

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Memorandum") is executed and effective as of the date last signed below by and between 4W, LLC, a Wyoming limited liability company ("4W"), the Jackson Hole Land Trust, a Wyoming nonprofit corporation ("Land Trust"), and Teton County, Wyoming ("Teton County"). 4W, Land Trust and Teton County are referred to herein individually as a "Party" and collectively as "Parties." 4W's property is referred to as the "Walton Ranch."

1. INTENT & OVERVIEW. The purpose of this Memorandum is to set forth in writing the Parties' support for the transfer, through a legislative process, of approximately 377 acres of land in Teton County known as Parcels 9&10 from the Bureau of Land Management ("BLM") to Teton County (the "377 acres") all on the terms and conditions set forth herein.

Concurrent with the transfer, the 377 acres will be protected by a Land Trust conservation easement that will include provisions regarding: i) agriculture use; ii) conservation of wildlife habitat; iii) recreational opportunities; iv) flood control of the Snake River; and v) storage of stone and rocks incident to such flood control. These provisions are discussed in more detail below. The 377 acres would also be subject to a Management Agreement which is attached hereto.

As part of this land transfer 4W will convey $\pm$ 3.34 acres along Highway 22 ("HWY 22") to Teton County for a bike path and will consent to the burial of powerlines on the Walton Ranch. In order to accomplish this conveyance of land and power line burial, the Land Trust unifying conservation easement protecting the Walton Ranch (Recorded in the County Clerk's office as Document # 0510422) (the "UCE") will be amended to allow for the conveyance of land for a bike path due to the expansion of HWY 22 and to allow for the burial of powerlines, both of which are currently prohibited by the UCE.

2. BACKGROUND. The BLM issued a Record of Decision/Snake River Resource Management Plan ("ROD/RMP") in 2004 which provides management direction for public land administered by the BLM in the Snake River Corridor in Teton County. The Management Objectives of the ROD/RMP are 1) to retain existing public access to the parcels and to provide for continuing public access and use of the parcels; 2) to maintain or improve ecological conditions for the benefit of livestock use, wildlife habitat, watershed values and riparian areas; 3) to increase opportunities for quality recreation use and provide improved visitor services while protecting other sensitive resources ; 4) improve the diversity of plant communities to support wildlife habitat, watershed protection, scenic resources, and livestock grazing; control existing noxious weed infestations and prevent their spread; 5) maintain or improve scenic values throughout the planning area; and 6) maintain or enhance riparian and upland habitat for wildlife and fish and promote species diversity (ROD/RMP, intro). Teton County, the Land Trust, and other parties signed a Memorandum of Understanding, effective December 16, 2008, which approved the November 2008 Snake River Corridor Management/ Ownership Transfer Plan (the "Transfer Plan"). The Transfer Plan established specific recommendations for the transfer of certain BLM Parcels. The Public Use and Habitat Management recommendation for BLM Parcels 9&10, on page 48 of the Transfer Plan, was to: "Manage the parcel in a comprehensive manner that emphasizes public use opportunities while accommodating compatible agricultural use along with habitat conservation and restoration." The Ownership recommendation was for Teton County to own BLM Parcels 9&10 in fee-simple with a conservation

easement held by the Land Trust, while a reversionary clause should be considered as part of the ownership transfer.

The Walton Ranch currently and has historically maintained agricultural rights and a grazing lease over the entirety of Parcels 9&10 which rights arose from the settlement of the “Omitted Islands” lawsuit in the United States District Court for the District of Wyoming Case # C79-113K. 4W desires to maintain these grazing rights but agrees to reduce the scope of the lease from $\pm$ 377 acres to 70 acres.

The transfer of 377 acres of Parcels 9&10 to Teton County with a conservation easement and grazing lease would permanently implement the recommendations in the Transfer Plan for Parcels 9&10.

