

INTERGOVERNMENTAL AGREEMENT FOR
EXCHANGE OF REAL PROPERTY BY
CITY OF GREELEY AND WELD COUNTY SCHOOL DISTRICT 6

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this ____ day of December, 2020 (the “Effective Date”), by and between the **City of Greeley, a Colorado home rule municipality (the “City”)**, and **Weld County School District 6 (the “District”)**, a Colorado public school district, for the exchange of real property located in Weld County, Colorado

RECITALS

WHEREAS, in accordance with C.R.S. §31-15-101 and Article XX of the Colorado Constitution, the City is a home rule municipality with the power to acquire and dispose of real property on terms and conditions that it may determine and approve; and

WHEREAS, in accordance with C.R.S. §22-32-110(1)(b) and (e), the District is a political subdivision and body corporate with the power to purchase and sell real property on such terms and conditions as it may determine and approve; and

WHEREAS, under C.R.S. §29-1-2013, the City and the District may contract with one another to provide any function, service, or facilities; and

WHEREAS, the City owns real property located in Weld County, Colorado, which is part of the Boomerang Links Golf Course and is more particularly described on Exhibit A, attached hereto and incorporated by reference herein (the “City Property”); and

WHEREAS, the District owns real property located in Weld County, Colorado, which is part of a new PK-8 School and is more particularly described on Exhibit B, attached hereto and incorporated by reference herein (the “District Property”); and

WHEREAS, the District desires to acquire the City Property from the City for District purposes, including, but not limited to, providing better access to the new PK-8 School via 71st Avenue and 4th Street (the “School Project”); and

WHEREAS, the City desires to acquire the District Property from the District for City purposes, including, but not limited to, relocating portions of the Boomerang Links Golf Course (the “Golf Course Relocation”) and non-potable water transmission and storage facilities to better meet the needs of the City (the “Water Facilities Relocation”), together the “City Improvements”; and

WHEREAS, a party conveying property under this Agreement may herein be referred to as “Conveying Party” and a party receiving property under this Agreement may herein be referred to as “Receiving Party”; and

WHEREAS, the City and the District acknowledge and agree that an exchange of the properties is in each party's best interest; and

WHEREAS, the City and the District desire to enter into this Agreement to define the rights and obligations of each with respect to the exchange of the properties.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated by this reference, the sufficiency of which is acknowledged, the parties agree as follows:

1. Property.

a. Subject to the terms of this Agreement, the City agrees to convey to the District, and the District agrees to accept from the City, the City Property.

b. Subject to the terms of this Agreement, the District agrees to convey to the City, and the City agrees to accept from the District, the District Property.

2. Additional Consideration.

a. As additional consideration for the City Property and to offset the costs associated with the City Improvements, the District will pay the City the amount of \$1,763,644 at the Closing (the "Purchase Price").

b. In the event that the cost of the Golf Course Relocation is less than \$1,763,644, the City shall reimburse the District the cost difference upon the completion of the Golf Course Relocation.

c. In the event that the cost of the Golf Course Relocation exceeds \$1,763,644, the parties shall meet and confer in good faith about sharing in the cost of the overage, taking into account the benefits provided to the District by the Water Facilities Location. If the parties cannot agree on a cost-sharing arrangement, the matter shall be submitted to a mutually acceptable mediator for resolution. The cost of the mediator shall be divided evenly between the parties.

3. Property Information. Within thirty (30) days after the Effective Date, Conveying Party shall deliver to Receiving Party the following documents:

a. Copies of existing plans and specifications (if any), all utility agreements and reservations related to the property, existing surveys and plats, development agreements/plans, building plans, together with any other information or documents relating to the property that are reasonably requested by Receiving Party or that are in Conveying Party's possession or control.

b. All (i) licenses, permits, approvals, entitlements issued, approved or granted by all governmental authorities in connection with the property, (ii) covenants, conditions and

restrictions, easement agreements and other agreements or documents benefitting and/or burdening the property, and (iii) licenses, leases, consents, easements, rights of way and approvals obtained from private parties to make use of utilities and/or to provide vehicular and pedestrian ingress and egress for the property.

c. A title insurance commitment from Land Title Guarantee Company (“Title Company”), and copies of all documents referenced in the title commitment, in the name of Receiving Party, insuring its property in accordance with the standards set forth herein.

d. All environmental reports and information in Conveying Party’s possession or control, including, without limitation, any and all Phase I and Phase II Environmental Studies, and all related studies, reports and documents concerning the property.

e. All available soils/geotech reports and information in Conveying Party’s possession or control concerning the property.

