

KCRMA/KCRMD  
First FIRST Amendment to AMENDED  
**COOPERATIVE AGREEMENT**  
**RE: PRAIRIE DOG RELOCATION**

THIS FIRST AMENDED AGREEMENT (“Amended Agreement”) dated this \_\_\_\_\_ day of November, ~~2014~~2017 is made and entered into by and between the KEN-CARYL RANCH MASTER ASSOCIATION, a Colorado non-profit corporation (“Association”) and the KEN-CARYL RANCH METROPOLITAN DISTRICT, a political subdivision of the State of Colorado (“District”), collectively the “Parties.”

**RECITALS**

WHEREAS, the Association is desirous of relocating the prairie dog colony (approximately 900 animals) commonly known as the Manor House Colony, whose current location is more particularly described on Exhibit A;

WHEREAS, the Association intends to relocate as much of the Manor House Colony as the land will support to land owned by the Association located along the eastern flank of the North Hogback, west of C-470;

WHEREAS, the District owns land suitable for a prairie dog colony located along the eastern flank of the South Hogback, west of C-470; and

WHEREAS, the Parties have adopted the Ken-Caryl Ranch Master Association and Metropolitan District Open Space and Parks Prairie Dog Conservation Policy.

WHEREAS, the Association may wish to relocate prairie dogs from other locations on Ken Caryl Ranch in its ~~their~~ ongoing effort to implement the Prairie Dog Conservation Policy.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth herein, the Parties agree as follows:

**FIRST AMENDED AGREEMENT**

**I. PRAIRIE DOG RELOCATION**

The Association Open Space Manager ("Manager"), working with the Colorado Parks and Wildlife and Prairie Dog Action, will review the relocation sites expressed in general terms on the attached map (Exhibit B) to determine the adequacy and carrying capacity of each site. The Manager will report his findings to the Parties' respective

Boards of Directors in the form of a Relocation Plan for final authorization before any prairie dogs are relocated. Upon approval by the Parties' respective Boards of Directors, the Manager will ~~work with volunteers to~~ relocate the Manor House Colony, and/or other Ken Caryl Ranch prairie dogs, as specified in the Relocation Plan.

No ~~additional~~ prairie dog colonies from outside of Ken Caryl Ranch will be relocated to District property unless and until this Amended Agreement is further amended or a new agreement is created.

This Amended Agreement does not obligate the District to pay any costs associated with the relocation of any prairie dogs or otherwise expend any funds in connection with this Amended Agreement.

## II. MAINTENANCE OF THE COLONY

The Association is solely responsible for all costs associated with maintaining the ~~Manor House Colony prairie dog colony~~ after relocation to District property. In addition to the actual costs of relocating the ~~Manor House Colony prairie dog colony~~, the cost of maintaining the colony will include, but not be limited to, the costs for noxious weed control, colony boundary control, and any erosion damage caused by the colony.

This Amended Agreement does not obligate the District to pay any costs associated with maintaining the ~~Manor House Colony prairie dog colony~~ after it is relocated to District property.

## III. INDEMNIFICATION

The Association agrees to indemnify, defend and hold harmless the District and its past and present directors, officers, employees and agents from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, relating to or arising out of any negligent or intentional act or omission by the Association or its directors, officers, employees or agents, in connection with this Amended Agreement. The District shall have the right to select legal counsel to represent it in connection with any claim, damage, loss or expense coming within this paragraph, notwithstanding the Association's obligation to pay the reasonable attorneys' fees, costs and expenses incurred by such legal counsel.

## IV. TERM OF AGREEMENT

This Amended Agreement shall ~~commence~~ November 1 January 1, 2017~~5~~, and shall run for as long as the relocated ~~Manor House Colony prairie dog colony~~ exists on District property.

## V. MISCELLANEOUS

a. Any notice required or permitted by this Amended Agreement shall be in writing and shall be given by personal service, or by certified or registered mail, postage

and fees prepaid, to the party's address provided at the end of this Amended Agreement, or at another address specified by the party in accordance with this paragraph V. Notice by certified or registered mail shall be deemed given when sent.

b. This Amended Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the District and its directors, officers, and employees under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*

c. Colorado law governs this Amended Agreement. This Amended Agreement is the entire agreement between the parties and there are no oral or collateral agreements or understandings as to the subject matter of this Amended Agreement. This Amended Agreement supersedes the original Cooperative Agreement Re: Prairie Dog Relocation, which had a term commencing January 1, 2015, except that the indemnification provision set forth therein shall survive. This Amended Agreement may only be amended by a document signed by the Parties. Course of conduct, no matter how long, shall not constitute an amendment to this Amended Agreement. If any provision is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Amended Agreement shall not operate or be construed as a waiver of any subsequent breach of this Amended Agreement. This Amended Agreement shall inure to the benefit of and be binding upon the parties and their legal successors and assigns. This Amended Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Amended Agreement. In any dispute arising from or relating to this Amended Agreement the prevailing party shall be awarded its attorney's fees, costs and expenses, including any attorneys' fees, costs and expenses incurred in collecting upon any judgment, order or award. This Amended Agreement may be executed in several counterparts and by facsimile or electronic pdf, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

#### **KEN-CARYL RANCH MASTER ASSOCIATION**

By \_\_\_\_\_ Date \_\_\_\_\_

~~Valerie Walling~~ Seth Murphy, President  
Ken-Caryl Ranch Master Association  
7676 South Continental Divide Road  
Littleton, Colorado 80127

#### **KEN-CARYL RANCH METROPOLITAN DISTRICT**

By \_\_\_\_\_ Date \_\_\_\_\_

~~Bob Generoli~~ Lauri Lehan-Milano, President  
Ken-Caryl Ranch Metropolitan District

7676 South Continental Divide Road  
Littleton, Colorado 80127

EXHIBIT A

Map of Manor House Prairie Dog Colony

## EXHIBIT B

Map of relocation site along the east side of the South Hogback