- The transfer opens up public use of the currently fenced 377 acres (“...emphasizes public use opportunities...”)
- The transfer promotes habitat conservation in perpetuity via the conservation easement (“...with habitat conservation and restoration.”)
- The transfer protects 4W’s agricultural rights over a reduced area (“...while accommodating compatible agricultural use...”)
- The transfer secures a permanent bike path along HWY 22 and allows for burial of the above ground power lines on 4W’s property, the latter two items being of important public benefit.
- A map of proposed uses for Parcels 9&10 is attached here as **Exhibit A**.
- WY Game and Fish will study wildlife movement for compatibility and provide input. The Land Trust will provide a habitat inventory which will ensure compatibility of uses with lines on the map.

3. BLM PARCEL 9&10 CONVEYANCES. Once authorized by legislative action, BLM would convey the 377 acres of Parcels 9&10 to Teton County. Additionally, 4W would donate to Teton County approximately $\pm$ 3.34 acres of land abutting HWY 22 as legally described in **Exhibit B-1** and graphically depicted in **Exhibit B-2** (the “Bike Path”). Teton County would reimburse 4W for the reasonable costs associated with moving fences, re-connecting all drainage outlets connecting the Walton Ranch irrigated lands to the lands on the south side of HWY 22, and re-grading the Walton Ranch driveway to maintain vehicular access onto HWY 22.

4. CONSERVATION EASEMENT AMENDMENTS ON WALTON RANCH; NEW CONSERVATION EASEMENT ON 23 ACRES.

a. The Unifying Conservation Easement (“UCE”) recorded in the Teton County Clerk’s Office of Land Records as Doc # 0510422 will be amended to allow for the donation to Teton County of $\pm$ 3.34 acres of land adjacent to HWY 22 as set forth on Exhibit B-1 and B-1 because the UCE currently prohibits the division of 4W’s property.

b. The UCE will be amended to allow for the burial of the overhead power lines which currently traverse a portion of 4W’s property because the UCE does not allow for ground disturbance or underground power lines other than for ranching and residential use on 4W’s property.

The amendment of the UCE will not create any private inurement or impermissible private benefit as the benefits arising from the amendment will be public benefits. Conservation values will be increased because the Land Trust will permanently conserve the 377 acres of BLM land conveyed to Teton County resulting in a net conservation benefit increase to the community. Further, the

conveyance of the Bike Path and power line burial in a scenic viewshed will be a benefit to the community, not the Walton Ranch.

5. CONSERVATION EASEMENT. The new conservation easement on the entire 377 acres will include and allow for: 1) an agricultural lease with 4W covering approximately **70** acres adjacent to the Walton Ranch (the “Agricultural Lease Zone”); 2) a wildlife habitat refuge of approximately **43** acres to protect the considerable wildlife, including deer, moose, elk, bear, beaver, coyote and mountain lions that frequent Parcels 9&10 (the “Wildlife Habitat Zone”); and 3) a recreational zone of approximately **248** acres that includes access to the Snake River, the levee road, loop trails and other amenities (the “Recreational Zone”); and 4) Teton County’s Levee Maintenance Area of approximately **16** acres to store rock and stone via the BLM Right of way granted September 22, 2016 (the “Levee Maintenance Area”). Most importantly, this easement ensures that the 377 acres of Parcels 9&10 will remain public lands in public hands and remain true to the objectives set forth in the Transfer Plan which guides the disposal of BLM lands in the Snake River Corridor. The Recreational Zone will be located on portions of the parcel closer to the Snake River and the Levee access road, while the Wildlife Habitat Zone will occupy the more sensitive, mostly wetland areas. The Agricultural Lease Zone will cover lands immediately contiguous to the working ranchlands of the Walton Ranch. The approximate locations of these zones are set forth on the Map contained in **Exhibit A**.

