

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE TOWN OF CASTLE ROCK, THE TOWN OF PARKER AND  
THE BOARD OF COUNTY COMMISSIONERS OF THE  
COUNTY OF DOUGLAS REGARDING THE IMPLEMENTATION OF THE  
DOUGLAS COUNTY HABITAT CONSERVATION PLAN FOR THE CONSERVATION  
OF THE PREBLE’S MEADOW JUMPING MOUSE**

**THIS INTERGOVERNMENTAL AGREEMENT** (the “Agreement”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the **Town of Castle Rock**, 100 North Wilcox Street, Castle Rock, Colorado 80104, **Town of Parker** (collectively “the Towns”), 20120 E. Mainstreet, Parker, Colorado 80138 and the **Board of County Commissioners of Douglas County, Colorado**, 100 Third Street, Castle Rock, Colorado 80104 (the “County”) collectively referred to herein as the “Participants” and individually as “Participant”.

**RECITALS**

**WHEREAS**, the United States Fish and Wildlife Service (the “Service”) designated the Preble’s meadow jumping mouse (“Preble’s”) as a threatened species protected under the Endangered Species Act (“ESA”) in 1998 (63 Fed. Reg. 26517, May 13, 1998);

**WHEREAS**, the ESA requires that non-federal activities that may incidentally take a listed species or its habitat receive an incidental take permit from (“ITP”) the Service;

**WHEREAS**, the Towns and the County developed the Douglas County Habitat Conservation Plan (“DCHCP”) to identify potential Preble’s habitat (referred to in the DCHCP as the riparian conservation zone (“RCZ”)) throughout Douglas County, to identify activities to be conducted by the County and the Towns within a 10-year period that may impact the RCZ (referred to in the DCHCP as covered activities), and to identify measures to adequately mitigate and monitor impacts to the RCZ;

**WHEREAS**, the Service issued 10-year Incidental Take Permits (ITP) in 2006 to the County and each of the Towns authorizing the take of Preble’s and its potential habitat from certain public improvements outlined in the HCP;

**WHEREAS**, the Service issued renewed incidental take permits (“ITPs”) in 2016 to the County and each of the Towns authorizing the take of Preble’s and its potential habitat in accordance with the provisions of the DCHCP and the ITPs;

**WHEREAS**, in addition to the DCHCP and the ITPs, the County and Towns individually entered into an Implementing Agreement (“IA”) with the Service to identify the process of implementing the DCHCP;

**WHEREAS**, the County and the Towns made the following commitments in the DCHCP, ITPs and IAs in order to conduct defined activities in the RCZ:

- a. Assure that covered activities do not exceed the designated total impact threshold absent amendment of the DCHCP and ITPs;
- b. Minimize and mitigate the impacts of covered activities to the maximum extent practicable;
- c. Implement management plans for all Participant-owned mitigation lands;
- d. Implement the monitoring programs, including monitoring of the restoration and re-vegetation of temporary impacts to the RCZ associated with covered activities, and implement adaptive management responses as needed;
- e. Meet funding obligations set forth in Chapter 7 of the DCHCP; and
- f. Provide an annual report to the Service that demonstrates compliance with the above commitments;

**WHEREAS**, the County and Towns desire to work cooperatively to coordinate efforts to comply with the DCHCP, ITP and IA commitments;

**WHEREAS**, the Participants were parties to an Intergovernmental Agreement Regarding the Implementation of the Douglas County Habitat Conservation Plan for the Conservation of the Preble's Meadow Jumping Mouse dated January 16, 2007, as approved by the Parker Town Council by Ordinance No. 9.142, Series of 2007, and Castle Rock Town Council by Resolution No. 2007-46, ("Prior IGA"); and

**WHEREAS**, the Participants desire to renew the Prior IGA under the same terms and conditions as set forth herein; and

**WHEREAS**, governmental entities are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution and § 29-1-203, C.R.S.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, the Participants agree to the following terms and conditions:

**Section 1. Total Impact Threshold.** Collectively, the Participants shall not exceed the designated total impact threshold of 430 acres. If such threshold is exceeded, the Participants must amend their respective ITPs. Individually, the Participants shall not exceed the designated impact thresholds identified in Chapter 4 of the DCHCP and **Exhibit A**, attached hereto and incorporated herein. However, the Participants may, but are not obligated to, trade allocated impacts upon mutual written agreement and in accordance with the DCHCP at a cost to be determined at the time of trade.

