

RESOLUTION 2016-071
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH LARIMER COUNTY FOR THE
HORSETOOTH FOOTHILLS LAND CONSERVATION PROJECT

WHEREAS, on October 7, 2014, the City Council approved the Natural Areas Master Plan, which identifies the foothills west of Fort Collins as a key conservation priority; and

WHEREAS, since 2014, City Natural Areas staff has collaborated with Larimer County to engage property owners who are interested in conveying lands in the foothills west of Fort Collins in support of public conservation goals; and

WHEREAS, through this outreach, owners of multiple properties have proposed adding approximately 2,726 acres of key conservation priority properties to the existing 5,700 acres of conserved lands managed by the City and Larimer County; and

WHEREAS, in furtherance of shared public conservation objectives, the City and Larimer County pursued Great Outdoors Colorado (“GOCO”) grants to fund the purchase of interests in several properties as part of the regional Horsetooth Foothills Land Conservation Project (the “Project”); and

WHEREAS, GOCO awarded the Project \$1,000,000 in 2015 toward the costs to acquire and conserve a 359-acre property identified as part of the Project; and

WHEREAS, GOCO awarded the Project another \$4,000,000 in 2016 toward the costs to conserve an additional 993 acres in fee and 1,374 acres in conservation easements (CE) identified as part of the Project; and

WHEREAS, a condition of the 2016 GOCO grant is that the City and County provide the remaining local funds to acquire and conserve the subject property interests; and

WHEREAS, Larimer County has agreed to negotiate fee purchases from owners of three Project properties, and to convey a CE to the City on each property successfully acquired; and

WHEREAS, the City has agreed to negotiate fee purchase from owners of another Project property, and to convey a CE to Larimer County on that property if successfully acquired; and

WHEREAS, the estimated cost to complete the four Project acquisitions as described in both GOCO grants is \$12,000,000; the local contribution component of that cost will be up to \$7,000,000 after application of the GOCO grants; and

WHEREAS, Natural Areas staff has determined it furthers the public purpose of the Natural Areas Master Plan and regional conservation goals for the City and Larimer County to share the local contribution component of the Project acquisition and closing costs; and

WHEREAS, the City and Larimer County have agreed upon the details for the proposed split of local Project funding, as set forth in the Intergovernmental Agreement attached hereto as Exhibit "A" (the "Agreement"); and

WHEREAS, the City Manager and City staff have recommended the City Council approve the Agreement in substantially the form as set forth herein.

NOW, THEREFORE, BE IT RESOLVED 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 conveyed in the recitals set forth above.

Section 2. That the Mayor is hereby authorized to execute the Agreement between the City and Larimer County to apply \$5,000,000 in GOCO grant funds to acquire land interests and conservation easements on four (4) properties identified for the Horsetooth Foothills Land Conservation Project, and to share the remaining acquisition and closing costs with the County, which Agreement shall be in substantially the form of Exhibit "A" with such modifications and additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interest of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of September, A.D. 2016.



Mayor

ATTEST:

W Winkelmann
City Clerk

DRAFT – SUBJECT TO LEGAL REVIEW, REVISION, AND APPROVAL

INTERGOVERNMENTAL AGREEMENT
CONCERNING THE HORSETOOTH FOOTHILLS CONSERVATION PROJECT

This Intergovernmental Agreement (Agreement) is made this ___ day of ____, 2016, by and between the CITY OF FORT COLLINS, COLORADO (the "City") and LARIMER COUNTY, COLORADO ("Larimer County").

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, Larimer County has imposed a sales and use tax via the "Help Preserve Open Spaces Initiative" for the purchase and maintenance of open space, natural areas, wildlife habitat, parks and trails and a portion of the funds generated by said sales tax are distributed to municipalities located within Larimer County, including the City; and

WHEREAS, the City has imposed a dedicated 0.25% sales and use tax known as "Open Space Yes!", portions of the revenues from which are intended and available for the purchase and maintenance of open space, natural areas, and trails; and

WHEREAS, the parties recognize through the Larimer County Open Lands and Fort Collins Natural Areas Master Plans that certain lands in the foothills and along the mountain backdrop to the cities of Fort Collins and Loveland are important to be conserved through various means such as fee acquisition, conservation easements, and regulatory measures; and

WHEREAS, the parties have historically worked cooperatively in this area to conserve the wildlife and recreation corridor from Devil's Backbone Open Space to Horsetooth Mountain Park, adjacent to the Horsetooth Foothills properties to protect and promote the quality of life, the natural environment and the character of the region; and

WHEREAS, Larimer County Open Lands Department and the City of Fort Collins Natural Areas Department share common goals in conserving land in the foothills southwest of Fort Collins, and are forming a partnership per this IGA to implement a land conservation project known as the "Horsetooth Foothills Conservation Project" to conserve in fee and through conservation easements approximately 2,726 acres of land.

