

## MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (“**MOU**”), is entered into effective as of the 20th day of August, 2021 (the “**Effective Date**”), by and between the **City of Fort Collins, Colorado** (the “**City**”), the Board of Governors of the Colorado State University System (the “**Board**”), acting by and through the **Colorado State University System** (“**CSU**”), and **Cottonwood Land and Farms, LLC**, a Colorado limited liability company, or its successors or assigns (“**Cottonwood**”), (individually and collectively referred to herein as the “**Party**” and the “**Parties**”).

### RECITALS

A. CSU is the owner of a 164.56-acre parcel of real property that was generally the former location of Hughes Stadium (the “**Hughes Property**”) and that CSU had sought to and is still planning to redevelop in accordance with the Board’s authority under Colorado law and its public purposes, goals, and uses, such as supporting the values of environmental sustainability, healthcare access, quality childcare, public transportation, housing opportunities, equity, and fiscal responsibility, as set forth in the Board’s resolutions dated October 9, 2021 and May 6, 2021.

B. On April 6, 2021, the City’s voters passed a citizen-initiated ordinance (the “**Ordinance**”) that mandates immediate rezoning of the Hughes Property as Public Open Lands and requires the City to acquire the Hughes Property from CSU for parks, recreation, open lands and natural areas purposes, as well as wildlife rescue and restoration.

C. Cottonwood is the owner of a 185-acre acre parcel of real property generally located at the intersection of Zeigler Road and Horsetooth Road (the “**Strauss Lakes Property**”), which it seeks to develop into a high-quality, mixed use residential community. CSU believes a portion of the Strauss Lakes Property, consisting of approximately 24 acres (the “**CSU Development Property**”), may be suitable for the uses envisioned by CSU for the Hughes Property.

D. In light of the voters’ intent for the City to acquire the Hughes Property and because of continued unmet needs for housing, healthcare, childcare, transit, recreation, and sustainability, CSU desires to acquire the CSU Development Property, yet reserves all rights to redevelop the Hughes Property under CSU’s legal authority and to assert a claim for a regulatory taking or as otherwise permitted by law in connection with the City’s rezoning of the Hughes Property.

E. Accordingly, Cottonwood agrees to convey and CSU desires to purchase the CSU Development Property for \$1 million and such other good and valuable consideration as may be negotiated between Cottonwood and CSU (the “**Acquisition**”), provided that Cottonwood secures certain entitlements for the Strauss Lakes Property in accordance with the City’s Land Use Code and other applicable laws and regulations, suitable for Cottonwood’s development purposes in Cottonwood’s sole discretion, which entitlements may include but not be limited to annexation, zoning, approval of land plan, subdivision, approval of the formation of a metropolitan district(s), and vested rights (collectively, the “**Entitlements**”). Additionally, the Entitlements insofar as they relate to the CSU Development Property must also be acceptable to CSU as being suitable for CSU’s purposes in CSU’s sole discretion.

F. To comply with the Ordinance and to effectuate its voters' intent to acquire the Hughes Property, the City desires to acquire the Hughes Property from CSU. Contingent on the Acquisition and subject to the conditions described in this MOU, CSU, in order to meet its fiduciary obligation to maximize the value of its assets, agrees to convey and the City agrees to purchase the Hughes Property as described below for \$12.5 million ("the **Conveyance**").

G. The purpose of this MOU is to document the general understanding of the Parties with respect to the Entitlements, the Acquisition, and the Conveyance, and to state the commitment of the Parties to work together expeditiously and in good faith, consistent with their appropriate authorities, to undertake the activities necessary to consummate the transactions envisioned in this MOU. This includes:

1. Submittal by Cottonwood of the appropriate development review applications and fees necessary to secure the Entitlements in compliance with the City's laws, regulations and policies;

2. Timely consideration by the City of, and action on, Cottonwood's applications for the Entitlements; and

3. Negotiation of the relevant agreements regarding the Entitlements, the Acquisition and the Conveyance, as more specifically described below.

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

### AGREEMENT

1. The Entitlements. Cottonwood will submit its applications for the Entitlements consistent with the City's laws, regulations and policies, and the City will timely review and take action on such applications. At the appropriate stage(s) of the City's development review process, the City and Cottonwood anticipate entering into one or more written agreements (the "**Strauss Lakes Agreements**") to address, at a minimum, the following items:

(a) Required infrastructure improvements;

(b) Subdivision or other land division necessary to effectuate the Acquisition;

(c) Vested rights for an approved site-specific development plan pursuant to the City's development review process, which is acceptable to both Cottonwood and CSU, in their sole and absolute discretion, for their development purposes, and which vested rights are both enforceable and assignable; and

(d) Approval of the formation of a metropolitan district(s) for the Strauss Lakes Property and the associated agreement(s) concerning the public benefits to be provided under the approved metropolitan district(s) service plan.