The total impact threshold associated with emergency activities identified in the DCHCP (28 acres of impact to the RCZ) shall be used by the Participants based on need. However, the maximum total acreage for emergency activities allotted to each Participant shall not exceed the

acres identified in **Exhibit A**. Upon mutual written agreement, a Participant may, but is not obligated to, trade a portion of its emergency impacts to another Participant at a cost to be determined at the time of trade.

**Section 2. Mitigation.** Impacts to the RCZ authorized as part of the DCHCP are mitigated through the preservation of 1132 acres of permanently protected RCZ. As of the issuance date of the ITPs, impacts to the RCZ resulting from activities conducted by the County and the Town of Parker are mitigated entirely by land preservation efforts conducted individually by the County and the Town of Parker respectively. The Town of Castle Rock's activities are mitigated in part by its own land preservation efforts and in part by the other Participants' land preservation. The Participants may, but are not obligated to, trade allocated mitigation acreage upon mutual written agreement and in accordance with the DCHCP at a cost to be determined at the time of trade. The process for substituting mitigation land is outlined in DCHCP Section 7.6.1.4 – Additions, Transfers of Ownership or Substitutions of Mitigation Lands.

In addition to the provisions provided above, the Participants were required to complete management plans for the permanently protected properties used as impact mitigation for purposes of the DCHCP within two years of implementation of the DCHCP. Each Participant is responsible for implementing its own management plans, according to the DCHCP.

**Section 3. Monitoring and Reporting.** The DCHCP requires monitoring and reporting to ensure that the Participants are complying with the commitments made in the DCHCP. Each Participant shall be responsible for its own monitoring and reporting. The County agrees to consolidate the annual reports submitted by the Participants in a form acceptable to the County and prepare one annual report to be sent to the Service by March 1 of the year following the year impacts occur. The monitoring and annual reporting requirements include, but are not limited to, the following:

- Impact accounting – Project-by-project accounting of permanent, temporary and emergency impacts compiled into a single annual report to be sent to the Service.
- Mitigation accounting – Annual accounting of mitigation used (how many acres deducted from mitigation pool and which property acreage was deducted) to offset impacts of covered activities.
- Biological goals and objectives – Project-by-project monitoring to determine if restoration and revegetation (DCHCP Appendix 4), BMPs (DCHCP Appendix 3), and minimization (DCHCP Appendix 5) requirements are being met.
- Cultural resources – Project-by-project monitoring to ensure compliance with Cultural Resource Survey requirements (see Sections 3.5 and 4.2.4 of DCHCP).

**Section 4. Participant Responsibilities.**

Each Participant shall appoint a primary coordinator who will be responsible for fielding internal and external questions; serving as a subject matter expert; providing training to internal

departments; and ensuring that proper monitoring and reporting is performed. The Towns shall provide the required annual reports, in a form provided by and acceptable to the County, to the County coordinator by no later than February 1 of each year. The County coordinator agrees to consolidate such annual reports with the annual report of the County.

**Section 5.**     Funding. Each Participant shall be responsible for paying its own costs with regard to complying with the DCHCP, the ITP, the IA and this Agreement.

**Section 6.**     Withdrawal/Termination. If a Participant withdraws from participation in the DCHCP pursuant to Section 7.7.4 of the DCHCP, such Participant may withdraw from this Agreement upon 30 days prior written notice to the other Participants. Termination or withdrawal from this Agreement by any Participant for any other reason requires 30 days prior written notice to the other Participants. Upon withdrawal or termination, all monitoring data collected by the withdrawing Participant shall immediately be given to the other Participants to ensure that the County obtains all information necessary to submit the consolidated annual report to the Service.

**Section 7.**     Amendment. This Agreement may be amended only by written agreement of all Participants.

**Section 8.**     Governmental Immunity. The County and the Towns are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as from time to time amended, or otherwise available to the Participants, their officers or their employees.

**Section 9.**     Notices. Any notices, demands or other communications regarding this Agreement, shall be given in writing, delivered personally or sent by U.S. Mail, addressed to the Participants at the addresses set forth below or at such other address as the Participants may hereafter or from time to time designate by written notice to the other Participant. All notices, demands or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with Federal Express or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail.

