

**INTERGOVERNMENTAL AGREEMENT FOR ACQUISITION, OWNERSHIP AND
MANAGEMENT OF OPEN SPACE LAND**

This Intergovernmental Agreement for Acquisition, Ownership and Management of Open Space Land (“Agreement”) is made this ____ day of _____, by and between the CITY OF GREELEY, COLORADO (“City”) and TOWN OF WINDSOR, COLORADO (“Town”), each a Colorado home rule municipality.

WHEREAS, part of 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including the sharing of costs; and

WHEREAS, the parties, together with the Poudre River Trail Corridor Inc., have worked cooperatively to prepare and adopt *A Plan (Poudre Greenway Guide/ Priority Parcels Map Books) for the Region Between Greeley and Windsor* (“Plan”) to protect and promote the quality of life, the natural environment and the character of each community; and

WHEREAS, the parties have worked cooperatively to prepare and adopt the *Comprehensive Cache la Poudre Greenway Guide – Greeley-Windsor Reach* (“Guide”) to direct future urban development toward municipal boundaries, while balancing preservation of open lands and critical natural areas around the Cache la Poudre River and within areas between Greeley and Windsor; and

WHEREAS, the Guide identifies certain critical lands to be protected from development through various means such as fee acquisition, conservation easements, and regulatory measures; and

WHEREAS, the Guide further speaks to the management of lands within the identified Resource Management Area and the Regional Park Preserve; and

WHEREAS, the City has completed the Get Outdoors Greeley strategic plan in 2021 and the Town is in the process of developing a strategic plan with the anticipated adoption date in late 2021, which will further define and guide potential strategic open lands acquisitions and joint management areas; and

WHEREAS, each party may in the future acquire lands without contribution from the other, yet such acquisitions may fit into the overall strategic objectives of the Guide; and

WHEREAS, the parties desire to assure that independently-acquired lands will be subject to cooperative management and use as permitted and contemplated herein; and

WHEREAS, the parties desire to cooperate and contract with one another concerning the sharing of costs and responsibilities for the acquisition, ownership, improvement, and management of the properties acquired by each.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

A. Prior to Contracting for Purchase. Prior to the execution of any agreement for purchase of real property interests that may be appropriate for administration under this Agreement, the parties will:

- (1) Communicate regarding the suitability of each parcel under consideration, and will arrive at consensus as to whether the acquisition meets the criteria found in the Plan and the Guide.
- (2) Communicate regarding acquisition of interests in open space lands through fee transfers, conservation easements or other legal means, and will arrive at the preferred mode of ownership interest for each suitable parcel.
- (3) Communicate as to whether title to the acquisition will be held jointly or separately.
- (4) Communicate as to contractual terms for closing, title insurance, appraisals, due diligence and other items, and will between them allocate responsibility for such terms.
- (5) Communicate regarding each party's contribution, if any, toward the purchase price of any interests being acquired, and will obtain required authority to commit funds to each acquisition.

B. Approval of Purchase Contracts. The specific terms of purchase will be reduced to writing and subject to the following requirements:

- (1) Each party's representatives will obtain required governing body approval for each contract of sale for each acquisition of property interests that may be appropriate for administration under this Agreement.
- (2) The parties' representatives will coordinate and cooperate to assure timely governing body approval, understanding that executive sessions may be required to assure acceptable terms are negotiated and legal opinions are received as needed.
- (3) In the event one or the other party does not receive governing body approval for execution of a purchase agreement, the other party may proceed with the acquisition independently of the non-approving party. In this event, the acquiring party shall bear all expense associated with the acquisition. Nothing in this sub-section shall prevent the parties from later negotiating terms for the joint management of a parcel acquired separately by either party.

C. Pre-Closing Contract Performance. Each party will carry out its agreed responsibilities for contract terms necessary to satisfy closing requirements. The parties will coordinate any

contractual interpretations, modifications and communication with seller representatives in a manner mutually-acceptable to accommodate unforeseen circumstances. Neither party shall be compelled to undertake any obligation or commit additional funds outside of the approved contract terms without first obtaining governmental body approval, if such governmental body approval is needed in the sole estimation of any party.

D. Post-Closing. Upon closing of a parcel acquisition, the parties will negotiate a parcel-specific Management Plan as described in Section E below.

E. Property Management Plans. For each acquisition intended for administration under this Agreement, the parties will arrive at acceptable terms for a written management (“Management Plan”) to be adopted as provided in this Section.

