLURA and the Fire District acknowledge that in 2002, the eligible electors of the Fire District approved ballot issue for the issuance of general obligation bonds to finance capital construction costs for Fire District facilities (the "Fire District Debt Service Mill Levy"). FLURA agrees to deposit 100% of such TIF revenues into the Account all of the increase in property tax TIF Revenues calculated, produced, allocated and transferred to FLURA solely as a result of the levy by the Fire District of the Fire District Debt Service Mill Levy upon taxable property within the FLURA Plan pursuant to and in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado (the "Fire District Debt Service Mill

Levy Allocation”). Any additional bond issue approved by the voters during the FLURA Plan period or any refunding bonds on the 2002 bond issue or subsequently approved bond issues shall be treated in the same manner as the 2002 bond issue.

5. Accounting. Commencing with the month after the first month that TIF Revenues from the Fire District Debt Service Mill Levy or from the 50% pass through referenced in Paragraph 3 of this Agreement are collected by FLURA, FLURA shall transfer to the Fire District, on or before the 15th day of each month, all revenues received into such Account through the preceding month.

6. Area Added to FLURA Plan. If area is subsequently included in the FLURA Plan by a modification of the Plan approved by the Fort Lupton City Council, and such modification results in property tax TIF Revenues from the Fire District Debt Service Mill Levy (100%) and from the pass through (50%) referenced in Paragraph 3 of this Agreement being allocated and transferred to FLURA for an additional period beyond twenty-five (25) years from the effective date of the Plan, then FLURA shall make the foregoing transfers to the District for such additional period.

7. Use of Transferred TIF Revenues. The Fire District agrees to use property tax TIF Revenues transferred to it by FLURA pursuant to this Agreement solely for paying or reimbursing the costs, expenses and/or indebtedness incurred for the provision of Fire District facilities, equipment and services in the FLURA Plan, which may include area subsequently included in the FLURA Plan; provided, however, that nothing in this Agreement shall be

construed as permitting the use of disbursed funds for purposes of paying Fire District administrative or instructional expenses.

8. District Will Not be Adversely Impacted by Growth. It is the Authority's stated intent that the District shall suffer no significant impact by growth within the FLURA Plan on those undeveloped parcels described in Paragraph 3 of this Agreement and the Parties agree to negotiate in good faith, any additions to Fire District TIF revenue pass through which may be required to address such impacts.

9. Fire District Authority. Nothing in this Agreement shall be construed to limit the authority of the Fire District's Board of Directors to finally determine the location of fire stations and to construct and erect the necessary fire stations and structures.

10. Agreement Confined to Specified Revenue. This Agreement applies only to property tax TIF Revenue from the Fire District Debt Service Mill Levy (100%) or the 50% pass through on the 6 parcels referenced in Paragraph 3, if any, that is calculated, produced, allocated and transferred to FLURA within the FLURA Plan in accordance with C.R.S. § 31-25-107(9)(a)(II) and the rules and regulations of the Property Tax Administrator of the State of Colorado, and does not include any other revenues of FLURA. Further, this Agreement applies only to the FLURA Plan and area subsequently included in the FLURA Plan by a modification of the Plan approved by the Fort Lupton City Council.

11. Subordination. By written consent of the Fire District, as evidenced by a

resolution approved by the Board of Directors of the Fire District, the obligation of FLURA to transfer revenues to the Fire District may be made subordinate to any payment of the principal of, the interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by FLURA for financing or refinancing, in whole or in part, any urban renewal project specified in the Plan.

12. Delays. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, acts of public enemy, acts of the Federal or state government, acts of any other party, acts of third parties, litigation concerning the validity of this Agreement or relating to transactions contemplated hereby, fire, floods, strikes, labor disputes, accidents, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party. Notwithstanding the foregoing, where any of the above events shall occur which temporarily interrupt the ability of FLURA to transfer 100% Fire District Debt Service Mill Levy Allocation revenues as provided in this Agreement or 50% of TIF revenue on the 6 parcels described in Paragraph 3 of this Agreement, as soon as the event causing such interruption shall no longer prevail, FLURA shall transfer the total amount of the effected Allocation that has been received by FLURA that is then in the Account, as determined according to the provisions of this Agreement.

