

RESOLUTION 2020-009
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE MAYOR TO EXECUTE AN INTERGOVERNMENTAL
AGREEMENT WITH LARIMER COUNTY TO PARTNER ON THE PURCHASE
OF AN 800 ACRE INHOLDING AT RED MOUNTAIN OPEN SPACE

WHEREAS, to meet shared land conservation goals, the City and Larimer County (“County”) have been working together since 2003 to conserve land in the Laramie Foothills – Mountains to Plains Conservation Area, including the Red Mountain Open Space (“Red Mountain”) directly west of the City’s Soapstone Prairie Natural Area; and

WHEREAS, in 2018 the County acquired an inholding parcel in Red Mountain, approximately 800 acres in size (the “Ranch”); and

WHEREAS, whereas, the City wishes to collaborate with the County on the costs and responsibilities of conserving the Ranch by splitting the acquisition costs with the County; and

WHEREAS as part of this arrangement the County would convey to the City a conservation easement (the “Conservation Easement”) on the Ranch property and on another inholding parcel at Red Mountain that the County purchased in 2007 with the help of the City (together, the “Red Mountain Inholding”); and

WHEREAS, the City already holds a conservation easement on the rest of Red Mountain; and

WHEREAS, the City and County have negotiated a proposed intergovernmental agreement regarding the Red Mountain Inholding, a draft of which is attached hereto as Exhibit “A” and incorporated herein by reference (the “IGA”); and

WHEREAS, under the terms of the IGA the City would pay the County \$1,125,000, representing half the cost of acquiring the Ranch, plus a portion of the due diligence costs incurred by the County for the acquisition, and the County would convey the Conservation Easement to the City by a separate deed of conservation easement; and

WHEREAS, the City’s portion of the funds has already been appropriated and is available for expenditure in the Natural Areas fund; and

WHEREAS, under the IGA the County will also grant the City a right of first refusal if the County ever wishes to sell all or a portion of the Red Mountain Inholding, and the County will a right of first refusal if the City wishes to sell the Conservation Easement; and

WHEREAS, if either party was to sell or transfer its interest to a third party, the City and County would split any proceeds from that conveyance in the same proportion as their contributions to this project; and

WHEREAS, at its regular meeting on July 11, 2018, the Land Conservation and Stewardship Board voted to recommend that the City Council approve the IGA; and

WHEREAS, the proposed collaboration with the County, as documented in the IGA, meets the criteria of the Natural Areas Department's Land Acquisition Partnership Guidelines; and

WHEREAS, Article II, Section 16 of the City Charter empowers the City Council, by ordinance or resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, the City Council has determined that entering into the IGA with the County and acquiring the Conservation Easement on the Red Mountain Inholding are in the best interests of the City.

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 contained in the recitals set forth above.

Section 2. That the City Council hereby authorizes the Mayor to execute the IGA, pursuant to which the City will pay the County a portion of its costs for acquiring the Ranch and in exchange the County will convey the Conservation Easement and a right of first refusal over the Red Mountain Inholding to the City while retaining a right of first refusal in the Conservation Easement, in substantially the form attached hereto as Exhibit "A," together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City or further the purposes of this Resolution, as set forth above.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 21st day of January, A.D. 2020.



Mayor

ATTEST:



City Clerk



INTERGOVERNMENTAL AGREEMENT
CONCERNING THE RED MOUNTAIN INHOLDING CONSERVATION PROJECT

This Intergovernmental Agreement (Agreement) is made this ___ day of _____, 2020, by and between the CITY OF FORT COLLINS, COLORADO (the "City") and LARIMER COUNTY, COLORADO (the "County").