The City makes no representations about what decisions it may make in connection with the City's review and consideration of any of Cottonwood's applications for the Entitlements.

2. The Acquisition. Cottonwood and CSU will negotiate and intend to enter into a written agreement (the “**CSU Development Agreement**”) pursuant to which CSU will purchase the CSU Development Property for \$1 million and such other good and valuable consideration as may be negotiated between Cottonwood and CSU, provided that Cottonwood secures the Entitlements with respect to the CSU Development Property and that CSU deems the Entitlements to be suitable for CSU’s purposes in CSU’s sole discretion, and upon the occurrence of agreed upon milestones, such as final, non-appealable approval of the Entitlements and subject to additional conditions and requirements as set forth therein. At a minimum, the CSU Development Agreement will include:

- (a) The Entitlements for the CSU Development Property are secured to the sole satisfaction of CSU;
- (b) The CSU Development Agreement is contingent on the Conveyance;
- (c) Terms and conditions requiring satisfactory surveys, inspections including but not limited to environmental inspections, title work, the form of deed, and other customary due diligence; and
- (d) Schedule for closing on CSU Development Property.

3. The Conveyance. The City and CSU will also negotiate and intend to enter into a written agreement (the “**Hughes Agreement**”) pursuant to which CSU agrees to convey and the City agrees to purchase the Hughes Property and all associated rights and appurtenances, including any utility service entitlements attributable or apportionable to the Hughes Property for \$12.5 million upon the occurrence of agreed upon milestones, such as final, non-appealable approval of the Entitlements and subject to additional conditions and requirements as set forth therein. At a minimum, the Hughes Agreement will include:

- (a) The Hughes Agreement is contingent on the Acquisition;
- (b) Terms and conditions requiring satisfactory surveys, inspections including but not limited to environmental inspections, title work, the form of deed, and other customary due diligence;
- (c) Terms for CSU’s temporary forbearance from processing land use applications on the Hughes Property, including the City meeting key milestones;
- (d) Terms for tolling the statute of limitations for any regulatory takings claim CSU may have while the parties are under contract and any other agreements the parties are able to reach regarding any such claims; and
- (e) Schedule for closing on the Hughes Property.

4. Miscellaneous.

(a) No Waiver of City Land Use Authority or other Laws. In signing this MOU, and agreeing to timely review, consider and take action regarding the Entitlements, all Parties

understand that neither CSU nor the City is waiving its land use authority or any other authority granted to it by law, including the Charter and Code of the City of Fort Collins. Nothing herein is intended to require the City to take any action that would be in violation of any applicable federal, state or local law or regulation.

(b) No Third-Party Enforcement. It is expressly understood and agreed that the enforcement of the terms and conditions of this MOU, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and their respective successors and assigns, and nothing in this MOU shall give or allow any claim or right of action whatsoever by any other person or entity not included in this MOU. It is the express intention of the Parties that any person or entity other than the Parties and their respective successors and assigns shall be an incidental beneficiary only.

(c) Severability. If any term or provision of this MOU or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this MOU, or the application of such term or provision to persons, entities or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this MOU shall be valid and be enforced to the fullest extent permitted by law.

(d) Execution in Counterparts. This MOU may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the Parties. Signature pages may be detached and reattached to physically form one document.

(e) Notices. All notices or other communications required or permitted hereunder, including notice of change of address, shall be in writing, and shall be delivered to the receiving Party at the address below by (i) personal delivery (including by means of professional messenger service); (ii) nationally recognized overnight courier; (iii) registered or certified mail, postage prepaid, return receipt requested; or (iv) electronic mail, or electronic transmission of a PDF document followed by delivery of a hard copy through one of the methods outlined in (i) through (iii) above, and shall be deemed received upon the date of receipt thereof.

If to the City:                      City of Fort Collins, Colorado  
300 Laporte Avenue  
P.O. Box 580  
Fort Collins, CO 80522  
Attn: City Manager and City Attorney  
Email: [kdimartino@fcgov.com](mailto:kdimartino@fcgov.com) and  
[cdaggett@fcgov.com](mailto:cdaggett@fcgov.com)

If to CSU:                              Colorado State University System  
c/o Chancellor and General Counsel  
555 17th Street, Suite 1000  
Denver, CO 80202

Attn: Tony Frank and Jason Johnson  
Email: [Tony.Frank@colostate.edu](mailto:Tony.Frank@colostate.edu)  
Email: [Jason.Johnson@colostate.edu](mailto:Jason.Johnson@colostate.edu)

with copy to: Otten Johnson Robinson Neff & Ragonetti, P.C.  
950 17th Street, Suite 1600  
Denver, CO 80202  
Attention: Jim Johnson  
Email: [jjohnson@ottenjohnson.com](mailto:jjohnson@ottenjohnson.com)

If to Cottonwood: Cottonwood Land and Farms, LLC  
c/o Flatiron Companies  
P.O. Box 229  
Boulder, CO 80306  
Attn: Bill McDowell  
Email: [whmcd999@aol.com](mailto:whmcd999@aol.com)

with copy to: Brownstein Hyatt Farber Schreck, LLP  
410 17th Street, Suite 2200  
Denver, CO 80202  
Attention: Carolynne White  
Email: [cwhite@bhfs.com](mailto:cwhite@bhfs.com)

(f) Parties Not Partners. Notwithstanding any language in this MOU, the anticipated Strauss Lakes Agreements, CSU Development Agreement, Hughes 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.