13. Termination and Subsequent Legislation. This Agreement may be terminated at any time upon the mutual written agreement of FLURA and the Fire District. In addition, in the event of termination of the FLURA Plan, including its TIF Financing component, FLURA may

terminate this Agreement by delivering written notice to the Fire District. FLURA may also terminate this Agreement by delivering written notice to the Fire District if the Fire District no longer provides any Fire District services to the property within the FLURA Plan within the City of Fort Lupton. The parties further agree that in the event legislation is adopted after the effective date of this Agreement that invalidates or materially effects any provisions hereof, the parties will in good faith negotiate for an amendment to this Agreement that most fully implements the original intent, purpose and provisions of this Agreement.

14. Entire Agreement. This instrument embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. No modification to this Agreement shall be valid unless agreed to in writing by the parties hereto.

15. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors in interest.

16. No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity

other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

17. No Waiver of Immunities. Nothing contained herein shall be construed as a waiver, in whole or in part, by any party hereto of the rights, protections, and privileges afforded under the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. or under any other law, nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement.

18. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality or unenforceability, the parties will in good faith negotiate for an amendment to this Agreement that achieves to the greatest degree possible the intent of the affected provision of this Agreement.

19. No Assignment. No party may assign any of its rights or obligations under this Agreement without the express written consent of the other party. Any attempted assignment in violation of this provision shall be null and void and of no force and effect.

20. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

21. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

22. Governing Law. This Agreement and the provisions hereof shall be governed by and construed in accordance with the laws of the State of Colorado.

23. No Presumption. The parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the party causing the Agreement to be drafted.

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

Fort Lupton Urban Renewal Authority

Attention: Executive Director~~City Administrator~~

130 S. McKinley Avenue

Fort Lupton, CO 80621

Fort Lupton Fire Protection District

Attn: Fire Chief

1121 Denver Avenue

Fort Lupton, CO 80621

Notice given by mail shall be effective upon mailing.

25. Days. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

26. Parties Not Partners. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the parties shall not be deemed to be partners or joint venturers, and no party shall be responsible for any debt or liability of any other party.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement effective as of the day and year first above written.

ATTEST:

FORT LUPTON FIRE PROTECTION DISTRICT

By: _____

Secretary

By: _____

Larry Leinweber, President of the Board

ATTEST:

FORT LUPTON URBAN RENEWAL
AUTHORITY

By: _____

Recording Secretary

By: _____

Exhibit A
Legal Description of Area within the FLURA Plan

4820-0408-0678, v. 1

AM 2016-003
WELD COUNTY IGA

AM 2016-003

RESOLUTION NO. 2016URAXXX AUTHORIZING THE CHAIRPERSON OF THE FORT LUPTON URBAN RENEWAL AUTHORITY TO EXECUTE AN INTERGOVERNMENTAL AGREEMENT WITH WELD COUNTY

- I. **Agenda Date:** Board Meeting – February 16, 2016
- II. **Attachments:**
- A. Resolution No. 2016URAxXX (Both Versions)
 - B. FLURA/Weld County IGA (FLURA Attorney Version)
 - C. FLURA/Weld County IGA (County Attorney Version)

III. **Issue/Request:**

In 2015, FLURA was approached by Weld County officials to discuss sharing fifty percent of FLURA's TIF revenues from the Fort Lupton Core Urban Renewal Plan (Core Plan). In exchange, the County offered to include adjacent unincorporated properties into the Core Plan.

There are two versions of intergovernmental agreements for the FLURA Board to consider: one version drafted by the FLURA attorney and one by Weld County's attorney. Both IGAs have a provision to include a fifty percent share of future property tax TIF revenues from the Core Plan. The primary difference between the two IGAs, however, relates to restrictions on how FLURA spends TIF revenue. The FLURA attorney's version of the IGA states, "The remaining fifty percent (50%) of the County Tax Levy Allocation Revenues each year shall be used by the Authority for payment of any amounts authorized by the Urban Renewal Plan and Act for purposes of administering the Plan, complying with applicable legal and contractual obligations and eliminating the conditions of blight in the Urban Renewal Area."

