

INTERGOVERNMENTAL AGREEMENT
ESTABLISHING THE
YAMPA VALLEY HOUSING AUTHORITY

This Intergovernmental Agreement Establishing the Yampa Valley Housing Authority (the “Agreement”) dated as of November 18, 2003, is between the City of Steamboat Springs, Colorado, a municipality chartered pursuant to the laws of the State of Colorado (“City”) and Routt County, Colorado (“County”) acting by and through its Board of County Commissioners. The City, the County and any other county or municipality that may subsequently become a party to this Agreement by amendment to it are sometimes collectively referred to herein as the “Member Jurisdictions.”

Recitals:

A. City and County have experienced rapid growth over the last decade and, consequently, the demand for attainable housing has grown to exceed the available supply.

B. There has been a concern expressed by the business community, public officials, and others that there is insufficient housing for workers in the County and particularly in the City, for example teachers, firefighters, retail, and daycare workers.

C. Counties and cities within Colorado have the opportunity to address such housing issues through the creation of housing authorities, whose purpose it is to effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan.

D. Colorado Revised Statutes Section 29-1-204.5 provides for the establishment of a separate governmental entity to be known as a multijurisdictional housing authority.

E. City and County intend, by this Agreement, to establish the Yampa Valley Housing Authority as a multijurisdictional housing authority.

Terms and Conditions

Section One: Housing Authority Established.

The Yampa Valley Housing Authority, a multijurisdictional housing authority (the “Authority”), is hereby established pursuant to Colorado Revised Statutes Section 29-1-204.5. The Authority shall be a political subdivision and a public corporation of the State, separate from the parties to this Agreement, and shall be a validly created and existing political subdivision and public corporation of the State, irrespective of whether a Member Jurisdiction withdraws (whether voluntarily, by operation of law, or otherwise) from such Authority subsequent to its creation under circumstances not resulting in the rescission or termination of the contract establishing such Authority pursuant to its terms and so long as there are at least two continuing Member Jurisdictions. It shall have the duties, privileges, immunities, rights, liabilities, and

disabilities of a public body politic and corporate. The Authority may deposit and invest its money in the manner provided in C.R.S. Section 43-4-616.

Section Two: Purpose.

It is the purpose of the Authority to effect the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, and operation of housing projects or programs pursuant to a multijurisdictional plan in order to provide dwelling accommodations at rental prices or purchase prices within the means of families of low or moderate income living within the jurisdiction of the Authority, and to provide affordable housing projects or programs for employees of employers located within the jurisdiction of the Authority.

Section Three: Boundaries.

The area included within the Authority shall be all of the area within the City's municipal limits and the area within the current boundaries of the Steamboat Springs Rural Fire Protection District as described in the attached Exhibit A east of the line between Range 85 West and Range 86 West as shown on the map attached as Exhibit B. City and County reserve the right to alter the boundaries of the Authority by amending this Agreement.

Section Four: Establishment and Organization of Governance.

- 4.1 Governance. The Authority shall be governed by a Board of Directors ("Board") in which all legislative power of the Board is vested by C.R.S. Section 29-1-204.5 (2)(b). Power and authority is vested in the Board as described below.

- 4.2 Board of Directors. The Board of Directors shall be composed of at least seven directors and not more than fifteen directors. One of the directors shall be a member of the Steamboat Springs City Council (the "City Council") as selected by the City Council. One of the directors shall be a member of the Routt County Board of County Commissioners (the "BCC") as selected by the BCC. These two directors shall be *ex officio*, voting members of the Board, and each may be replaced at any time by the body appointing them. It is the intent of City and County that if this Agreement is amended to add other municipalities as parties to this Agreement, this section shall be amended to provide for the addition of more *ex officio* voting directors as representatives of those municipalities. The remaining directors are to be appointed jointly by the governing bodies of the Member Jurisdictions based upon nominations of the Appointments Committee established pursuant to Section 5 below. All appointments must be approved by action of the governing bodies of all of the Member Jurisdictions. It is the intent of City and County that the remaining directors represent a diverse mix of interests, demographics and technical expertise including, if possible, and by way of example and not by way of limitation, one or more members of the local Habitat for Humanity board of directors, one or more representatives of employers employing 100 or more local residents, low or middle income residents of the area included within the Authority boundaries, individuals working in the areas of banking, finance, the law, real estate

development, construction, health care, human services and the resort and tourism industry. In connection with the appointment of the initial directors, the members of the Regional Affordable Living Foundation board of directors are encouraged to apply. All directors, other than the *ex officio* director appointed by the BCC must, at all times during their term, reside or work within the Authority boundaries. Directors shall serve without compensation for their services in such capacity but shall be entitled to reimbursement for actual expenses reasonably incurred in connection with their service as director.