(g) Waivers. No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(h) Entire MOU. This MOU (including any exhibits or amendments hereto) is the final expression of, and contains the entire MOU between, the Parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This MOU may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the Party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

(i) Successors and Assigns. This MOU shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties. No party shall assign this MOU and any attempted assignment in violation of this provision shall be null and void *ab initio* and of no force and effect.

(j) Time of Essence. The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision hereof and that failure to timely perform any of the terms, conditions, obligations, or provisions hereof by any Party shall constitute a material breach of and a non-curable (but waivable) default under this MOU by the Party so failing to perform.

(k) Construction. Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of this MOU. Whenever required by the context of this MOU, the singular shall include the plural and the masculine shall include the feminine, and vice versa. The Parties acknowledge that the Parties and their counsel have reviewed and revised this MOU and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this MOU or any exhibits or amendments hereto. Unless otherwise indicated, all references to paragraphs and subparagraphs are to this MOU.

(l) Governing Law. This MOU shall be governed by the laws of the State of Colorado. THE CITY, CSU, AND COTTONWOOD AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATED TO THIS MOU SHALL BE LITIGATED IN THE DISTRICT COURT OF LARIMER COUNTY, COLORADO, WHICH SHALL BE THE EXCLUSIVE VENUE FOR ALL SUCH ACTIONS. THE CITY, CSU, AND COTTONWOOD EACH HEREBY WAIVES ANY CLAIM THAT THE AGREED VENUE IS AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED ON LACK OF VENUE.

(m) Termination. The Parties recognize that by entering into this MOU they are agreeing to work in good faith to carry out its terms. If, by December 31, 2022, despite their best commercially reasonable efforts, the Parties are unable to finalize the agreements contemplated herein, including if Cottonwood fails to submit the appropriate development review applications for the Entitlements, any Party may terminate this MOU upon notice to the other Parties.

(n) Exhibits. All exhibits to this MOU are fully incorporated herein as though set forth at length.

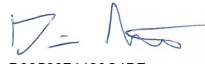
(o) Further Assurances. The Parties will make, execute, and deliver such documents and undertake such other and further acts as may be reasonably necessary to complete the transaction contemplated herein.

(p) No Recording. The provisions hereof will not constitute a lien on the Strauss Lakes Property or the Hughes Property, and neither this MOU nor any notice or memorandum of this MOU shall be recorded with the Larimer County Clerk and Recorder by any Party.


(q) City Obligations Subject to Appropriation. All obligations of the City hereunder are subject to annual appropriation of funds sufficient and intended for such purpose by the Fort Collins City Council in its discretion.

IN WITNESS WHEREOF, the City, CSU, and Cottonwood have caused their duly authorized officials to execute this MOU effective as of the Effective Date.

**THE CITY OF FORT COLLINS, COLORADO,  
a Colorado municipal corporation**

DocuSigned by:  
  
By: \_\_\_\_\_  
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Darin Atteberry, City Manager

**ATTEST:**

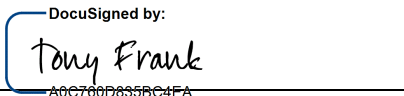
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City Clerk's Office  
Printed Name: CityClerkStaff  
Title: Interim City Clerk

**APPROVED AS TO FORM:**

DocuSigned by:  
  
C65E4E1BA9304D5...  
Carrie M. Daggett, City Attorney

**CSU:**

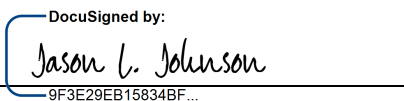
THE BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM,  
ACTING BY AND THROUGH THE COLORADO STATE UNIVERSITY SYSTEM

By:  DocuSigned by:  
*Tony Frank*  
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Name: Tony Frank

Title: Dr.

**LEGAL REVIEW:**

By:  DocuSigned by:  
*Jason L. Johnson*  
9F3E29EB15834BF...

Name: Jason L. Johnson

Title: General Counsel



**COTTONWOOD:**

COTTONWOOD LAND AND FARMS, LLC,  
a Colorado limited liability company

DocuSigned by:  
*Bill McDowell*  
By: 04AEAE708EEC403  
Name: Bill McDowell  
Title: Manager