

## **2022 AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES**

THIS AGREEMENT is made and entered into in duplicate originals by and between the City of Longmont, Colorado, a municipal corporation ("City"), and the Colorado Enterprise Fund, Inc., a Colorado nonprofit corporation ("CEF" or "Contractor"), effective as of the 1<sup>st</sup> day of January 2022.

WHEREAS CEF provides loans to qualified small businesses which do not qualify for traditional loans and supports them with one-on-one business coaching and training through the Longmont Small Business Lending Program ("Program"); and

WHEREAS the stimulation of economic growth is recognized to serve both the public interest and municipal purposes of the City by enhancing the tax base and creating employment opportunities; and

WHEREAS it is deemed advisable for the City to contract for the provision of CEF Services to assist and support our local small businesses.

THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows

1. TERM. This Agreement shall begin January 1, 2022 and end December 31, 2022. This Agreement may be modified or extended only by written agreement of the parties.

2. DUTIES. CEF agrees to provide the business services, programs and regular reporting requirements as outlined in Exhibit A: Scope of Services. Contractor shall not endorse or campaign for anyone running for City of Longmont elected positions. The City will provide \$5,000.00 to compensate CEF for the services to be provided under this Agreement. The City shall pay said \$5,000.00 within 30 days of receipt of an invoice issued by CEF. Funds used to pay CEF for services under this Agreement are not federally derived. Payment of invoices is acknowledgement that CEF has met or will meet substantially all performance requirements referenced in this Agreement or its subparts for the period noted in the invoice and that funds can be immediately recognized as income without further restriction.

3. REPORTING REQUIREMENTS. Contractor further agrees to submit a Final Report to Assistant City Manager, Joni Marsh. The Final Report will contain complete and accurate statements of services rendered and will be signed by Contractor. The Final Report must be submitted no later than January 31, 2023. Contractor shall also submit quarterly activity reports to City Council with copies provided to the Assistant City Manager. Besides any other remedies available under law, the City may decline to consider further contracts with Contractor if the Contractor does not submit its Final Report on time. Contractor shall present quarterly reports to City Council at a regularly scheduled session.

4. RELIABILITY OF REPORTS. Contractor represents that all information Contractor has provided or will provide to the City is true and correct, and that the City can rely on such information in modifying, making payments, or taking any other action concerning this

Contract. Any false or misleading material information or omission provided or caused by Contractor is just cause for the City to terminate this Contract and to pursue any other available remedies against the Contractor.

5. NON-PROFIT STATUS. CEF during the term hereof, agrees to remain a not-for-profit corporation dedicated to the rendition of the services described in this Agreement, and no part of the income or assets of CEF shall be distributed to, or inure to the benefit of, any individual or for any other private purpose.

6. AUDIT. The City reserves the right to conduct an audit of all records related to this Contract should the City have concerns about the Contractor's performance of the services listed in Exhibit A.

7. INTEGRATED AGREEMENT AND AMENDMENTS. This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. This Agreement cannot be altered or amended except in writing, and signed by duly authorized representatives of the respective parties. This Agreement incorporates by reference the attachments checked below:

  X   Exhibit A (Scope of Services)

8. STATUS OF CONTRACTOR. CEF shall perform all services under this Agreement as an independent contractor and not as an agent or employee of the City. It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed as in any way establishing the relationship of co-partners or joint venture between the parties hereto, or as construing CEF, including its agents and employees, as an agent of the City. CEF shall remain an independent and separate entity. CEF shall not be supervised by any employee or official of the City, nor will CEF exercise supervision over any employee or official of the City. CEF shall not represent that CEF is an employee or agent of the City in any capacity. **CEF is not entitled to City workers' compensation benefits and is obligated to pay federal and state income tax on money earned pursuant to this Agreement, if applicable.**

9. PERSONNEL. Contractor agrees to provide competent personnel with expertise in the delivery of the scheduled services to achieve and maintain a highly professional and competent level of services.

10. INSURANCE. The Contractor is solely responsible for providing any insurance including liability, casualty, and workers' compensation for the Contractor's use. Contractor shall provide during the time of this Agreement a general liability policy with limits no less than \$1,000,000 per occurrence and a workers' compensation insurance policy covering all employees and complying with State law. Before the effective date of this Agreement, the Contractor shall present to the City's Risk Manager a certificate showing it has in effect the required policies. Any variance to these insurance provisions must be approved in writing by the City's Risk Manager and will become incorporated as an addendum to this Agreement.