4.3 Director Terms. The terms of the directors, other than any *ex officio* directors, shall be for three years except that, in order to stagger the director terms, the terms of the initially appointed directors shall be established in the motion, resolution or ordinance appointing those directors so that the terms of approximately one-third of those directors shall be one year terms and the terms of approximately one-third of those directors shall be two year terms. There shall be no limit to the number of terms a director may serve. All directors' terms shall extend until a replacement director has been appointed and accepted such appointment. All directors, other than the *ex officio* directors (who may be removed by the body that appointed them), may be removed at any time during their term by joint action of the City Council and the BCC with or without cause. The Board shall have the right to make recommendations to the Appointments Committee for the removal of individual members of the Board for failure to properly discharge their responsibilities as directors. The Appointments Committee shall act upon any such recommendation by forwarding its recommendation on the issue to the City Council and the BCC.

4.4 Officers of the Authority Board. The officers of the Board shall consist of a President, a Vice-President and a Secretary/Treasurer. The Authority's "Financial Officer," as required by C.R.S. Section 29-1-204.5 (2)(e)(III), shall be appointed and may be removed at will and without cause by the voting directors. Unless the Financial Officer is already a member of the Board, the Financial Officer shall be a non-voting member of the Board but, for the purposes of determining the number of sitting directors, shall not be counted. The officers of the Board, other than the Financial Officer, shall be elected and removed in accordance with the by-laws for the Authority adopted by the Board. The terms of the officers of the Board shall be for one year except as otherwise provided in the Authority's by-laws. In addition to those duties of the officers of the Authority contained in the by-laws for the Authority, the duties of the officers shall include: (a) President: shall preside at all meetings of the Board and execute all legal documents on behalf of the Authority; (b) Vice-President: shall act as President when President is unable to act; (c) Secretary/Treasurer: shall ensure the maintenance of the official records of the Authority including its by-laws, meeting notices, agenda and minutes, shall oversee any Authority bank accounts, cause the preparation of the annual budgets for the Authority, ensure the maintenance of the financial records of the Authority, and cause the preparation of the periodic financial statements for the Authority; (d) Financial Officer: shall ensure compliance with Colorado Constitution Article X, Section 20 ("TABOR") and the applicable Colorado budget, accounting and audit laws and act as the Authority's "financial officer" as required by C.R.S. Section 29-1-204.5 (2)(e)(III).

4.5 Voting Requirement and Related Provisions. The Board shall comply with all requirements of the Open Public Meetings Act, (C.R.S. Section 24-6-401 et seq.) applicable to "local public bodies" as defined in that Act. The Board shall meet at least six times each year. The Board shall act only upon a duly executed vote of the Directors. Each Director shall cast one vote. A vote of the Board shall be deemed duly executed if made by a majority of a quorum of the Directors except with respect to those actions listed below. A quorum shall consist of a majority of Directors except with respect to those actions listed below.

4.5.1 Any decision regarding the exercise of the power of eminent domain shall be made only upon the affirmative vote of two-thirds of the then-sitting Directors having the right to vote whether such Directors are present or not, which number shall be the required quorum for any meeting at which action is to be considered. In addition, no such action shall be taken unless voted for in the affirmative by the *ex officio* Director or Directors representing the contracting party, e.g. City or County, or parties in whose jurisdictions the property subject to the exercise is located. That is to say, if the property to be acquired is located within the city limits of the City, the affirmative vote of the Director representing the City *ex officio* shall be required. If the property to be acquired is located within the unincorporated area of the County, then the affirmative vote of the Director representing the County *ex officio* shall be required. The Board shall exercise the power of eminent domain only with respect to land within the boundaries of the Authority.

4.5.2 All decisions authorizing single expenditures of \$500,000 or more shall be made only upon the affirmative vote of two-thirds of the then-sitting Directors having the right to vote whether such directors are present or not, which number shall be the required quorum for any meeting at which such action is to be considered.