4. Inspection.

a. During the period beginning on the Effective Date and ending one hundred eighty (180) days after the Effective Date (the “Due Diligence Period”), Receiving Party, its agents, employees, and contractors, shall have the right to enter upon the applicable property at all reasonable times for the purpose of doing any survey, Phase I or Phase II Environmental Studies, geotechnical or investigation as may be required by such party in its discretion to determine that such property is suitable for its intended purpose. Neither party shall permit any liens or encumbrances to arise against a property in connection with or as a result of such inspections, studies, or investigations.

b. Receiving Party has the right to terminate this Agreement, for any reason or no reason at all, by written notice to Conveying Party given on or before the expiration of the Due Diligence Period.

5. Survey. During the Due Diligence Period, Receiving Party may obtain, at Receiving Party’s expense, and may cause to be delivered to Conveying Party and Title Company an ALTA survey of the applicable property that is in a form acceptable to Title Company and is certified to Receiving Party, Conveying Party, and Title Company (“Survey”).

6. Platted Parcel.

a. During the period beginning on the Effective Date and ending two hundred seventy (270) days after the Effective Date (the “Government Approval Period”), Conveying Party shall cause the applicable property to be a separately platted parcel. The Governmental Approval Period includes the time for expiration of all applicable protest, appeal, and referendum periods without a protest, appeal, or referendum being filed (or if a protest, appeal, or referendum has been filed, then on the date that such protest, appeal, or referendum has been resolved on terms satisfactory to Receiving Party).

b. Conveying Party shall pursue all necessary approvals of the property as a separately platted parcel (the "Governmental Approvals"), including the recordation of a final plat or similar document in the real property records of Weld County, Colorado at its sole expense. Receiving Party shall cooperate with Conveying Party in its efforts to obtain the Governmental Approvals and will timely execute any and all applications, consents, and other documents reasonably requested by Conveying Party in connection therewith, at no cost to Receiving Party. Conveying Party will provide sufficient advance notice to Receiving Party of all meetings necessary to obtain Governmental Approvals to give Receiving Party an opportunity to attend such meetings; provided, however, that in no event will Receiving Party's presence be a condition to Conveying Party attending or scheduling such meetings, and in no event will Conveying Party be required to delay or postpone any such meetings based on the availability of Receiving Party. Conveying Party will also deliver to Receiving Party copies of all submittals necessary to obtain Governmental Approvals contemporaneously with Conveying Party's submittal thereof and copies of any comments or other correspondence received from the promptly upon Conveying Party's receipt thereof.

7. Possession. The City shall deliver possession of the City Property to the District at Closing. The District shall deliver possession of the District Property to the City at Closing.

8. "As-Is" Conveyance. Each party acknowledges and agrees that the other party is conveying the applicable property in an "as is" condition, "where is" and "with all faults," and without any warranty, express or implied.

9. Closing

a. Closing shall be held on or before the date that is fifteen (15) days after the expiration of the Government Approval Period, at a time and place mutually agreed to by the parties (the "Closing Date"). However, Closing is expressly contingent upon (i) the City Council of the City of Greeley approving the conveyance of the City Property by ordinance, in its discretion, on or before fifteen (15) days prior to Closing and (ii) the Board of Education of the District approving the conveyance of the District Property, in its discretion, on or before fifteen (15) days prior to the Closing.

b. The City and the District will cooperate with the Title Company (the "Closing Company") to enable the Closing Company to prepare and deliver documents required for Closing to the City and the District and their designees. The parties shall furnish any additional information and documents required by Closing Company that are reasonably necessary to complete the conveyance of the properties. The parties shall sign and complete all customary and reasonably required documents at or before Closing.

c. Subject to each party's compliance with the terms of this Agreement, Conveying Party shall execute and deliver a special warranty deed to Receiving Party at Closing conveying the applicable Property free and clear of all taxes and liens, except those exceptions accepted by Receiving Party.

10. Title Policy. As a condition to each party’s obligation to close, Title Company shall deliver to Receiving Party at Closing an owner’s policy of title insurance issued by Title Company as of the date and time of the recording of the documents set forth in the “Closing” Section, in a mutually acceptable amount, insuring Receiving Party as the owner of good, marketable, and indefeasible fee simple title to the applicable property, subject only to the specific exceptions in the title commitment that the Title Company has not agreed to insure over or remove and that Receiving Party has accepted. Notwithstanding the foregoing, Conveying Party shall remove all monetary liens affecting the applicable property as of Closing (except those caused by or with the written approval of Receiving Party).