In contrast, the County attorney's version of the IGA states, "The remaining fifty percent (50%) of the County Tax Levy Allocation Revenues each year shall be used by the Authority for payment of any amounts authorized by the Plan and Act for the purposes of financing public infrastructure, such as water, sewer, parks, storm drainage, streets and roads, sidewalks and traffic lights; complying with legal and contractual obligations; and eliminating the conditions of blight in the Urban Renewal Area."

Acting as the FLURA Board, the Fort Lupton City Council chose to defer this IGA and any further discussions to the newly seated FLURA Board for consideration.

IV. **Alternatives/Options:**

1. The Board may authorize execution of the FLURA attorney's IGA as presented.
2. The Board may authorize execution of the County attorney's IGA as presented.
3. The Board may choose not to approve execution of either IGA and continue negotiating the terms with Weld County officials.

V. **Financial Considerations:**

Excluding the above-mentioned funds from the Fort Lupton Core Urban Renewal Plan will result in lower revenues for FLURA.

VI. **Legal / Political Considerations:**

The IGAs have been reviewed and approved by both FLURA's and the County's legal counsel.

Politically, sharing fifty percent of property tax revenues with the County may create some concerns from other taxing districts.

VII. **Staff Recommendation:**

Staff is choosing to stay neutral on this topic.

FLURA Attorney Version

RESOLUTION NO. 2016URAxXX

A RESOLUTION OF THE FORT LUPTON URBAN RENEWAL AUTHORITY AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH WELD COUNTY

WHEREAS, the Fort Lupton Urban Renewal Authority (FLURA) and Weld County (the County) have negotiated the terms of an intergovernmental agreement to share fifty percent (50%) of the property tax TIF revenues generated from the Fort Lupton Core Urban Renewal Plan; and

WHEREAS, this Resolution honors FLURA's version of the intergovernmental agreement.

NOW THEREFORE BE IT RESOLVED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY, AS FOLLOWS:

The FLURA Board hereby finds, determines and declares that this Resolution is necessary and that it serves a valid public purpose and authorizes the execution of the attached intergovernmental agreement between FLURA and the Fire District.

APPROVED AND PASSED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY BOARD THIS 16th DAY OF FEBRUARY 2016.

Fort Lupton Urban Renewal Authority

Barbara Kirkmeyer, Chair

Approved as to form:

Attest:

Andy Ausmus, Attorney

Nanette Fornof, Secretary

TAX INCREMENT REVENUE SHARING AGREEMENT

THIS AGREEMENT is made and executed effective the ___ day of _____, 2016, by and between the COUNTY OF WELD, COLORADO (hereinafter referred to as “Weld County” or “County”) and the FORT LUPTON URBAN RENEWAL AUTHORITY (hereinafter referred to as the “Authority”).

WITNESSETH:

WHEREAS, the City Council of the City of Fort Lupton (the “City”) approved and adopted, and the Authority is carrying out, the Fort Lupton Core Urban Renewal Plan in accordance with the requirements of the Colorado Urban Renewal Law, Sections 31-25-101, *et seq.*, C.R.S., (the “Act”), including, without limitation, compliance with Section 31-25-107(3.5) of the Act; and

WHEREAS, as authorized by Section 31-25-112 of the Act, the Plan provides for financing the undertakings and activities of the Authority by use of tax allocation or tax increment financing (“TIF”); and

WHEREAS, the parties hereto desire to enter into this Agreement to offset the costs of any additional county infrastructure or services necessary to serve development of the Urban Renewal Area described in the Plan, as it may be amended; and

NOW THEREFORE, in consideration of the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties hereto as follows:

