

ORDINANCE NO. 169, 2017  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE USE OF THE NON-DEVELOPMENT LEASE WITH THE  
COLORADO STATE BOARD OF LAND COMMISSIONERS AS MATCH FOR  
A NEOTROPICAL MIGRATORY BIRD CONSERVATION ACT GRANT  
ADMINISTERED BY THE U.S. FISH AND WILDLIFE SERVICE

WHEREAS, in March 2008, the City Council adopted Ordinance No. 037, 2008, authorizing the use of the City's Zimmerman Conservation Easement as a matching contribution for a Neotropical Migratory Bird Conservation Act Grant administered by the U.S. Fish and Wildlife Service ("FWS"); and

WHEREAS, in April 2009, the City Council adopted Ordinance No. 032, 2009, authorizing the use of a 440-acre portion of Bernard Ranch as a matching contribution for a Neotropical Migratory Bird Conservation Act Grant administered by the FWS; and

WHEREAS, in May 2010, the City Council adopted Ordinance No. 053, 2010, authorizing the use of a different 660-acre portion of Bernard Ranch as a matching contribution for a Neotropical Migratory Bird Conservation Act Grant administered by the FWS; and

WHEREAS, in June 2013, the City Council adopted Ordinance No. 079, 2013, authorizing the use of the Noonan Tract and the Bowes Homestead Tract as a matching contribution for Neotropical Bird Conservation Act Grant administered by the FWS; and

WHEREAS, the City has worked cooperatively with the Rocky Mountain Bird Observatory ("RMBO") to carry out the terms of the previous grant projects involving the study of neotropical birds, a category of bird species that includes high priority grassland birds found on Soapstone Prairie Natural Area; and

WHEREAS, in 2015 the City entered into a Mineral Non-Development Lease ("Lease") with the State Board of Land Commissioners to protect the surface of approximately 3,873 acres of Soapstone Prairie Natural Area from development of mineral rights owned by the State; and

WHEREAS, a copy of the Lease is attached hereto and incorporated herein as Exhibit "A";  
and

WHEREAS, Soapstone Prairie has been identified as an appropriate area to be conserved as habitat for neotropical birds in the region; and

WHEREAS, RMBO, together with other grant partners, is continuing to study neotropical birds and has applied for an additional grant of \$200,000 in 2017 grant funds from FWS; and

WHEREAS, RMBO hopes to use this new grant to continue its neotropical bird study as part of the Laramie Foothills Mountain to Plains Project, which includes Soapstone and other geographical areas that the birds inhabit; and

WHEREAS, the FWS grant terms will require RMBO to match the grant funds awarded; and

WHEREAS, the funds already expended by the City to acquire the Lease, along with funds spent by the City on habitat management, law enforcement and education in the Laramie Foothills region, may be used to match the grant funds awarded by FWS to RMBO; and

WHEREAS, to commit the Lease as the matching contribution for the FWS grant, FWS will require that the City record a Notice of Grant Requirements in the real property records of the Larimer County Clerk and Recorder for the property; and

WHEREAS, the Notice of Grant Requirements requires the City to be bound by the terms of the grant agreement between FWS and RMBO, including the obligation to ensure the long-term conservation of the Lease and to obtain the consent of the FWS prior to conveying or encumbering the Lease; and

WHEREAS, as the Lease is an interest in real property, the City's consent to these restrictions constitutes an encumbrance on the City's real property; and

WHEREAS, the City will also enter into an agreement with RMBO requiring RMBO to comply with the terms of the grant agreement between FWS and RMBO; and

WHEREAS, the data acquired from the study will allow City staff to more effectively form conservation strategies and manage high priority grassland birds that are found at Soapstone; and

WHEREAS, at its regular meeting on April 12, 2017, the Land Conservation and Stewardship Board unanimously recommended that the City Council approve an ordinance authorizing the use of the funds used to acquire the Lease as a match for the 2017 Neotropical Migratory Bird Conservation Act Grant and the placement of a Notice of Grant Agreement on the mineral leasehold interest; and

WHEREAS, under Section 23-111 of the Code of the City of Fort Collins, the City Council is authorized to sell or otherwise dispose of any and all interests in real property owned in the name of the City, provided that the City Council first finds, by ordinance, that such sale or disposition is in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds that use of the Lease as a match towards a U.S. Fish and Wildlife Service Grant to the Rocky Mountain Bird Observatory, including execution and recording of a Notice of Grant Requirements as described herein, is in the best

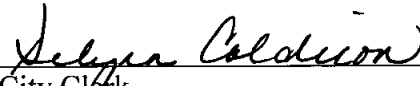
interests of the City.

Section 3. That the Mayor is hereby authorized to execute a Notice of Grant Requirements consistent with the terms of this Ordinance, along with such other terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the best interests of the City, including, but not limited to, any necessary changes to the legal description of the property rights to be encumbered, as long as such changes do not materially increase the size or change the character of such property rights.