4.6 Duties, Powers and Authority of the Board.

4.6.1 Duties of the Board. It shall be the duty of the Board to govern the affairs of the Authority, to comply with Parts 1, 5, and 6 of C.R.S. § 29-1-204.5, and to exercise with due diligence and prudence the purpose and powers set forth herein, including, but not limited to:

a. develop and adopt by-laws and, if deemed appropriate, operating policies and procedures for the Authority;

b. develop, periodically review and update and implement a multijurisdictional plan that outlines the planning, financing, acquisition, construction, reconstruction or repair, maintenance, management and operation of housing projects and programs to be undertaken by the Authority;

- c. develop and fund an annual operating budget that includes provisions for staff and professional assistance as deemed appropriate. The fiscal year of the Authority shall be the calendar year;
- d. hire such employees as are necessary to implement the programs and projects of the Authority as identified and directed by the Board; and
- e. by August 1 of each year commencing in 2004, prepare, provide and present in one or more public hearings to the governing bodies of the Member Jurisdictions, a written report of the Authority's activities during the prior calendar year. Such report shall include annual financial statements for the Authority, descriptions of projects and programs undertaken or contemplated, and such other information as the Board may deem of interest to the residents living within the boundaries of the Authority.

4.6.2 Powers. The general powers of the Authority include those listed below. The use of any power and responsibility listed below shall be at the discretion of the Board. All powers granted hereby are subject to the restrictions, conditions and limitations on those powers set forth in C.R.S. Section 29-1-204.5.

- a. To plan, finance, acquire, construct, manage, and operate housing for families of low or moderate income;
- b. To plan, finance, acquire, construct, manage, and operate housing programs for employees of employers located within the jurisdiction of the Authority;
- c. To make and enter into contracts with any person, including, without limitation, contracts with state or federal agencies, private enterprises, and nonprofit organizations;
- d. To employ agents and employees;
- e. To cooperate with state and federal governments concerning the financing of housing projects and programs;
- f. To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property, commodity, or service;
- g. Subject to the limitations set forth in Section 4.5 and its subsections, to condemn property for public use, if such property is not owned by any governmental entity or any public utility and devoted to public use pursuant to state authority;
- h. Subject to the provisions of C.R.S. Section 29-1-204.5 (7.5), to levy, in all of the area within the boundaries of the Authority, a sales or use tax, or both, at a

rate not to exceed one percent, upon every transaction or incident with respect to which a sales or use tax is levied by the state;

i. Subject to the provisions of C.R.S. Section 29-1-204.5 (7.5), to levy, in all of the area within the boundaries of the Authority, an *ad valorem* property tax at a rate not to exceed 5 mills on each dollar of valuation for assessment of the taxable property within such area;

j. Subject to the provisions of C.R.S. Section 29-1-204.5, subsection 3 (f.5) and subsection 7.5, to establish, and from time to time increase or decrease, a development impact fee and collect such fee from persons who own property located within the boundaries of the Authority who apply for approval for new residential, commercial, or industrial construction in accordance with applicable ordinances, resolutions, or regulations of any county or municipality;

No action by the Authority to establish or increase any tax or development impact fee shall take effect unless first submitted to a vote of the registered electors of the area in which the tax or development impact fee is proposed to be collected.

k. To incur debts, liabilities, or obligations;

l. To sue and be sued in its own name;

m. To have and use a corporate seal;

n. To fix, maintain, and revise fees, rents, security deposits, and charges for functions, services, or facilities provided by the Authority;

o. To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purposes;

p. To exercise any other powers that are essential to provision of functions, services, or facilities by the Authority and that are specified in the contract;

q. To perform any acts and things authorized by C.R.S. Section 29-1-204.5 under, through, or by means of an agent or by contracts with any person, firm, or corporation;

r. To issue revenue or general obligation bonds according to state law;

s. To establish enterprises for the ownership, planning, financing, acquisition, construction, reconstruction or repair, maintenance, management, or operation, or any combination of the foregoing, of housing projects or programs authorized by this section on the same terms as and subject to the same conditions provided in C.R.S. Section 43-4-605; and

t. To accept from the Regional Affordable Living Foundation (“RALF”) such assets as the Board of Directors of RALF offers for transfer and, to the extent permitted by TABOR and other applicable law, assume all of the obligations and liabilities of RALF under existing contracts related to such assets to which RALF is a party.

4.6.3 Limitations and Related Provisions.

a. When involved in major new construction, the Authority shall not act as the construction contractor if a private contractor is available and willing to perform those duties for a reasonable fee. This shall not prohibit the Authority’s use of its staff or other professionals for repairs related to Authority-owned projects or acting as the construction contractor for reconstruction or renovation related to projects owned by the Authority.