WHEREAS, Larimer County was awarded in 2015, One Million dollars in Great Outdoors Colorado (GOCO) grant funds to acquire in partnership with the City fee title to a parcel of real property located in the County of Larimer, State of Colorado known as "Parcel D", which property is depicted on the overview map attached as Exhibit "A" and legally described in Exhibit "B" herein ("Parcel D East-Phase I"); and

WHEREAS, Larimer County was awarded in 2016, Four Million dollars in GOCO grant funds to acquire in partnership with the City fee title and conservation easements to additional parcels of real property located in the County of Larimer, State of Colorado known as "Parcel B", "Parcel C", "Parcel D West-Phase II", and "Parcel A" properties ("Horsetooth Foothills Properties" or "Properties"), which are depicted on the overview map attached as Exhibit A and legally described in Exhibits B and C herein; and

WHEREAS, Larimer County executed a grant agreement with GOCO on January 25, 2016, to accept the One Million Dollars in GOCO funding necessary to proceed with the City to acquire fee interest in the Parcel D East- Phase I property, as part of the Horsetooth Foothills Conservation Project, Log #16129,(the "2015 GOCO Agreement"); and

WHEREAS, Larimer County anticipates executing a grant agreement with GOCO after September 6, 2016, to accept the Four Million dollars in GOCO funding necessary to proceed with the City to acquire respective interests in the Parcel B, Parcel C, Parcel D West – Phase II, and Parcel A properties, as part of the Horsetooth Foothills Conservation Project, Log #16662, (the "2016 GOCO Agreement"); and

WHEREAS, Larimer County anticipates acquiring through purchase of fee interests and conservation easements, the real property described in Exhibit B, attached hereto and incorporated herein by reference (the "County Acquisitions"), and the City anticipates acquiring through purchase of fee interests and conservation easements, the real property described in Exhibit C, attached hereto and incorporated herein by reference (the "City Acquisitions"); and

WHEREAS, GOCO requires a conservation easement to be placed upon all parcels acquired in fee interest using GOCO funds; Larimer County will convey a conservation easement to the City on all parcels it acquires in fee using GOCO Funds as described in Exhibit B, and the City will convey a conservation easement to Larimer County on the parcel it acquires in fee using GOCO funds as described in Exhibit C.

WHEREAS, the County will also convey a conservation easement to the City on Parcel G which is not being acquired with GOCO funds.

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 Horsetooth Foothills Properties.

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

A. Subject Properties/Easements

1. The cost for conserving the Horsetooth Foothills Properties including closing costs, title insurance, surveying, appraisal fees, minor land divisions, Phase I Environmental Assessment Reports, Baseline Reports, and Geologist and Remoteness Letters is estimated to be approximately \$12,000,000, as described in greater detail in Exhibit "D", attached hereto and incorporated herein by reference.

2. The parties will split evenly all unanticipated acquisition costs in addition to the amounts reflected on Exhibit D, arising during final negotiations and closing on the interests generally described herein. If that approach is not financially feasible for either party, the parties agree to negotiate in good faith to reach a solution, which may include a different division of costs,

in order to proceed with the acquisitions. Exhibit D (and the other exhibits as necessary) will be updated upon completion of the final acquisitions.

Acquisition of each property and easement described in Exhibits B and C shall occur at closings set at mutually agreed date(s), time(s) and location(s), at which each party shall bring purchasing funds as described below and on Exhibit D, unless otherwise agreed by parties.

3. The acquisitions will be structured as follows:

Parcel A – appx. 800 acres total:

- i. City is the lead in conserving this property, has been negotiating with the property owner and paying the due diligence costs, and will pay all miscellaneous costs associated with conserving this property shown on Exhibit D.
- ii. City will prepare the conservation easement instrument(s) necessary for conservation of Parcel A in collaboration with Larimer County and GOCO.
- iii. City will acquire and manage the 500 acres in fee, and will convey a conservation easement (CE) to Larimer County as required by GOCO, subject to prior approval by ordinance of such conveyance by the Fort Collins City Council in its discretion.
- iv. City will acquire and hold a 270+/- acre conservation easement.
- v. City will acquire and hold a 35+/- acre conservation easement.
- vi. Contributions towards the fee and CE acquisitions are shown on Exhibit D.
- vii. The City shall submit the CE, upon acceptance by Larimer County, to the County Clerk and Recorder for recording in the real property records of Larimer County, and shall provide a copy of the recorded Conservation Easement to Larimer County upon completion of recording.