11. Closing Costs. Each party shall pay its portion of the closing costs as follows:

Type of Cost	Paid By
Title Policy Premium	Conveying Party
Extended Coverage Endorsement	Receiving Party
Documentary, transfer, excise, sales tax and similar fees	Conveying Party
Recording Fees	Receiving Party
Title Company Fee	Split 50/50
Other Costs Not Specified	Local Custom

12. Prorations. Taxes and assessments if any will be prorated at Closing based on the most recent mill levy and most recent assessed valuation. All other income and ordinary operating expenses for or pertaining to the applicable property, including, but not limited to, public utility charges, maintenance and service charges, will be prorated to the Closing Date.

13. Risk of Loss. Risk of loss to a property due to fire, flood, or any other cause before the Closing Date, shall remain with Conveying Party. If a property is damaged before the Closing Date, then Receiving Party may terminate this Agreement by written notice to Conveying Party given within five (5) days after Receiving Party learns of the damage.

14. Term and Termination.

a. Subject to earlier termination as provided in the “Inspection” Section and the “Risk of Loss” Section, the term of this Agreement shall be from the Effective Date until the Closing Date or November 30, 2021, whichever first occurs.

b. In addition to termination as provided in the “Inspection” Section and the “Risk of Loss” Section, either party may terminate this Agreement for cause upon the material breach of this Agreement by the other party that is not cured within fifteen (15) days of receiving written notice of the breach. Upon such termination the parties will have no further obligations hereunder.

c. Termination of this Agreement shall terminate the rights and obligations of the parties except for such rights and obligations that have accrued prior to the date of termination.

15. Miscellaneous.

a. Governing Law/Venue. The laws of the State of Colorado shall govern the performance and interpretation of this Agreement. Venue for any dispute concerning the Agreement or to enforce any provision herein shall be exclusively in the federal court located in Colorado or the state court located in Weld County, Colorado.

b. No Assignment. This Agreement may not be assigned by either party without the other party's prior written consent.

c. Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by both parties.

d. Notices. All notices, requests, consents and other communications required or permitted under this Agreement shall be (as elected by the person giving such notice) (i) hand delivered by messenger or courier service, (ii) pre-paid first-class certified mail, return receipt requested, or (iii) emailed addressed to the respective party at the address set forth in this Section. Each such notice shall be deemed delivered (i) on the date delivered if by personal delivery, (ii) on the date received if by electronic mail; or (iii) three (3) days after postmark if mailed as provided in this Section.

To City: The City of Greeley
 Attn: Lindsay Kuntz, Real Estate Manager
 1000 10th Street
 Greeley, CO 80631
 Email: lindsay.kuntz@greeleygov.com

To District: Weld County School District 6
 Attn: Kent Henson
 1025 9th Avenue
 Greeley, CO 80631
 Email: khenson1@greeleyschools.org

e. Counterparts. This Agreement and any amendments may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. For purposes of executing this Agreement, facsimile or scanned signatures shall be as valid as the original.

f. Waiver. A failure to assert any rights or remedies available to a party under the terms of this Agreement, or a waiver of the right to remedies available to a party by a course of dealing or otherwise shall not be deemed to be a waiver of any other right or remedy under this Agreement, unless such waiver of such right or remedy is contained in a writing signed by the party alleged to have waived his other rights or remedies.

g. Execution of Agreement. This Agreement contains the entire understanding of the parties and supersedes all prior understandings, agreements, or representations by or between the parties, whether oral or written, that in any way relate to the subject matter of this Agreement.

h. No Third-Party Beneficiaries. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the parties.

i. Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.

j. Severability. If any provision of this Agreement is ruled to be invalid or illegal, such ruling shall have no effect upon the remaining provisions, which shall be considered legally binding and given full effect.

k. Exhibits. "Exhibits" shall mean those exhibits that are identified in this Agreement and are attached to this Agreement or will be attached to this Agreement when complete information becomes available. Exhibits are specifically made a part of this Agreement by this reference.

l. Additional Documents or Actions. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY

DISTRICT

By: _____

By: _____

Attest:

Attest:

Exhibit A

Exhibit B

4817-9808-8658, v. 2