1. Sharing of County Levy Allocation:

a. The Authority agrees to calculate and pay to Weld County fifty per cent (50%) of the net revenue it receives from the Weld County Treasurer each year while the provisions of Section 31-23-107(9) of the Act are in effect in the Urban Renewal Area from the levy of Weld County against the TIF portion of the assessment roll (the “County Tax Levy Allocation Revenues”). Such revenues to be paid to the County shall be placed in a separate account created for such purpose. Commencing on the date of this Agreement and for a period of twenty-five (25) years from the effective date of the Plan, the Authority shall pay to the County on or before the 20th day of each month all such County Tax Levy Allocation Revenues received into such account through the preceding month.

b. The remaining fifty per cent (50%) of the County Tax Levy Allocation Revenues each year shall be used by the Authority for payment of any amounts authorized by the Urban Renewal Plan and Act for the purposes of administering the Plan, complying with applicable legal and contractual obligations and eliminating the conditions of blight in the Urban Renewal Area.

2. Notification of Substantial Modifications of the Plan; Agreement Not Part of Plan. The Authority agrees to notify Weld County of any intended substantial modification of the Plan as required by Section 31-25-107(3.5)(a) of the Act. This Agreement is not part of the Plan.

3. Use of County Tax Levy Allocation. The County agrees to use County Tax Levy Allocation Revenues received pursuant to this Agreement in accordance with the requirements of Section 31-25-107(1) of the Act to address the impacts of the Plan on Weld County revenues and on infrastructure and services necessary to serve the Urban Renewal Area.

4. Agreement Confined to County Tax Levy Allocation Revenues. This Agreement applies only to the County Tax Levy Allocation Revenues, as calculated, produced, collected and paid to the Authority from the Urban Renewal Area in the Plan by the Weld County Treasurer in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado, and does not include any other revenues of the City or the Authority.

5. Subordination Consent Required. With the prior written consent of the County, as evidenced by a resolution approved by the Board of County Commissioners, the obligation of Authority to pay all or part of the County Tax Levy Allocation Revenues to the County may be made subordinate to any payment of the principal of, the interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by Authority for financing or refinancing, in whole or in part, the Urban Renewal Project specified in the Plan.

6. Delays. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, acts of public enemy, acts of the Federal or state government, acts of any other party, acts of third parties, litigation concerning the validity of this Agreement or relating to transactions contemplated hereby, fire, floods, strikes, labor disputes, accidents, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party. Notwithstanding the foregoing, where any of the above events shall occur which temporarily interrupt the ability of the Authority to transfer or pay County Tax Levy Allocation Revenues as provided in Section 1, as soon as the event causing such interruption shall no longer prevail, the Authority shall transfer and pay the total amount of the County Tax Levy Allocation Revenues that has been received by Authority that is then owing to date, as determined according to the provisions of Section 1 of this Agreement.

7. Termination and Subsequent Legislation. In the event of termination of the Plan, including its TIF Financing component, the Authority may terminate this Agreement by delivering written notice to the County. The parties further agree that in the event legislation is adopted after the effective date of this Agreement that invalidates or materially effects any provisions hereof, the parties will in good faith negotiate for an amendment to this Agreement that most fully implements the original intent, purpose and provisions of this Agreement, but does not impair any contracts in effect at such time.

8. Entire Agreement. This instrument embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or

obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. No modification to this Agreement shall be valid unless agreed to in writing by the parties hereto.

9. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors in interest.

10. No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

11. No Waiver of Immunities. No portion of this Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this agreement.

12. Severability. If any term or condition of this agreement shall be held to be invalid, illegal or unenforceable, this Agreement shall be construed and enforced without such a provision, to the extent this agreement is then capable of execution within the original intent of the parties.

13. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality or unenforceability (as to any or all parties hereto), the parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the affected provision of this Agreement.

14. No Assignment. No party may assign any of its rights or obligations under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement effective as of the day and year first above written.