The Authority is encouraged to establish separate enterprises within its organizational structure for some of its programs and projects in order to allow for efficient operation of those programs and projects. The Board shall have the power to appoint a subcommittee of its members and authorize them to approve basic contracts and agreements and make operational decisions related to those programs.

b. RALF has been awarded a United States Department of Agriculture (“USDA”) two-year grant for a self-help housing program. Concerns have been raised that when there is a transition from RALF to the Authority, the self-help housing program will not proceed with the dedicated focus outlined in the USDA grant application submitted by RALF. Therefore, the City and County make the following commitments:

i. The Authority shall establish an enterprise within its organizational structure to house the self-help housing program, and appoint a subcommittee of five Directors that is authorized to approve contracts and agreements and make operational decisions related to the self-help housing program.

ii. Any RALF employees who have been hired to implement the self-help housing program will become employees of the Authority to work exclusively on that program for the two-year grant period. This provision shall not be construed as a guarantee of employment for such employees who shall be at-will employees of the Authority, subject to discharge with or without cause.

iii. If the USDA grant received by RALF does not fund the operational budget for this program as submitted with the grant application, cash assets transferred from RALF to the Authority equal to the operational budget shortfall for the remainder of the two-year period

will be set aside by the Authority to ensure that adequate monies are available to operate the program for the two-year grant period.

iv. After the self-help program has been in existence for the first year of the grant term, the Board shall evaluate the success and cost/benefit of the program to determine whether or not to apply for another USDA two-year grant.

Section Five: Appointments Committee.

The Appointments Committee is hereby established to make nominations to the City Council and the BCC of individuals to be included on the Board. The Appointments Committee shall consist of three members of City Council as appointed by the City Council at the beginning of each calendar year and the three members of the BCC. The Appointments Committee shall be responsible for seeking letters of interest from those desiring to be appointed as a director by advertising in local newspapers, public notices and other means as the Committee deems appropriate and for conducting interviews of such candidates submitting letters of interest as the Committee deems appropriate. In making its recommendations to the City Council and the BCC, the Appointments Committee is to consider the intent of the City Council and the BCC that all directors must have a desire to work actively to identify community housing issues and develop and implement solutions for those issues. If additional municipalities or counties become signatories to this Agreement through amendment of it, it is the intent of the City and the County that the membership of the Appointments Committee will be restructured to provide appropriate representation of such municipalities or counties on the Committee.

Section Six: Revenues.

The expected sources of revenue of the Authority include:

- a. City and County may provide for the payment of proprietary revenues to the Authority as permitted in C.R.S. Section 29-1-204.5 (6);
- b. Fees for services provided and rental income;
- c. Contributions from other entities that benefit from the work of the Authority;
- d. Project and program revenues;
- e. Cash and in-kind donations;
- f. Grants;
- g. Tax exempt bonds and government loans; and
- h. Property, sales and use taxes and impact fees.

Section Seven: Obligations of Authority.

The bonds, notes, and other obligations of such Authority shall not be the debts, liabilities, or obligations of the Member Jurisdictions.

Section Eight: Insurance.

The Authority shall procure and maintain with insurers with an A- or better rating as determined by Best's Key Rating Guide, at its own expense, the following policies of insurance:

a. In the event the Authority hires employees, the Authority shall procure Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this contract, and Employers' Liability insurance with the following limits:

| | |
|------------------------|----------------|
| Workers' Compensation: | Statutory |
| Employers' Liability: | \$1,000,000.00 |

b. Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence and one million dollars (\$1,000,000.00) aggregate. The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy will contain a severability of interests provision.

c. Hired and Non-owned Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) each occurrence with respect to hired and non-owned vehicles assigned to or used in performance of the Authority services. The policy will contain a severability of interests provision. In the event the Authority acquires automobiles, the Authority will procure Commercial Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000.00) each occurrence with respect to each owned, hired, and non-owned vehicle assigned to or used in performance of the Authority services. The policy will contain a severability of interests provision.

d. Directors and Officers Liability Insurance in an amount not less than one million dollars (\$1,000,000.00).

e. Officers and employees fraud, dishonesty and forgery coverage in an amount not less than one million dollars (\$1,000,000.00).

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Section Nine: Notice.