6. AGRICULTURAL LEASE ZONE & AGRICULTURAL LEASE. The non-exclusive Agricultural Lease will be executed between Teton County as Lessor and 4W as Lessee whereby 4W will lease approximately 70 acres within the 377 acres conveyed to Teton County so long as the Walton Ranch is being used for agricultural purposes. This represents a ~81% reduction in leasehold area compared to the current 4W lease with BLM. The Agricultural Land is to be used for agricultural purposes, which shall include, but not be limited to the following: the grazing and feeding of horses and cattle, hay storage, open range calving, branding, tagging, castrating, and vaccinating of livestock, the erection and maintenance of agricultural fences, the repair and maintenance of water ditches and pumping infrastructure, weed control, the clearing of deadfall, hanging trees and limbs that could threaten livestock, infrastructure or humans, and other agricultural activities the right but not the obligation to place protective fencing around pipe, gate and pump infrastructure. Additional rights granted to 4W under the Agricultural Lease would include the right to use vehicular, OHV and other equipment over Parcels 9&10 for the uses contemplated by the easement and lease as well as to investigate, repair, replace or regulate the water pumps, pump infrastructure and piping, headgates and ditches. Fencing may also be required around the pumps for public safety and to prevent vandalism. Signage on the western boundary of the Agricultural Lease would also be permitted to warn the public of the dangers of the agricultural operation beyond the fence and that they enter at their own risk. While public use is available to every citizen, these portions of Parcels 9&10 are designated as the Agricultural zone, would be conserved primarily for agricultural use and would contain no recreational trails or improvements.

The Agricultural Lease would commence on the date the 377 acres is conveyed to Teton County and would renew annually in perpetuity except in the event that none of the leased land is used for agricultural purposes for three consecutive years in which case the Agricultural Lease would terminate unless such non-use is required by government laws or regulations or is caused by Force Majeure.

Teton County shall reimburse 4W for the relocation of the existing agricultural fences to the 70 acre Agricultural Lease. Thereafter, maintenance of the fencing surrounding the Agricultural Lease shall be the responsibility of 4W.

Consideration for the Agricultural Lease is (i) the transfer of property to Teton County for the bike path; (ii) burying the power lines, and (iii) \$100 per year which shall be invoiced by Teton County to 4W and payable 30 days from invoice. The property covered by the Agricultural Lease would be subject to annual inspection and monitoring by Land Trust to ensure compliance with the terms of the conservation easement and to ensure suitable grazing practices.

Given the mixed uses contemplated on the Agricultural Land, the Agricultural Lease shall also contain an indemnity provision whereby the County indemnifies and holds 4W harmless for any claims, damages, actions, liabilities, injuries, or deaths sustained by the County, its agents, guests, invitees, and the general public entering upon the land covered by the Agricultural lease unless such actions arise from the willful actions or gross negligence of 4W, its employees or agents, in their use of the Agricultural land.

Upon recordation of the conservation easement on the 377 acres, 4W would record a rescission of its rights under the Omitted Islands lawsuit settlement. The Agricultural Lease inures to the benefit of 4W, its successor and assigns.

7. WILDLIFE HABITAT ZONE. The entirety of the 43 acres would encourage wildlife and habitat conservation as the primary use with human impact being minimal. While public use is available to every citizen, these portions of Parcels 9&10 are designated as the Wildlife Habitat zone, would be conserved primarily for wildlife and would contain no recreational trails or improvements. This zone is bounded on the east by the Parcel 9&10 property boundary and on the west by a line approximately 25 feet west of the center line of the Walton Ranch Ditch. This zone also houses some existing agricultural improvements used by the Walton Ranch such as ditches, pumps, pump infrastructure, power lines for pump infrastructure, pipes, fencing to protect that infrastructure and access paths. 4W is entitled to repair and replace such infrastructure and its related appurtenances. Much of this zone is low lying and consists of mostly, marshes, ditches, beaver flooded land and/or wetlands.