COUNTY:

ATTEST:
Clerk to the Board

COUNTY OF WELD, a political Weld County
subdivision of the STATE OF COLORADO:

By: _____
Deputy Clerk to the Board

By: _____
_____, Chair
Board of County Commissioners,
County of Weld

AUTHORITY:

ATTEST:

FORT LUPTON URBAN RENEWAL
AUTHORITY

By: _____
_____, Secretary

By: _____
_____, Chairperson

**Weld County Attorney
Version**

RESOLUTION NO. 2016URAxXX

A RESOLUTION OF THE FORT LUPTON URBAN RENEWAL AUTHORITY AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH WELD COUNTY

WHEREAS, the Fort Lupton Urban Renewal Authority (FLURA) and Weld County (The County) have negotiated the terms of an intergovernmental agreement to share fifty percent (50%) of the property tax TIF revenues generated from the Fort Lupton Core Urban Renewal Plan; and

WHEREAS, this Resolution honors the County's version of the intergovernmental agreement.

NOW THEREFORE BE IT RESOLVED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY, AS FOLLOWS:

The FLURA Board hereby finds, determines and declares that this Resolution is necessary and that it serves a valid public purpose and authorizes the execution of the attached intergovernmental agreement between FLURA and the County.

APPROVED AND PASSED BY THE FORT LUPTON URBAN RENEWAL AUTHORITY BOARD THIS 16th DAY OF FEBRUARY 2016.

Fort Lupton Urban Renewal Authority

Barbara Kirkmeyer, Chair

Approved as to form:

Attest:

Andy Ausmus, Attorney

Nanette Fornof, Secretary

TAX INCREMENT REVENUE SHARING AGREEMENT

THIS AGREEMENT is made and executed effective the ___ day of _____ 2015, by and between the COUNTY OF WELD, COLORADO (hereinafter referred to as "Weld County" or "County") and the FORT LUPTON URBAN RENEWAL AUTHORITY (hereinafter referred to as the "Authority").

WITNESSETH:

WHEREAS, the City Council of the City of Fort Lupton (the "City") approved and adopted, and the Authority is carrying out, the Fort Lupton Core Urban Renewal Plan in accordance with the requirements of the Colorado Urban Renewal Law, Sections 31-25-101, *et seq.*, C.R.S., (the "Act"), including, without limitation, compliance with Section 31-25-107(3.5) of the Act; and

WHEREAS, as authorized by Section 31-25-107(9) of the Act, the Plan provides for financing the undertakings and activities of the Authority by use of tax allocation or tax increment financing ("TIF"); and

WHEREAS, the parties hereto desire to enter into this Agreement to offset the costs of any additional county infrastructure or services necessary to serve development of the Urban Renewal Area described in the Plan, as it may be amended; and

WHEREAS, the parties hereto are authorized to enter into this Agreement pursuant to Section 31-25-112(1)(d) of the Act.

NOW THEREFORE, in consideration of the covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties hereto as follows:

1. Sharing of County Levy Allocation:

a. The Authority agrees to calculate and pay to Weld County fifty per cent (50%) of the net revenue it receives from the Weld County Treasurer each year while the provisions of Section 31-23-107(9) of the Act are in effect in the Urban Renewal Area from the levy of Weld County against the TIF portion of the assessment roll (the "County Tax Levy Allocation Revenues"). Such revenues to be paid to the County shall be placed in a separate account created for such purpose. Commencing on the date of this Agreement and for a period of twenty-five (25) years from the effective date of the Plan, the Authority shall pay to the County on or before the 20th day of each month all such County Tax Levy Allocation Revenues received into such account through the preceding month.

b. The remaining fifty per cent (50%) of the County Tax Levy Allocation Revenues each year shall be used by the Authority for payment of any amounts authorized by the Plan and Act for the purposes of financing public infrastructure, such as water, sewer, parks, storm drainage, streets and roads, sidewalks and traffic lights; complying with applicable legal and

2016-0166(2)

contractual obligations; and eliminating the conditions of blight in the Urban Renewal Area.

2. Notification of Substantial Modifications of the Plan; Agreement Not Part of Plan. The Authority agrees to notify Weld County of any intended substantial modification of the Plan as required by Section 31-25-107(3.5)(a) of the Act. This Agreement is not part of the Plan.