WHEREAS, part 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 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 Master Plan and Fort Collins Natural Areas Master Plans that certain lands in the Laramie Foothills – Mountains to Plains Conservation Area ("Conservation Area") 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 to conserve the Conservation Area, provide limited recreation, and protect and promote the quality of life, wildlife, the natural environment and the character of the region; and

WHEREAS, the Larimer County Natural Resources Department and the City of Fort Collins Natural Areas Department share common goals in conserving land in the Conservation Area, and by this IGA intend to form a partnership to carry out a land conservation project known as the "Red Mountain Inholding Conservation Project" to conserve in fee approximately 800 acres of land and in conservation easement approximately 2,280 acres of land; and

WHEREAS, the County has acquired through purchase of fee interest, the real property referred to as the "Table Mountain Ranch Property", described in **Exhibit A**, attached hereto and incorporated herein by reference; and

WHEREAS, the County will convey a conservation easement (the "Conservation Easement") to the City on the Table Mountain Ranch Property and on a 1,480-acre parcel referred to as "Previous Joint Purchase Property" which was acquired by a joint acquisition in 2007 and is described in **Exhibit B**, attached hereto and incorporated herein by reference, both of which shall be referred to together as the "Red Mountain Inholding," and

WHEREAS, the parties desire to cooperate and contract with one another concerning the sharing of costs and responsibilities for the conservation of the Red Mountain Inholding.

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

A. Subject Properties/Easements

1. The County has acquired the Table Mountain Ranch Property and will convey the Conservation Easement to the City on the Red Mountain Inholding, subject to prior approval by the Larimer County Board of County Commissioners in its discretion.

2. The City will prepare the Conservation Easement instrument covering the entire Red Mountain Inholding in collaboration with the County and will pay all transaction costs associated with the Conservation Easement. The City shall submit the Conservation Easement, upon completion of the transaction, to the Larimer 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 County upon completion of recording.

3. The cost for conserving the Red Mountain Inholding, including the purchase price for the Table Mountain Ranch Property, conveyance of the Conservation Easement, closing costs, title insurance, Phase I Environmental Assessment Reports, and Baseline Reports is estimated to be approximately \$2,270,000 as shown in **Exhibit C**, attached hereto and incorporated herein by reference.

4. The County and City will share equally all costs that are incurred, with each party responsible for paying the estimated costs designated to each of them as shown on Exhibit C. If either the City or County determines it is unable to pay its share of any unanticipated costs, they agree to negotiate in good faith to reach a resolution such that the acquisition may be completed. Such resolution may include modifying the amount each party will pay for the unanticipated costs.

5. Following the closing of the fee and conservation easement acquisitions, the County will prepare a summary report similar to Exhibit C showing the exact costs paid by each party. It is not necessarily the parties' intent that the costs paid by each party will be equivalent to the value of the property interest held by such party.

B. Management of the Red Mountain Inholding Property

1. The County will manage the 800-acre Table Mountain Ranch Property as a part of its Red Mountain Open Space and in accordance with the Red Mountain Open Space Management Plan (which will be updated to reflect this acquisition) and subsequent updates.

2. 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 Red Mountain Inholding, the County shall be entitled to use reasonable discretion in responding to such circumstances. If possible, the County shall consult with the City in advance of any action being taken. In the event advance consultation is not reasonably

possible, the 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 Red Mountain Inholding or Conservation Easement Interests

1. If the County desires to sell all or any portion of its fee interest in the Red Mountain Inholding, or if the City desires to sell its conservation easement interest, the "Selling Party" shall provide written notice to the Non-selling Party of its intention to sell its fee or conservation easement interest ("Notice of Intent to Sell"). The Non-selling Party shall have a right of first refusal ("Option") to purchase such interest ("Interest") for its fair market value. The Non-selling Party shall have 30 days from the date of the Notice of Intent to Sell to notify the Selling Party if it is interested in purchasing the Interest. The parties shall then jointly select an appraiser to determine the fair market value of the Interest. The cost of such appraisal shall be split equally between the parties. The Non-Selling party shall notify the Selling Party within 30 days following the completion of the appraisal whether it intends to purchase the Interest. 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 if the Non-selling party does not, within 30 days of the completion of the appraisal, notify the Selling Party that it intends to purchase the Interest. If the Non-selling Party timely notifies the Selling party of its intent to purchase, the Option shall nonetheless expire two years after the date of the Notice of Intent to Purchase if the parties have not closed on the conveyance of the Interest by that time.