Contractor shall not cancel, materially change, or fail to renew insurance coverages. Contractor shall notify the City of Longmont, Risk Manager's Office, 350 Kimbark St., Longmont, CO 80501, of any material reduction or exhaustion of aggregate limits. In the event any policy is canceled or has a material reduction of aggregate limits before final payment by City to Contractor, Contractor shall immediately procure other insurance sufficient to maintain the insurance requirements of this Agreement. If any policy lapses or is canceled before final payment by the City to the Contractor and if the Contractor fails immediately to procure other insurance as specified, the City may deem such failure to be a breach of this Agreement.

Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor's responsibility for payment of damages resulting from Contractor's operation under this Agreement.

11. **CERTIFICATE OF INSURANCE.** As evidence of the insurance coverages required by this Agreement, prior to the effective date of this Agreement, Contractor shall furnish a certificate of insurance to:

City of Longmont  
Risk Manager's Office  
350 Kimbark St.  
Longmont, CO 80501  
Attention: Doug Spight

The liability certificate will name the City, its officers, agents, and employees as Additional Insureds and must require thirty (30) days' notice to the Additional Insureds before non-renewal or cancellation. Insurance coverages required under this Agreement shall be obtained from insurance companies authorized to do business in the State of Colorado. If the Contractor is self-insured under the laws of the State of Colorado, Contractor shall provide appropriate declarations of coverage.

12. **INDEMNITY.** The Contractor shall fully indemnify and hold the City harmless from all claims, actions, suits, liability, losses, costs, expenses, and/or damages of any kind whatsoever, which may occur to or be suffered by any person (including, but not limited to the Contractor, its agents, employees, contractors, tenants, invitees, licensees, successors or assigns) arising out of or in connection with its use and occupation of any City facilities and/or any activities undertaken pursuant this Agreement. Upon commencement of any such suit or action against the City, the Contractor shall provide prompt notice to the City, and shall defend the same at its own cost and expense. If a judgment shall be rendered against the City in such an action or suit, Contractor shall fully satisfy the judgment within ninety (90) days after the same has been conclusively determined.

13. **TERMINATION.** This Agreement may be terminated at the sole discretion of the City for any violation by the Contractor of any of the terms and conditions of this Agreement, including the reduction or discontinuance of the services listed in Exhibit A.

14. **PROVISIONS CONSTRUED AS TO FAIR MEANING.** The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party as the source of the language in question.

15. **HEADINGS FOR CONVENIENCE.** All headings, captions and titles are for convenience and reference only, and of no meaning in the interpretation or effect of this Agreement.

16. **COMPLIANCE WITH ORDINANCES AND REGULATIONS.** The Contractor shall perform all obligations under this Agreement in strict compliance with all federal, state, and City laws, rules, statutes, charter provisions, ordinances, and regulations applicable to the performance of the Contractor's services under this Agreement, and specifically, shall not discriminate against any person on the basis of age, ancestry, color, creed, sex, race, religion, national origin, disability, sexual orientation, gender status, or as otherwise prohibited by law.

17. **NO IMPLIED REPRESENTATIONS.** No representations, agreements, covenants, warranties, or certifications, express or implied, shall exist as between the parties, except as specifically set forth in this Agreement.

18. **NO THIRD PARTY BENEFICIARIES.** None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or CEF receiving services or benefits under this Agreement shall be only an incidental beneficiary.

19. **FINANCIAL OBLIGATIONS OF CITY.** All financial obligations of the City under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the City's credit or a payment guarantee by the City to the Contractor. If appropriated funds are not available, both parties shall be relieved of their obligations hereunder.

20. **WAIVER.** No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

21. **SEVERABILITY.** Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.

22. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

23. **AUTHORITY.** The parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law to authorize their respective signatories to sign this Agreement for them and to bind them to its terms.