The Town of Castle Rock's mailing address is:

Town of Castle Rock  
Miller Activity Complex  
1375 W. Plum Creek Parkway  
Castle Rock, Colorado 80109  
Telephone: 303-814-7444  
Facsimile: 303-660-2022  
Attention: Natural Resource Specialist

With copies to:

Town of Castle Rock  
100 Wilcox Street  
Castle Rock, Colorado 80104  
Telephone: 303-660-1388  
Facsimile: 303-660-1028  
Attention: Town Manager  
Town Attorney

The Town of Parker's mailing address is:

Town of Parker  
20120 E. Mainstreet  
Parker, Colorado 80138  
Telephone: 303-840-9546  
Facsimile: 303-840-8241  
Attention: Town Attorney  
Stormwater Utility Manager

The County's mailing address is:

Douglas County Division of Open Space and Natural Resources  
100 Third Street  
Castle Rock, Colorado 80104  
Telephone: 303-660-7495  
Facsimile: 303-663-2064  
Attention: Director of Open Space and Natural Resources

With a copy to:

Douglas County Attorney's Office  
100 Third Street  
Castle Rock, Colorado 80104  
Telephone: 303-660-7414  
Facsimile: 303-688-6596  
Attention: County Attorney

**Section 10. Recitals.** All recitals are incorporated by reference herein and shall be deemed to be a part of the substantive terms of this Agreement.

**Section 11. Entire Understanding.** This Agreement represents the entire agreement between the Participants and there are no oral or collateral agreements or understandings.

**Section 12.** Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of Colorado. Venue shall be in the courts of Douglas County, State of Colorado.

**Section 13.** Compliance with Laws. The Participants agree that in performing any obligations under this Agreement, each shall comply with all laws, rules, regulations, ordinances and orders of any governmental authority having jurisdiction.

**Section 14.** No Third Party Beneficiaries. None of the terms, conditions or covenants contained in this Agreement shall be deemed to be for the benefit of any person not a party hereto.

**Section 15.** Severability. If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

**Section 16.** Assignability. No Participant shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the non-assigning Participant to this Agreement.

**Section 17.** Binding Effect. The provisions of this Agreement shall bind and shall inure to the benefit of the Participants and to their respective successors and permitted assigns.

**Section 18.** Enforceability. The Participants hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

**Section 19.** Appropriations. Notwithstanding any other term, condition or provision herein, each and every obligation of the Participants is subject to the requirement of a prior appropriation of funds therefor by the Participants.

This Agreement is entered into as of the day and year set forth above.

**TOWN OF CASTLE ROCK**

**ATTEST:**

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**Paul Donahue, Mayor**

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**Sally A. Misare**  
**Town Clerk**

**APPROVED AS TO FORM:**

**APPROVED AS TO CONTENT:**

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**Robert J. Slentz**  
**Town Attorney**

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**Dave Corliss**  
**Town Manager**

**TOWN OF PARKER**

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**Mike Waid, Mayor**

**ATTEST:**

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**Carol Baumgartner  
Town Clerk**

**APPROVED AS TO FORM:**

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**Jim Maloney  
Town Attorney**



**THE BOARD OF COUNTY COMMISSIONERS  
OF THE COUNTY OF DOUGLAS, COLORADO,**

**BY:** \_\_\_\_\_  
**David A. Weaver, Chair**

**ATTEST:**

\_\_\_\_\_  
**Codie Brenner**  
**Deputy Clerk**

**APPROVED AS TO CONTENT:**

**APPROVED AS TO LEGAL FORM:**

\_\_\_\_\_  
**Douglas J. DeBord, County Manager**

\_\_\_\_\_  
**Kristin Decker, Sr. Asst. County Attorney**

**APPROVED AS TO FISCAL CONTENT:**

\_\_\_\_\_  
**Andrew Copland, Director of Finance**

## EXHIBIT A

### Impact Thresholds to the RCZ for the County and Towns' Covered Activities

#### Permanent and Temporary Impacts to the RCZ in Acres for Covered Activities.

(See also Table 4-1, Chapter 4)

Applicant	Roads and Bridges		Trails		Stormwater, Utilities, Other <sup>†</sup>		Total	
	Temp.	Perm.	Temp.	Perm.	Temp.	Perm.	Temp.	Perm.
Douglas County	31.3	194.6	1.2	20.8	0	0	32.5	215.4
Castle Rock	18.6	29.6	3.6	10.3	34.3	6.1	56.5	46.0
Parker	16.3	12.5	1.0	3.7	15.7	2.8	33.0	19.0
Total	66.2	236.7	5.8	34.8	50.0	8.9	122.0	280.4

<sup>†</sup>Impacts associated with emergency activities are estimated to be 10 percent of the total permanent impacts, or 28 acres, and are shown in Table 5-3 of the DCHCP. The total impact threshold to the RCZ is 430 acres.

#### Allocation of Emergency Activities

Applicant	Total Allocated Acres for Emergency Purposes
Douglas County	17.0 acres
Castle Rock	5.5 acres
Parker	5.5 acres
Total	28 acres