Any notice required under this Agreement may be personally delivered or mailed in the United States mails, first class postage prepaid to the party to be served at the following addresses:

City: City Manager
P.O. Box 775088
Steamboat Springs, Colorado 80477

County: Routt County Board of Commissioners
P.O. Box 773598
Steamboat Springs, Colorado 80477

With courtesy copies to:

Yampa Valley Housing Authority
Attn: Board of Directors President
At address to be determined

and to:

Executive Director
Yampa Valley Housing Authority
At address to be determined

Notices personally served shall be deemed served on the date of delivery. Notices mailed shall be deemed served the next business day following the date of mailing if mailed in Steamboat Springs, Colorado.

Section Ten: Entire Agreement; Amendments.

This Agreement constitutes the entire agreement of the parties hereto concerning the establishment and operation of the Authority. This Agreement may not be amended, otherwise modified, revoked or rescinded except by a written document executed by the Member Jurisdictions.

Section Eleven: Term and Termination of Agreement.

Subject to due execution of this Agreement by the parties, this Agreement shall be effective as of January 1, 2004, or the later date on which this Agreement has been fully executed by all of the parties to it; provided, however, that if this Agreement has been fully executed by all of the parties to it before January 1, 2004, this Agreement shall become effective at such time to the extent that advertisement for and selection of the initial directors may then be undertaken. The initial term of this Agreement shall be from January 1, 2004, or such later date upon which this Agreement becomes effective, through December 31, 2004. Thereafter, its term shall automatically be extended annually for the following year unless any party to this Agreement gives written notice of

termination to the other parties no later than January 1 of the year prior to the year in which the termination is to be effective.

This Agreement may not be terminated if the Authority has bonds, notes or other obligations outstanding until and unless provision has been made to fully satisfy and meet such obligations.

Upon termination, the obligations of the parties hereunder shall terminate. Upon termination, all cash assets of the Authority shall be conveyed and delivered to the Fund Holder of the Routt County-Steamboat Springs Affordable Housing Fund created pursuant an intergovernmental agreement between City and County. All other assets shall be distributed to such one or more legal entities as determined by the Member Jurisdictions.

Section Twelve: Governing Law; Venue; and Attorney Fees.

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Colorado without reference to choice of laws rules. In the event that legal action is brought by any party to this Agreement to enforce or interpret it, the prevailing party shall be entitled to recover from the other parties its attorney fees and other costs incurred in connection with such legal action. Venue for any such action shall be in the District Court for the 14th Judicial District of Colorado.

Section Thirteen: Savings Clause.

In the event that a Court of competent jurisdiction determines that any provision of this Agreement is contrary to law and therefore, unenforceable or invalid, the balance of this Agreement shall remain in full force and effect unless, as a result of such decision, the essential purposes of the parties in making this Agreement cannot be achieved.

Attest:

ROUTT COUNTY, COLORADO

Kay Weinland
Routt County Clerk

By: _____
Douglas B. Monger, Chairman
Routt County Board of County Commissioners

Attest:

CITY STEAMBOAT SPRINGS, COLORADO

Julie Jordan
City Clerk

By: _____
Paul Strong, President
Steamboat Springs City Council

LEGAL DESCRIPTION:

All of that land described below lying east of the line between Range 85 West and Range 86 West of the 6th Prime Meridian:

Commencing at a point of intersection between the Eastern Routt County Line and the Northern Section Line of Section 10-T7N-R83W,

Thence Westerly along said Section Line to the Southeast Corner of Section 1-T7N-R86W,

Thence Northerly to the Northeast Corner of Section 1-T7N-R86W,

Thence Westerly to the Northwest Corner of Section 6-T7N-R86W,

Thence Southerly to the Southwest Corner of Section 31-T7N-R86W,

Thence Easterly to the Southeast Corner of Section 32-T7N-R86W,

Thence Southerly to the Northeast Corner of Section 29-T6N-R86W,

Thence Westerly to the Northwest Corner of Section 30-T6N-R86W,

Thence Southerly to the Southwest Corner of Section 6-T5N-R86W,

Thence Easterly to the Southeast Corner of Section 2-T5N-R86W,

Thence Southerly to the Southwest Corner of Section 12-T5N-R86W,

Thence Easterly to the Southeast Corner of Section 8-T5N-R85W,

Thence Southerly to the Southwest Corner of Section 33-T5N-R85W,

Thence Easterly to the Northwest Corner of Section 11-T4N-R85W,

Thence Southerly to the Southwest Corner of Section 23-T4N-R85W,

Thence Easterly along the Section Line to the Eastern Boundary of Routt County,

Thence Northerly along the County Boundary to the point of origin.

EXHIBIT A