Introduced, considered favorably on first reading, and ordered published this 5th day of December, A.D. 2017, and to be presented for final passage on the 19th day of December, A.D. 2017.

  
\_\_\_\_\_  
Mayor Pro Tem

ATTEST:


  
\_\_\_\_\_  
City Clerk



Passed and adopted on final reading on the 19th day of December, A.D. 2017.

  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk





STATE OF COLORADO  
STATE BOARD OF LAND COMMISSIONERS  
**MINERAL NON-DEVELOPMENT LEASE**  
**NO. LT - 109941**

THIS AGREEMENT (Agreement), dated this 18th day of August, 2015 (the Effective Date) made and entered into by and between the STATE OF COLORADO, acting by and through the STATE BOARD OF LAND COMMISSIONERS, whose address is 1127 Sherman Street, Room 300, Denver, CO 80203, hereinafter called the State, and THE CITY OF FORT COLLINS, COLORADO, a Municipal Corporation whose address is 300 LaPorte Avenue, P. O. Box 580, Fort Collins, CO 80522 hereinafter called the Surface Owner:

WITNESSETH

WHEREAS, the Surface Owner has applied for a mineral development restriction covering all mineral underlying the land described below and has paid a filing fee in the amount of \$0.00; and,

WHEREAS, said application has been approved by the State; and,

WHEREAS, the Surface Owner is the record owner of the surface interest of the land covered hereby, or is the designated agent or trustee for the record owner or owners (proof of said ownership to be furnished at the State's request); and,

WHEREAS, to protect the surface, the Surface Owner desires to acquire from the State an agreement to restrict the development of the mineral estate owned by the State; and,

THEREFORE, for and in consideration of the premises and subject to any existing mineral leases in effect at the time this Agreement is executed, the State covenants and agrees that it will not lease, or cause to be developed, any and all minerals owned by the State, except as described herein, in the following land (the Subject Lands), situated in the County of Larimer, State of Colorado, more particularly described as follows:

ACRES	SUBDIVISION	SEC. TWP. RGE.	PATENTS
410.78	Lots 1, 2, 3, 4, S2N2, N2S2, SESE	20 - 12N - 68W	Yes
440	E2NE, NWNW, S2NW, SW, S2SE	28 - 12N - 68W	Yes
474.88	NE, S2	30 - 12N - 68W	Yes
640	ALL	32 - 12N - 68W	Yes
640	ALL	36 - 12N - 69W	Yes
636.40	ALL	4 - 11N - 68W	Yes
630.70	ALL	16 - 11N - 68W	Yes

FUND: School

(NOTE: The State assumes no responsibility for the accuracy of descriptions furnished by the Surface Owner nor does it admit any liability for loss or damage due to inaccuracy on the Surface Owner's part in describing the land subject to this Agreement.)

Subject to the following existing mineral leases: None

1. **TERM** -- The term of this Agreement shall be twenty (20) years from the hour of twelve o'clock noon on the date hereof, to the hour of twelve o'clock noon on August 18, 2035.
2. **RENTS** -- The Surface Owner shall pay to the State total compensation of \$387,226.00, payable in five equal installments of \$77,445.20 each, commencing on the date that this Agreement is signed by the Surface Owner and continuing annually on or before each of the next four anniversary dates of the Effective Date of this Agreement.
3. **PENALTIES** -- A penalty shall be imposed for, but not limited to, late payments, improper payments, violation of any covenant of this lease, or false statements made to the State. Penalties shall be determined by the State and may be in the form of, but not limited to, interest, fees, and fines.
4. **SURRENDER** -- The Surface Owner may at any time surrender and cancel this Agreement insofar as the same covers all or any portion of the land herein, provided that this

surrender clause shall become inoperative immediately and concurrently with the institution of any suit in any court of law by the Surface Owner, the State, or any assignee of either to enforce this Agreement or any of its terms, express or implied. If this Agreement is terminated for any reason, no rental or bonus refund shall be made, nor will rental or bonus be transferred or credited in any way to another account. All paid up rental and bonus shall be forfeited unless otherwise agreed to by the State.

5. **RECEIPT FOR PAYMENTS** -- This Agreement shall not be in effect until the State has received cash or the cash proceeds of any check tendered in payment for fees, bonus, or rental. All payments shall be made on or before the date due and any default may subject this Agreement to cancellation as set out in Paragraph 13.
6. **TRANSFER AND ASSIGNMENT** -- The parties expressly agree that the mineral development restrictions set forth in this Agreement run with the land, and shall be binding upon all subsequent owners of all or any portion of the land covered hereby.

If a portion of the subject surface estate is sold or transferred and an assignment of the mineral development restriction for that parcel is approved, a new agreement shall be issued to the assignee covering the assigned land, containing the same terms and conditions as this Agreement and limited as to term as this Agreement is limited, and the assignor shall be released and discharged from all further obligations and liabilities as to that portion so assigned. An assignment shall not extend the term of this Agreement.