8. RECREATIONAL ZONE. The majority of the 377 acres would be dedicated as a public park for enhanced opportunities for low impact, wildlife compatible, public recreation as set forth in the Management Agreement. T

9. LEVEE MAINTENANCE AREA. The existing Levee Maintenance Area will remain as permitted by the BLM and be used for flood fighting, levee maintenance, haul road repairs, and hauling material to and from the Levee Maintenance Facility under pre-existing easements.

10. HWY 22 BIKE PATH & CONVEYANCE TO TETON COUNTY. 4W would convey to Teton County ±3.34 acres of land adjacent to HWY 22 which constitutes a 20 foot wide bike path adjacent to the WYDOT right of way, except that at Pratt Road, the bike path conveyance shall expand to 40 feet in width to accommodate safe crossing at Pratt Road by pathway users behind queuing vehicles. (the "Bike Path"). This conveyance would allow construction of the Bike Path prior to the HWY 22 expansion and ensure continuity in the path linking the east and west banks of the Snake River while also providing more separation from the highway and thus alleviating snow removal challenges that disrupt the current bike path during the winter months. Teton County would reimburse 4W for the

reasonable costs associated with moving fences, reconnecting all drainage outlets connecting the Walton Ranch irrigated lands to the lands on the south side of HWY 22 and re-grading the Walton Ranch driveway to maintain vehicular access to HWY 22 as this access and historical irrigation flows must remain unchanged.

11. POWER LINE BURIAL. An allowance to bury the existing overhead power lines would enable future private fundraising to enhance the scenic view corridor of the Teton Range.

12. BOUNDARY LINE AGREEMENT. 4W and Teton County shall enter into a boundary line agreement permanently fixing the common boundary line of the riparian lands adjacent to Parcel 9/10 and the Walton Ranch property to the north. The common boundary between the riparian lands shall be a straight prolongation in a westerly direction to the thread of the Snake River. The boundary established shall be a permanent, fixed boundary between the respective riparian lands and such that irrespective of accretion, reliction, avulsion or erosion, 4W and Teton County shall have a fixed boundary and riparian line. This boundary line agreement shall be recorded in the office of the Clerk of Teton County. The purpose of this boundary line agreement is to avoid any future disputes as to boundary lines of adjacent riparian lands.

13. MANAGEMENT. The management of the 377 acres shall be governed by the terms and conditions of a Management Agreement between 4W and Teton County executed this same date.

14. VALUE OF EXCHANGE. The Parties agree that the exchange of lands set forth above, including the land for the public Bike Path, the allowance for burial of the power lines and reduction in 4W's grazing lease taken and increased lands under conservation, as a whole, are of public benefit.

15. NON-BINDING; GOOD FAITH; EXPIRATION. As stated in this Memorandum, the Parties agree to cooperate and work in good faith to memorialize the conveyances and exchanges set forth herein into a definitive agreement (the "Definitive Agreement") as soon as practicable following execution of this Memorandum. The Parties accept and acknowledge that this Memorandum is non-binding but includes an obligation to exercise good faith efforts to complete and enter into the Definitive Agreement contemplated hereby in accordance with the terms and conditions stated herein and as to be more fully set forth in the Definitive Agreement to be executed between the Parties to enable a legislative transfer as contemplated herein.

16. COUNTERPARTS. This Memorandum may be executed in counterparts and facsimile or scanned and e-mailed signatures shall be binding as if originals.

[signature page to follow]

IN WITNESS WHEREOF, this Memorandum of Understanding is dated to be effective as of the date and year first written above.

4W, LLC,

By: _____

Stefan J. Fodor

Authorized Representative

Date: _____

**Board of County Commissioners,
Teton County, Wyoming**

By: _____

Name: _____

Its: _____

Date: _____

ATTEST:

Maureen E. Murphy, Teton County Clerk

Date: _____

Jackson Hole Land Trust

By: _____

Name: _____

Its: _____

Date: _____

Ex A Map of proposed uses

Ex B -1 legal description bike path conveyance

Ex B-2 map of bike path conveyance