24. **DAMAGES FOR BREACH OF CONTRACT.** In addition to any other legal or equitable remedy the City may be entitled to for a breach of this Agreement, if the City terminates this Agreement, in whole or in part due to Contractor's breach of any provision of this Agreement,

Contractor shall be liable for actual and consequential damages to the City.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF LONGMONT:

COLORADO ENTERPRISE FUND:

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DIRECTOR

APPROVED AS TO INSURANCE  
PROVISIONS:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
RISK MANAGER

\_\_\_\_\_  
ASSISTANT CITY MANAGER

APPROVED AS TO FORM:

\_\_\_\_\_  
SENIOR ASSISTANT CITY ATTORNEY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROOFREAD

\_\_\_\_\_  
DATE

CA File: 21-001487

State of Colorado     )  
  ) ss.  
County of Boulder     )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ as the Mayor of the City of Longmont.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK

Notary Public, State of Colorado

My commission expires: \_\_\_\_\_

State of \_\_\_\_\_)  
  ) ss:  
County of \_\_\_\_\_)

The foregoing instrument was acknowledged before me by \_\_\_\_\_  
as \_\_\_\_\_ of the Colorado Enterprise Fund, Inc. on behalf of the corporation,  
this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission expires \_\_\_\_\_.

## **EXHIBIT A: SCOPE OF SERVICES**

1. **GOAL:** Longmont startup businesses will increase and existing businesses will expand through access to capital provided by the Colorado Enterprise Fund.
2. To achieve this goal, CEF will provide the following business services and programs on behalf of the City to established and emerging businesses that are located, or are considering locating, within the territorial limits of the City:
  - 2.1. **Tactic 1—Loan Program Development**
    - 2.1.1. Presence in Longmont – CEF will have a loan officer working in Longmont an average of eight (8) hours per month.
    - 2.1.2. CEF staff will devote part of that time to promoting the financing and services offered by CEF and will work with banks and other lending institutions to co-promote CEF services to small businesses that cannot be assisted by the banks.
    - 2.1.3. CEF will work with the Longmont Economic Development Partnership (Longmont EDP) to provide services to small businesses and co-promote services to clients and will conduct initial and follow-up contacts with business clients.
    - 2.1.4. CEF will work with the Small Business Development Center to identify prospective borrowers and to provide business technical assistance to prospects in determining the eligibility for and use of financing.
  - 2.2. **Tactic 2—Lending**
    - 2.2.1. CEF will coordinate in the provision of all loans or potential financial assistance to Longmont businesses with the Longmont EDP, and the City of Longmont CDBG Office, to ensure businesses are in good standing with the City in the areas of: zoning, land use, taxes, environmental assessment issues, and that those businesses to be assisted with the CDBG funding previously provided and now funded from the Revolving Loan Fund; and meet the low/moderate income requirements of the CDBG Program. Information shall be provided on the “New Loan Intake Form” provided by Longmont EDP.
    - 2.2.2. CEF will complete credit analysis on loan applications from prospective Loan Program clients according to CEF standard policy and practice.
  - 2.3. **Tactic 3—Portfolio Servicing & Business Technical Assistance**
    - 2.3.1. CEF will service loans in the Program according to CEF standard policy and practice. Standard CEF interest and fees apply to loans made through the Program and are retained by CEF. Loan payments will be made to CEF, and CEF is responsible for collections, loan restructures and all other loss mitigation.

- 2.3.2. CEF will provide business technical assistance according to standard CEF policy and practice. Borrowers will be offered the opportunity to be evaluated for business management strength, and will be eligible to receive personalized training addressing areas of relative weakness. Borrowers pay nothing for most technical assistance, and can access additional accounting and legal expertise at subsidized rates.

3. Reporting.

- 3.1. Quarterly Reports: CEF agrees to provide the City Manager's Office, the CDBG Office and the Longmont EDP with quarterly activity reports, and CEF's periodic newsletters (as published), specifically related to services provided by CEF. The quarterly update on loans made shall include a summary of the number of loans made, businesses provided with training, number of jobs created/retained, and capital generated.

- 3.2. Annual Reports: CEF agrees to provide an annual update on loans made using the Longmont Revolving Loan Fund (LRLF). The annual report shall be provided no later than January 31, of each year. The LRLF report shall be sent to the CDBG Office and will include the amount of funds in the account at the beginning of the year, the amount of funds collected during the year, the amount of funds lent during the year and to which businesses (including DUNS numbers), and the end of year balance.

4. Financial Records: CEF agrees to establish and maintain books of account and records reflecting all of CEF's revenues, expenditures, and services to be performed by CEF under this Agreement, and CEF agrees to provide the City Council with an annual financial summary and/or audit report.