

Intergovernmental Agreement between Boulder County and the Town of Erie Regarding Trail Construction and the Ongoing Management of the Prairie Run Connector Trails

This Intergovernmental Agreement (the "Agreement") is made by and between the County of Boulder (the "County"), a body corporate and politic of the State of Colorado, and the Town of Erie (the "Town"), a Colorado home rule municipality (each a "Party" and collectively the "Parties")

Whereas, Colorado Constitution Article XIV, Section 18(2)(a), C.R.S. §§ 29-1-201, *et seq.*, and C.R.S. § 30-11-410, provide that political subdivisions of the State may contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units;

Whereas, the County owns and/or manages more than 100,000 acres of open space lands and 120 miles of trails within Boulder County;

Whereas, the Town owns and/or manages more than 1,500 acres of land as open space land and 38 miles of trails within Boulder County;

Whereas, part of the Parties' respective missions is to provide the public with passive recreational opportunities that reflect sound resource management and community values; and

Whereas, the Parties are entering into this Agreement to establish the County's and the Town's responsibilities with respect to construction and management of the Prairie Run Connector Trails that pass through property owned by the Town depicted on Exhibit A, attached hereto and incorporated herein by this reference (the "Town Property").

In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Term.** This Agreement will begin on February 24, 2025 and continue until completion of the trail and restoration of the Town Property, as defined below.

2. **License.** Subject to the conditions set forth herein, the Town hereby grants to the County a non-revocable, non-exclusive license during the Term to enter into and use that particular portion of the Town Property identified as the "Work Area" on **Exhibit B**, attached hereto and incorporated herein by this reference, solely for purposes of constructing the Prairie Run Connector Trails; provided that the Town may continue to use the Town Property for all purposes, including access across and through the Town Property and Work Area. The Parties will cooperate in good faith to minimize any interference with the other Party's operations.

3. Permitting. The County shall obtain all permits required to construct the Prairie Run Connector Trails, including any local building, excavation, stormwater quality, and right-of-way permits, and any applicable state or federal permits.

4. Trail Construction. The County shall complete construction of the Prairie Run Connector Trails including the agreed upon pedestrian crossing treatments at 119th Street and Kenosha Road in the general locations outlined in Exhibit A, in compliance with current Town Standards and Specifications. The County must receive written approval from the Town for the exact location of the Prairie Run Connector Trails prior to the commencement of construction.

5. Pedestrian Crossing. The County shall evaluate the proposed trail crossings at 119th Street and Kenosha Road and work with the Town to select the proper pedestrian crossing treatment across each road. The Parties shall agree on the what the pedestrian crossing treatment will be at each location.

6. Staging. All staging of construction materials and equipment will occur on County property. If any staging needs to occur on the Town Property, the County will receive prior written approval from the Town.

7. Restoration of Property. Following completion of the trail, the County shall restore all areas on the Town Property disturbed during the course of trail construction to pre-trail construction condition.

8. Trail Maintenance. Following completion of construction of the Prairie Run Connector Trails, the Town will be responsible for conducting maintenance of the Prairie Run Connector Trails on Town Property (*e.g.*, cleaning of culverts, removal of sediment and debris in ditches and on trail surfaces, smoothing out small irregularities in the trail surface, minor erosion of the trail and adjacent areas, pedestrian crossing treatments, and other similar preventative maintenance activities), as well as weed control on both the Prairie Run Connector Trails and the surrounding trail corridor. The County shall be responsible for maintenance of the Prairie Run Connector Trails on property owned by the County.

9. Management. The Prairie Run Connector Trails on Town Property will be managed by the Town. All other portions of the Prairie Run Connector Trails shall be managed by the County.

10. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party by the other Party, must in writing and must be deemed duly served, given, or delivered when personally delivered to the representative to whom it is addressed or in lieu of such personal services, upon receipt in the United States mail, first-class postage prepaid, addressed to the following:

Town of Erie: Director
Parks & Recreation
645 Holbrook Street
Erie, CO 80516

Boulder County: Director
Boulder County Parks and Open Space
5201 St. Vrain Road
Longmont, CO 80503

With a copy to: Office of the Boulder County Attorney
P.O. Box 471
Boulder, CO 80306

Either Party may change its address for the purpose of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

11. Emergencies. The County will, or will cause its third-party contractors to, immediately call 911 if any conditions on the Town Property during the trail construction constitute a generally accepted emergency requiring immediate or quick responsive action by the Town to benefit public safety and welfare.

12. Entire Agreement/Binding Effect/Amendments. This Agreement represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Agreement terminates any prior agreements, whether written or oral in whole or in part, between the Agreement relating to the work. This Agreement may be amended only by a written agreement signed by both Parties.

13. Governmental Immunity. Each Party agrees to be responsible for its own actions or omissions and those of its officers, agents, and employees in the performance or failure to perform work under this Agreement. By entering into this Agreement, neither Party waives or intends to waive the limitations on liability which are provided to it under the Colorado Governmental Immunity Act, C.R.S., §§ 24-10-101, *et seq.*, as amended.

14. Legal Compliance. The County shall comply with all federal, state, and local laws and regulations, and obtain all permits, permissions, and approvals that are necessary for the uses permitted herein.

15. Governing Law/Venue. The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Agreement. Any claim relating to this Agreement or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

16. Severability. If any provision of this Agreement becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Agreement will continue to be operative and binding on the Parties.

17. Third-Party Beneficiary. Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the Parties. Any other person receiving services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement.

18. Colorado Open Records Act. All Parties may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.*

19. Assignment. Neither Party may assign this Agreement, or parts hereof, or its duties hereunder without the express written consent of the other Party.