- (1) Ownership. The parties will specifically agree as to how title to each acquisition will be held for so long as the acquisition is administered under this Agreement. Nothing herein will be deemed to compel joint ownership if the open space values of the parties can otherwise be achieved. Regardless of how title is held, management of each acquisition will be undertaken jointly as set forth in the approved management plan for the acquisition.
- (2) Management Best Practices. Each acquisition will be managed in accordance with industry best practices as set forth in the Management Plan, subject to any prior leases, declarations, or other legal restrictions otherwise affecting the property.
- (3) Management Cost-sharing. The Management Plan for each acquisition will define the sharing of cost and human resources needed to administer the property in a manner that promotes the parties’ open space values. The dedication of fiscal resources in future fiscal years will be subject to appropriation and legal availability of funds. Unless otherwise expressly agreed in the Management Plan for a particular acquisition, liabilities and costs outside of customary management costs for site improvements, the Poudre River Trail, or property management will be shared by the parties in proportion to their ownership interest in the acquisition. However, in the event such liability or extraordinary costs arise solely or in part from the negligent acts or omissions of one party, the responsible party shall be responsible for such liability or extraordinary cost attributable to its acts or omissions.
- (4) After-imposed Encumbrances, Restrictions, Conditions. The Management Plan for each acquisition will identify any encumbrances, restrictions or conditions the parties agree are appropriate, subject to approval of each party’s governing body. Regardless of how title is held, neither the Town nor the City may establish, memorialize or record any encumbrance or restriction on a parcel subject to a Management Plan established under this Agreement without the express consent of the other party.

- (5) Improvements. To the extent improvements to an acquisition are mutually agreed-upon by the parties (including, without limitation, Recreational Improvements, Landscape Improvements, and Habitat Improvements), the improvements and cost sharing therefor will be included in the applicable Management Plan.
- (6) Revenue Generation. To the extent any acquisition held pursuant to this Agreement generates revenue, any such revenue shall be applied to the customary costs of property management for the current or in future years, unless otherwise expressly agreed by the parties. To the extent that accumulated revenue attributed to an acquisition exceeds sums needed for current or reasonably anticipated future management costs, the parties may apply such accumulated revenue for improvements to any or all acquisitions held pursuant to this Agreement.
- (7) Memorialization of Management Plans. Once all terms for management of an acquisition have been reduced to writing, the written Management Plan will be executed by the Town Manager and City Manager, or their designees. Nothing herein shall be deemed to prohibit each party from undertaking management activity before execution of the written Management Plan, if doing so preserves the open space values of both parties on an interim basis.
- (8) Modifications to Approved Management Plans. In the event the parties mutually determine that modifications to an executed Management Plan are necessary or appropriate to promote the parties' open space values, such changes may be made by written amendments executed by the City Manager and Town Manager or their designee. No amendments will be construed to permit or compel any changes to ownership or additional encumbrances on a parcel without governing body approval as required in sub-sections E. (1) and (4) above.
- (9) Updates to Management Plans. To the extent necessary for management of acquisitions, the parties will consider updated Management Plans every ten (10) years, or as circumstances may otherwise require.
- (10) Emergencies, Unforeseen Circumstances. The parties recognize that exigencies may arise that fall outside of even the best-crafted Management Plan. Therefore, in the event of emergency or unusual circumstances requiring immediate response, the party responsible for administering the Management Plan will be entitled to use reasonable discretion in responding to such circumstances, regardless of the expressed terms of the Management Plan, provided that reasonable efforts are made to consult with the other party regarding the proper course of action.

- (11) **Responsible Party.** Each Management Plan will identify the entity responsible for administering the Management Plan and, if practical, identify individuals or departments with primary management responsibility. Any changes in composition or personnel will be updated to ensure both the Town and the City are accountable to each other on an ongoing basis.
- (12) **Periodic Reports.** The responsible party will provide periodic reporting of management activity for each acquisition on no less than an annual basis. Each party will identify the person or persons to whom reports shall be provided. All items of material importance to the parties will be disclosed through periodic reporting, including but not limited to disclosure of fiscal and human resources devoted to the property during the prior year, to assure that each party is discharging its respective obligations with respect to each acquisition.
- F. **Disposition of Property.** The parties recognize that circumstances may arise which render continued joint management of an acquisition impractical or infeasible. Under such circumstances, the parties agree to the disposition of property held pursuant to the Agreement as follows:
- (1) **Buy-out, jointly-held and Withdrawing Party-held acquisitions.** If for any reason a party no longer desires to participate in joint management of an acquisition (“Withdrawing Party”) to which title is held jointly or solely in the name of the Withdrawing Party, the Withdrawing Party will provide written notice accordingly to the other party (“Remaining Party”). Upon notification, the other party may respond with an offer to purchase to Withdrawing Party’s interest in the acquisition upon terms acceptable to the Remaining Party, which offer the Withdrawing Party must receive within sixty (60) days of the Withdrawing Party’s notice of request for withdrawal. If the Remaining Party’s offer is accepted by the Withdrawing Party, the parties will proceed to transfer ownership in accordance therewith. If the parties are unable to come to terms for the buy-out of the Withdrawing Party’s interest, then title and management of the acquisition will remain as previously agreed pursuant to the then-current Management Plan.
- (2) **Sale to third party, jointly-held and Withdrawing Party-held acquisitions.** If a party (“Transferring Party”) wishes to transfer its interest in an acquisition held jointly or solely by the Transferring Party to a third party, the Transferring Party shall first notify the other party (“Remaining Party”) accordingly. The Remaining Party will have thirty days to request relevant information regarding the party to whom the Transferring Party wishes to transfer its interest (“Third Party”), in order to assess the Third Party’s qualifications to perform the Transferring Party’s responsibilities under the applicable Management Plan. The Remaining Party shall have sixty (60) days following receipt of the Third Party’s qualifications to object to the transfer. If no objection to the Third Party’s qualifications is tendered within sixty (60) days, the Remaining Party will be deemed to consent to the proposed transfer. If the Remaining Party lodges a timely