3. Use of County Tax Levy Allocation. The County agrees to use County Tax Levy Allocation Revenues received pursuant to this Agreement in accordance with the requirements of Section 31-25-107(1) of the Act to address the impacts of the Plan on Weld County revenues and on infrastructure and services necessary to serve the Urban Renewal Area.

4. Agreement Confined to County Tax Levy Allocation Revenues. This Agreement applies only to the County Tax Levy Allocation Revenues, as calculated, produced, collected and paid to the Authority from the Urban Renewal Area in the Plan by the Weld County Treasurer in accordance with Section 31-25-107(9)(a)(II) of the Act and the rules and regulations of the Property Tax Administrator of the State of Colorado, and does not include any other revenues of the City or the Authority.

5. Subordination Consent Required. With the prior written consent of the County, as evidenced by a resolution approved by the Board of County Commissioners, the obligation of Authority to pay all or part of the County Tax Levy Allocation Revenues to the County may be made subordinate to any payment of the principal of, the interest on, and any premiums due in connection with bonds of, loans or advances to, or indebtedness incurred by Authority for financing or refinancing, in whole or in part, the Urban Renewal Project specified in the Plan.

6. Delays. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, acts of public enemy, acts of the Federal or state government, acts of any other party, acts of third parties, litigation concerning the validity of this Agreement or relating to transactions contemplated hereby, fire, floods, strikes, labor disputes, accidents, regulations or order of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party. Notwithstanding the foregoing, where any of the above events shall occur which temporarily interrupt the ability of the Authority to transfer or pay County Tax Levy Allocation Revenues as provided in Section 1, as soon as the event causing such interruption shall no longer prevail, the Authority shall transfer and pay the total amount of the County Tax Levy Allocation Revenues that has been received by Authority that is then owing to date, as determined according to the provisions of Section 1 of this Agreement.

7. Termination and Subsequent Legislation. In the event of termination of the Plan, including its TIF Financing component, the Authority may terminate this Agreement by delivering written notice to the County. The parties further agree that in the event legislation is adopted after the effective date of this Agreement that invalidates or materially effects any provisions hereof, the parties will in good faith negotiate for an amendment to this Agreement that most fully implements the original intent, purpose and provisions of this Agreement, but does not impair any contracts in effect at such time.

8. Entire Agreement. This instrument embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. No modification to this Agreement shall be valid unless agreed to in writing by the parties hereto.

9. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors in interest.

10. No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

11. No Waiver of Immunities. No portion of this Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this agreement.

12. Severability. If any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. Further, in the event of any such holding of invalidity, illegality or unenforceability (as to any or all parties hereto), the parties agree to take such action(s) as may be necessary to achieve to the greatest degree possible the intent of the affected provision of this Agreement.

13. No Assignment. No party may assign any of its rights or obligations under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officials to execute this Agreement effective as of the day and year first above written.

COUNTY:

ATTEST: Locher G. Meirik
Clerk to the Board

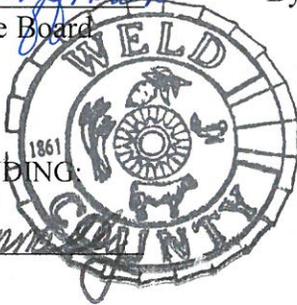
COUNTY OF WELD, a political Weld County subdivision of the STATE OF COLORADO:

By: Cheryl A. Hoppas
Deputy Clerk to the Board

By: S. P. Conway
Sean P. Conway, Pro-Tem JAN 13 2016
Board of County Commissioners,
County of Weld

APPROVED AS TO FUNDING:

Barbara J. Connors
Controller



APPROVED AS TO SUBSTANCE:

Donald D. Warden
Elected Official or Department Head

APPROVED AS TO FORM:

Brian T. [Signature]
County Attorney

MUNICIPALITY:

ATTEST:

TOWN OF FORT LUPTON, a municipal corporation of the STATE OF COLORADO

By: _____
_____, Town Clerk

By: _____
_____, Mayor

URA:

ATTEST:

FORT LUPTON URBAN RENEWAL
AUTHORITY

By: _____
_____, Recording Secretary

By: _____
_____, Chairperson

2016-0166(2)