Parcel B – appx. 300 acres total:

- i. Larimer County is the lead in conserving this property, has been negotiating with the property owner and paying the due diligence costs, and will pay all miscellaneous costs associated with conserving this property except for the cost of the baseline report, as shown on Exhibit D.
- ii. Larimer County will prepare the conservation easement instrument(s) necessary for the conservation of Parcel B in collaboration with the City and GOCO.
- iii. Larimer County will acquire and manage the 300+/- acres in fee and convey a conservation easement (CE) to the City as required by GOCO.
- iv. Contributions towards the fee and CE acquisitions are shown on Exhibit D.
- v. Larimer County shall submit the CE, upon acceptance by the City, to the County Clerk and Recorder for recording in the real property records of the County, and shall provide a copy of the recorded Conservation Easement to the City upon completion of recording.

Parcel C Property – appx. 1,060 acres total:

- i. Larimer County is the lead in conserving this property, has been negotiating with the property owner and paying the due diligence costs, and will pay all miscellaneous costs associated with conserving this property except for the cost of the baseline reports as shown on Exhibit D.
- ii. Larimer County will prepare the conservation easement instrument(s) necessary for the conservation of Parcel C in collaboration with the City and GOCO.
- iii. Larimer County will acquire and manage the 200+/- acres in fee and convey a conservation easement (CE) to the City.
- iv. County will acquire and hold an 870+/- acre conservation easement.
- v. Contributions towards the fee and CE acquisition are shown on Exhibit D.
- vi. Larimer County shall submit the CEs, upon acceptance by the City, to the County Clerk and Recorder for recording the real property records of the County, and shall provide a copy of the recorded Conservation Easement to the City upon completion of recording.

Parcel D Properties (East -Phase I and West-Phase II) – appx. 560 acres total:

- i. County is the lead in conserving these properties, has been negotiating with the property owner and paying the due diligence costs, and will pay all miscellaneous costs associated with conserving this property except for the cost of the baseline reports as shown on Exhibit D.
- ii. County will prepare the conservation easement instrument(s) necessary for the conservation of the Parcel A properties in collaboration with the City and GOCO.
- iii. County will acquire and manage 360+/- acres in fee and convey a conservation easement (CE) to the city as required by GOCO.
- iv. County will acquire and hold a 200+/- acre conservation easement.
- v. Contributions towards the fee and CE acquisition are shown on Exhibit D.
- vi. Larimer County shall submit the CE, upon acceptance by the City, to the County Clerk and Recorder for recording the real property records of the County, and shall provide a copy of the recorded Conservation Easement to the City upon completion of recording.

4. Promptly upon completion of each closing related to a property or easement described in Exhibits A-D Larimer County and the City shall arrange for title insurance to be provided for the acquired property or easement, for the benefit of the other party, consistent with the ownership interests to be conveyed herein.

5. Until such time as the above-referenced closing and conveyance of the property interests above shall occur, Larimer County shall remain the primary negotiator of the Parcel B, Parcel C and Parcel A properties purchases and shall have the discretion to make decisions related to the negotiations including choice of surveyor, title company, and other administrative matters, consistent with this Agreement. Until such time as the above-referenced closing and conveyance of

the property interests above shall occur, the City shall remain the primary negotiator of the Parcel A property purchase and shall have the discretion to make decisions related to the negotiations including choice of surveyor, title company, and other administrative matters, consistent with this Agreement. The parties shall promptly inform the other party of new developments in the negotiations and new material information related to the subject properties and easements or the acquisitions thereof.

B. Management of the Horsetooth Foothills Properties

1. The City will manage the 500+/- acres acquired on the Parcel A property as a part of the Coyote Ridge Natural Area in accordance with the Foothills Natural Areas Management Plan (which will be updated to reflect this acquisition) and subsequent updates.
2. Larimer County will manage the 300+/- acres acquired on the Parcel B property as a part of the Devil's Backbone Open Space and in accordance with the Devil's Backbone Open Space Management Plan (which will be updated to reflect this acquisition) and subsequent updates.
3. Larimer County will manage the 360+/- acres acquired on the Parcel A properties as a part of the Horsetooth Mountain Park in accordance with the Redstone HOA Covenants, the Horsetooth Mountain Park Management Plan (which will be updated to reflect this acquisition) and subsequent updates.
4. Larimer County will manage the 200+/- acres acquired on the Parcel C property as a part of the Horsetooth Mountain Park in accordance with the Horsetooth Mountain Park Management Plan (which will be updated to reflect this acquisition) and subsequent updates.
5. Emergency Circumstances. In the event of emergency circumstances requiring immediate response prior to the adoption of updated Management Plans which will be used to guide the management of the Properties, as described above, Larimer County and the City shall be entitled to use reasonable discretion in responding to such circumstances. If possible, any such emergency circumstances or responses shall be subject to consultation between the parties in advance of any action being taken. In the event advance consultation is not reasonably possible, Larimer County shall limit its actions to those necessary to address the existing emergency, and shall make reasonable efforts to inform the City promptly of any such event and chosen course of action.