2. If the Non-selling Party declines to purchase the Interest, either before or after having the Interest appraised, the Selling Party may then convey the Interest to a third-party as it chooses. Any sale of the County's fee interest shall be subject to the terms of the Conservation Easement and any other existing encumbrances, restrictions or conditions applicable to the conveyed property. If the County desires to sell all or any portion of its fee interest in the Red Mountain Inholding, including easements or rights of way, and the City notifies the County of an adverse impact of the proposed sale on the remaining interests in the Red Mountain Inholding or the Conservation Easement, the parties agree to negotiate in good faith to resolve the issue prior to the sale.

3. If either party sells all or any portions of its respective ownership interest in the Red Mountain Inholding, it shall divide the net proceeds from such sale between the County and the City in the same percentage as their respective contributions to the initial purchase payments for acquiring the property interests sold as defined in Exhibit C. If all or any portion of the subject properties is taken by eminent domain, the net proceeds from such disposition shall be divided between the County and the City in the same percentage as their respective contributions to the initial purchase payments for acquiring the property interests taken as defined in Exhibit C. Proceeds from such conveyance shall be subject to the provisions of each party's respective applicable policies, ordinances, resolutions and plans.

4. The parties understand and acknowledge that if the City assigns the Conservation Easement to a third party qualified organization as described in the Deed of Conservation Easement, the City may not receive any payment for such transfer, and neither the City nor the County would be entitled to recover any portion of its initial contribution to the value of the Conservation Easement.

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 parties payable after the current fiscal year are contingent upon the governing bodies of the parties, in their discretion, appropriating funds sufficient and intended for such purposes.

4. Each party is responsible for its own negligence and that of its officers, employees and volunteers. 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, or sent by first class mail, postage prepaid, or by overnight commercial courier, addressed as follows:

John Stokes	Daylan Figgs
Natural Areas Director	Natural Resources Director
City of Fort Collins – Natural Areas Department	Larimer County Natural Resources Department
PO Box 580, Fort Collins, CO 80522	1800 S County Rd 31, Loveland, CO 80537
jstokes@fcgov.com	dfiggs@larimer.org

Any such notice shall be effective (i) in the case of personal delivery or by overnight courier, 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.

6. If either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default thereof. If a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default.

7. Nothing in this Agreement shall imply any partnership, joint venture, or other association between the City and the County. Each party shall have sole responsibility for the content and the conduct of its activities. Neither party shall use the other's name or logo to suggest co-sponsorship or endorsement of any activity without the other's prior written approval.

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

THE CITY OF FORT COLLINS, COLORADO,
A Municipal Corporation

By: _____
Wade O. Troxell, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Assistant City Attorney

(print name)

(print name)

LARIMER COUNTY, COLORADO

By: _____
Chair, Board of County Commissioners

ATTEST:

APPROVED AS TO FORM:

Clerk

County Attorney

EXHIBIT A**Legal Description of the Table Mountain Ranch Property**

The South ½ of the South ½ of Section 7 and the North ½ of Section 18, all in Township 11 North, Range 69 West of the 6th P.M.; and the East ½ of Section 12, Township 11 North, Range 70 West of the 6th P.M., except reservations in Deed recorded in Book 1223 at Page 29 of the records of the County Clerk and Recorder of Larimer County; and commencing at the Southeast corner of the West ½ of said Section 12; thence West along section line 311.00 feet; Thence North parallel to the North and South quarter section line 140.00 feet; Thence East parallel to the South section line 311.00 feet to the quarter section line; Thence South along said section line 140.00 feet to the Point of Beginning, County of Larimer, State of Colorado.

EXHIBIT B

Legal Description of the Previous Joint Purchase Property

The North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ and the Southeast $\frac{1}{4}$ of the Northwest $\frac{1}{4}$ of Section 4, Township 11 North, Range 69 West of the 6th P.M. County of Larimer, State of Colorado; and

All of Section 5 and Section 6, Township 11 North, Range 69 West, of the 6th P.M., County of Larimer, State of Colorado, except the Southeast $\frac{1}{4}$ of the Southwest $\frac{1}{4}$ and the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 6; and

The Northeast $\frac{1}{4}$ of Section 8, Township 11 North, Range 69 West of the 6th P.M. County of Larimer, State of Colorado;