7. **PROTECTION FROM OFFSET DRAINAGE** -- In case of offset drainage from the Subject Lands, the Surface Owner will be offered an oil and gas lease or will allow the State to offer an oil and gas lease to a third party lessee, requiring development of oil or gas owned by the State underlying this surface or, in lieu of leasing, Surface Owner may pay an in-lieu royalty based on technical information and set by the State. Offset drainage is defined as a producing oil and gas well drilled on a spacing unit or legal location where any portion of the spacing unit or legal location is adjoining the Subject Lands.
8. **NO RIGHT TO DEVELOP MINERALS** -- Except as expressly set forth herein, this Agreement does not give the Surface Owner any authority to explore for, prospect, develop, extract or use any minerals owned by the State.
9. **UNIT AGREEMENTS** -- In the event the State permits the Subject Lands herein to be unitized or pooled with other lands, the terms of this Agreement shall be modified to conform to such unit agreement.
10. **GOVERNMENT CONTROL** -- Any matter over which the United States Government assumes exclusive control is exempted from any of the provisions of this Agreement.
11. **EXTENSION** -- Any request for an extension of the term of this Agreement will not be considered prior to the last year of the Agreement term. All requests must be in writing. The granting of an extension will be at the option of the State.
12. **COMPLIANCE WITH LAW** -- Nothing in this Agreement shall be construed as a waiver by the State of any right or remedy given to it by law for the administration of State-owned minerals, or construed in a manner that requires either party to violate applicable federal, state or local laws.
13. **FORFEITURE** -- Upon failure or default of the Surface Owner or its assignee to comply with any of the provisions or covenants hereof, the State is hereby authorized to cancel this Agreement, and such cancellation shall extend to, and include, all rights hereunder as to the whole of the tract so claimed or possessed by the Surface Owner or its assignee so defaulting, but shall not extend to nor affect the rights of any surface owner or approved assignee claiming land separated from this Agreement by assignment; provided, that in the event of any such default or failure to comply with any of the terms and conditions hereof, the State shall, before any such cancellation may be made, send by certified mail to the Surface Owner or assignee so defaulting, to the post office address of the Surface Owner or assignee, as shown by the records of the State, a notice of intention to cancel for such default, specifying the same, and if within thirty (30) days from the date of mailing said notice, the Surface Owner or assignee shall have paid all rents or bonuses in default, and shall have begun in good faith to correct such other default as may have been specified, and shall thereafter diligently prosecute the correction of such default, there shall not be a cancellation therefor. If such default is not corrected, or correction thereof is not begun in good faith as hereinabove required, within thirty (30) days after the mailing of such notice, this Agreement will terminate and be cancelled by operation of this paragraph without further action by the State, or further notice to the Surface Owner.

14. FALSE STATEMENTS -- Misrepresentation or false statements on the part of the applicant or Surface Owner, or failure to comply with any of the conditions set out in this Agreement or in the application which is a part hereof, may subject this Agreement to cancellation by the State.
15. CONDEMNATION -- If the State's mineral estate shall be taken in any condemnation proceeding, this Agreement shall automatically terminate as of the date of taking. The award for such condemnation shall be paid to the State. If only a portion of the mineral estate is taken by condemnation, the State may, at its option, terminate this Agreement or terminate only that portion of the Agreement covering the mineral estate so taken.
16. SUCCESSORS CLAUSE -- The benefits and obligations of this Agreement shall inure to and be binding upon the heirs, legal representatives, successors or assigns of the Surface Owner.
17. APPROPRIATION -- Surface owner obligations hereunder are subject to annual appropriation of funds sufficient and intended therefor by Surface Owner's City Council, in its sole discretion, however, failure to pay the Paragraph 2 - Rents obligations will result in termination of this Agreement as set out in Paragraph 13 of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, The parties hereto have executed the foregoing, the same to be effective as of the day and year first above written.

COLORADO STATE BOARD OF LAND COMMISSIONERS

Pete Milonas

Pete Milonas, Minerals Director

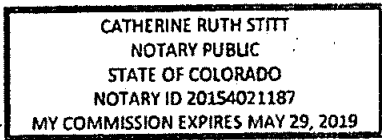
ATTEST

State of COLORADO

County of Denver

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of December, 2015 by Pete Milonas, in his capacity as Minerals Director of Colorado State Board of Land Commissioners, as being authorized to execute same.

(SEAL)



Notary Public Catherine R. Stitt

SURFACE OWNER:

CITY OF FORT COLLINS, COLORADO,  
A Municipal Corporation

By: [Signature]  
Darin A. Atteberry, City Manager

ATTEST:

Wanda Winkelman  
City Clerk



State of COLORADO

County of Larimer

APPROVED AS TO FORM:

[Signature]  
Assistant City Attorney

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of October, 2015, by Darin A. Atteberry as City Manager for the City of Fort Collins, Colorado, as being authorized to execute same.

(SEAL)

Notary Public Sara Gonzales