C. Subsequent Sale and/or Transfer of Fee or Conservation Easement Interests

1. Once closings have occurred on the City and County's respective acquisitions, if a party desires to sell all or any portion of its fee interest in the Properties or transfer its interest in a conservation easement (but not including conveyances of easements or rights-of-way), that party (the "Selling Party") shall provide at least 60 days' advance written notice to the other party of its intention regarding the property interest. The other party shall have a right of first refusal ("Option") to purchase such interest in the Properties for the proportional share of the fair market value of such Property as determined by an appraiser selected by the parties. The other party shall notify the Selling Party within 30 days whether it intends to purchase the Property. The parties shall then work in good faith to negotiate a purchase and sale agreement and any necessary documents for completion of the sale. The Option shall expire two years after the date of the Selling Party's

written notice of its intent to sell its interest if the parties have not closed on the conveyance of the Property interest by that time.

2. If the other party declines to purchase the subject property, the Selling Party may then convey the Property as it chooses. Any such conveyance shall be subject to the terms of the related conservation easement and any other existing encumbrances, restrictions or conditions applicable to the conveyed property. In addition, in the event one of the parties desires to sell all or any portion of its fee interest in the Property, including easements or rights of way, and the other party has a concern with the impact of the proposed sale on the remaining interests in the Property, the parties agree to negotiate in good faith to resolve the issue prior to the sale or transfer.

3. Any transfer or sale of a property interest acquired under this Agreement shall be subject to GOCO requirements and review as described in the GOCO Grant Agreements attached as Exhibit E and incorporated by reference herein.

4. In the event all or any portions of the subject properties are sold, exchanged, transferred or otherwise disposed of, the net proceeds from such disposition shall be divided between the County and the City in the same proportion as their respective contributions to the initial purchase payments for acquiring the property interests sold. In the event all or any portion of the subject properties is taken by eminent domain, the costs and proceeds of such condemnation shall be shared proportionally by the parties based on the same division of proceeds as set forth herein. Proceeds from such conveyance shall be subject to the provisions of each party's respective applicable policies, ordinances, resolutions and plans.

D General Provisions.

1. Each party agrees to execute all additional instruments and documents necessary to effectuate the transactions and purposes described herein, subject to any necessary approvals.

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 party's payable after the current fiscal year are contingent upon the governing bodies of the parties, in their discretion, appropriating necessary funds therefor. The parties' obligations hereunder are also subject to the final award of grant funds by GOCO.

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. Any notices required or permitted to be given shall be in writing and personally delivered to the office of the parties hereof by first class mail, postage prepaid, as follows:

John Stokes	Gary Buffington
Natural Areas Director	Natural Resources Director
City of Fort Collins – Natural Areas Department	Larimer County Open Lands
PO Box 580, Fort Collins 80522	[address]
jstokes@fcgov.com	@larimer.org

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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 first class mail, the third day following deposit in the United States mail, postage prepaid, addressed as set forth above. Any party may change these persons or addresses by giving notice as required above.

IN WITNESS WHEREOF, the parties hereto have executed this Intergovernmental Agreement concerning the Horsetooth Foothills Conservation Project, on the day and year first above written.

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

ATTEST:	D	R	A	T
	City Clerk		By: Mayor	APPROVED AS TO FORM:
			Assistant City Attorney	

LARIMER COUNTY, COLORADO

By: _____
Chair, Board of County Commissioners

ATTEST:

Deputy Clerk

APPROVED AS TO FORM:

Assistant County Attorney

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EXHIBIT A
Overview Map

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EXHIBIT B

County Acquisitions and Conservation Easement Conveyances to City

[Final identification and contract negotiations have yet to occur regarding these properties; alternate properties may be identified to replace those listed below, subject to prior approval by the City]

Legal Descriptions & Maps: Parcel B Fee and Parcel D East- Phase I Fee and Parcel D West -Phase II CE and Parcel C Fee and CE Properties

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EXHIBIT C

City Acquisitions and Conservation Easement Conveyances to County

[Final identification and contract negotiations have yet to occur regarding these properties; alternate properties may be identified to replace those listed below, subject to prior approval by Larimer County]

Legal Descriptions & Maps – Parcel A Fee and CE Properties

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Exhibit D

Horsetooth Foothills Conservation Project IGA COST DATA
[Preliminary pending final property identification]

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Exhibit E

Horsetooth Foothills Conservation Project IGA OWNERSHIP DATA

[Preliminary pending final property identification]

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