objection to the transfer, the parties will endeavor to resolve the Remaining Party's concerns. In the absence of a mutual resolution of the Remaining Party's concerns, title to the acquisition and its management will remain as previously agreed pursuant to the then-current Management Plan.

- (3) Transfer of management responsibilities only. If a party for any reason determines it is unable to continue the joint management of an acquisition under the terms of the then-current Management Plan ("Withdrawing Party"), the Withdrawing Party will tender a request to be relieved of ongoing management responsibility to the other party ("Remaining Party"). The parties will undertake negotiations to modify the terms of the Management Plan. If the parties are unable to modify the Management Plan, the management of the acquisition will remain as previously agreed pursuant to the then-current Management Plan.
 - (4) Transfer of both parties' interests to a third party. The parties may at any time agree to dispose of an acquisition undertaken pursuant to this Agreement. Unless otherwise expressly agreed prior to the transfer, the parties will divide equally the net proceeds of any transfer to a third party. If a governmental entity other than the Town or the City by eminent domain take all or any portion of an acquisition held pursuant to this Agreement, the proceeds of the taking will be divided equally between the parties unless otherwise expressly agreed otherwise.
 - (5) Appraisals. Each party may request one (1) appraisal of any acquisition being disposed of in accordance with this sub-section 9, and the parties will share equally in the cost of each such appraisal.
 - (6) The foregoing terms with respect to disposition of acquisitions held pursuant to this Agreement shall not be deemed exclusive. If the foregoing terms for disposition of acquisitions are unsuccessful, either party may seek equitable relief in the state courts of Colorado sitting in Weld County.
 - (7) Nothing herein shall be deemed to modify the requirements for disposition of real property interests applicable to the parties under their adopted codes, charters and policies
- G. Term and Termination. This Agreement shall take effect upon execution, and shall remain in force for a period of twenty (20) years from the date first appearing above. Notwithstanding this term, the parties commit to reviewing their relationship hereunder every five (5) years to determine whether amendments are necessary. This Agreement may be extended by mutual agreement for additional terms to be negotiated. Either party may terminate this Agreement at any time with written notice to the other party of not less than thirty (30) days. Notwithstanding the expiration or termination of this Agreement, any Management Plan adopted by the parties shall survive termination, and the terms of Section F shall remain in effect as to the disposition of any acquisition held under a Management

Plan at the time of the expiration or termination of this Agreement.

H. Miscellaneous.

1. This Agreement may not be assigned by either party without the prior written consent of the other party.
2. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and permitted assigns.
3. Financial obligations of the parties payable after the current fiscal year are contingent upon the governing bodies of the parties, in their discretion, appropriating the necessary funds therefor.
4. Nothing in this Agreement waives the immunities, limits of liability, or other terms and conditions of the Colorado Governmental Immunity Act as now in force or hereafter amended.
5. This Agreement contains the entire understanding of the parties with respect to its subject matter, and shall not be deemed a modification of any other written agreements between the parties relating to other topics.
6. Any notices required or permitted to be given shall be in writing and personally delivered to the office of the parties of by first class mail, postage prepaid, as follows:

To the City:

Natural Areas & Trails Superintendent
Culture, Parks & Recreation Department
321 N. 16th Avenue
Greeley, CO 80631

To the Town:

Open Space and Trails Manager
Public Services Department
922 N. 15th Street
Windsor, CO 80550

Any such notice shall be effective (i) in the case of personal delivery, when the notice is actually received, or (ii) in the case of Certified Mail, the third day following deposit in the United States mail, certified mail postage prepaid, addressed as set forth above. Any party may change these persons or addresses by giving notice as required above.

6. This Agreement shall be effective upon the date first appearing above.

CITY OF GREELEY, COLORADO

By: _____
John Gates, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Doug Marek, City Attorney

TOWN OF WINDSOR, COLORADO

By: _____
Paul Rennemeyer, Mayor

ATTEST:

Karen Frawley, Town Clerk

APPROVED AS TO FORM:

Ian D. McCargar, Town Attorney