20. Execution by Counterparts and Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Agreement in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

21. No Waiver. No waiver of any of the provisions of this Agreement will be deemed to constitute a waiver of any other provisions of this Agreement, nor will such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor will the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

21. Breach. Either Party's failure to perform any of its material obligations under this Agreement, in whole or in part or in a timely or satisfactory manner, will be a breach. In the event of a breach, the non-breaching Party may provide written notice of the breach to the other Party. If the breaching Party does not cure the breach, at its sole expense, as reasonably determined by the non-breaching Party in its sole discretion, within 30 days after delivery of notice, the non-breaching Party may exercise any of its remedies provided under this Agreement or at law, including immediate termination of this Agreement.

23. Insurance.

A. The County agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands,

and other obligations assumed by the County pursuant to this Agreement. At a minimum, the County must procure and maintain, and must cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy must be applicable to all premises and operations, and must include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy must contain a severability of interests provision, and must include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement will contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance will be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies must not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods must be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors must be excess and not contributory insurance to that provided by the County. The County must be solely responsible for any deductible losses under any policy.

C. The County shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate must identify this Agreement.

24. The Town acknowledges that the County intends to use third-party contractors for construction and related activities, and such third-party contractors may exercise any of the County's rights under this Agreement. The County shall insure that all such third-party contractors comply with all provisions of this Agreement, including without limitation the insurance requirements of Section 23. The County shall remain fully responsible for its obligations under this Agreement, whether performed by a third-party contractor or County employees.

In Witness Whereof, the Parties have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

[Signature Page to Follow]

**Town of Erie,
a Colorado home rule municipality**

Andrew Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

County of Boulder

Board of County Commissioners of Boulder
County

Marta Loachamin

Marta Loachamin, Chair

Reference Number:IGA-2024-POS-0016

Exhibit A

Depiction of the Property and the General Location of the Prairie Run Connector Trails

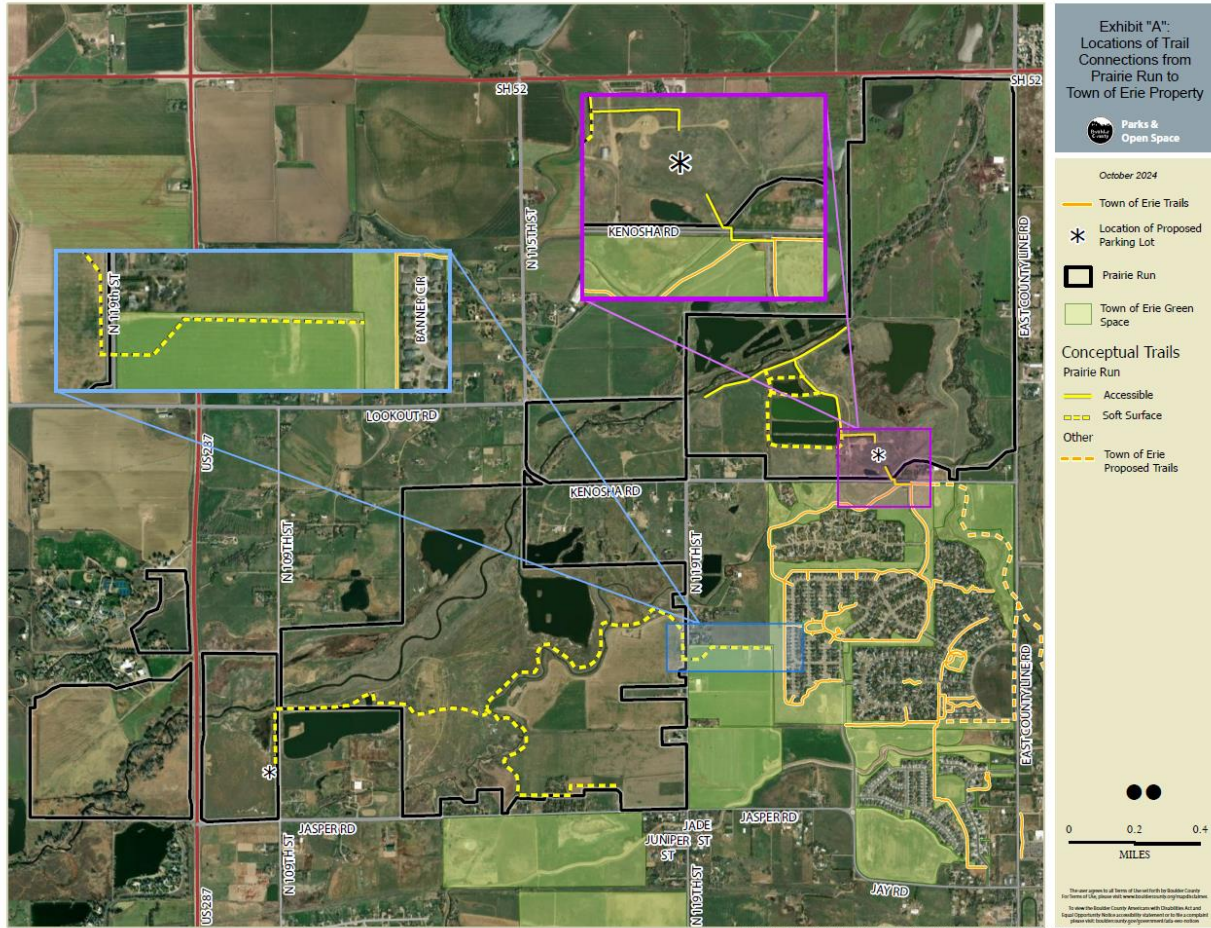


Exhibit B

Depiction of the Work Area

