

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF LONGMONT AND
COUNTY OF BOULDER
CONCERNING TRANSFERRED DEVELOPMENT RIGHTS**

EFFECTIVE: FEBRUARY 5, 1996

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THIS AGREEMENT is entered into by and between the City of Longmont (City), a municipal corporation, and the County of Boulder (Boulder County), a body politic and corporate of the State of Colorado, to be effective as of the 5th day of February, 1996, (Effective Date).

RECITALS

A. Local governments are encouraged and authorized to cooperate or contract with other units of government, pursuant to C.R.S. § 29-20-105, for the purpose of planning or regulating the development of land; and

B. Section 29-1-201, et seq., C.R.S., as amended, authorizes the City and Boulder County to cooperate and contract with one another with respect to functions lawfully authorized to each other, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18(2); and

C. Pursuant to C.R.S. § 31-23-202, and Article XX of the Colorado Constitution, the City Council of the City of Longmont has adopted the Longmont Area Comprehensive Plan, which provides goals and policies to plan for the orderly growth of the City of Longmont; and

D. By identifying sending and receiving sites for transferred development rights, the City and Boulder County are cooperating with respect to managing orderly growth; and

E. Requiring sending and receiving sites for transferred development rights implements the goals and policies of the Longmont Area Comprehensive Plan to make provision for public improvements in a manner appropriate for a modern, efficiently functioning city, and to ensure that new development does not negatively impact the provision of municipal services; and

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F. This Agreement augments Boulder County's nonurban planned unit development (NUPUD) program, and transferred development rights planned unit development (TDR/PUD) program; and

G. Providing for sending and receiving sites for transferred development rights is reasonable and necessary to protect, enhance, and preserve the public health, safety, and welfare of the City's citizens and the citizens of Boulder County; and

H. The City and Boulder County have held hearings, after proper public notice, for the consideration of entering into this Agreement.

IN CONSIDERATION of the objectives and policies expressed in the recitals and the mutual promises contained in this Agreement, the City and Boulder County agree as follows:

1 Definitions

As used in this Agreement, the following terms shall have the meanings stated below:

1.1 "Development" shall mean construction or establishment of a Structure, parking area, or surfaced vehicular roadway (except expansion of existing roads), or establishment of a new land use.

1.2 "LPA" shall mean the Longmont Planning Area, as it currently exists, together with any additional portions of the LPA as are jointly approved by the City and Boulder County.

1.3 "Parties" shall mean the City and Boulder County collectively.

1.4 "Structure" shall mean anything built or constructed above or below the ground, including, but not limited to, an edifice or building of any kind, or any piece of work artificially

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built up or composed of parts joined together in some definite manner, but excluding fences, retaining walls under 6 feet in height, and above ground or buried utility lines and related appurtenances.

1.5 "TDR Area" shall mean all real property designated as a transferred development right sending site or transferred development right receiving site in Exhibit A.

1.6 "TDR Receiving Sites" shall mean the transferred development rights receiving site designations in the TDR Area, attached as Exhibit A, and any receiving site jointly approved by the City and Boulder County that is within or contiguous to the LPA.

1.7 "TDR Sending Sites" shall mean the transferred development rights sending site designations in the TDR Area, attached as Exhibit A.

2 Controlling Regulations

2.1 Except as stated herein, no party shall agree with any landowner, or other person or entity, to allow Development on the TDR Sending Sites or the TDR Receiving Sites which does not comply with this Agreement. Boulder County agrees that approval of any proposed Development on the TDR Receiving Sites within or contiguous to the LPA shall be subject to review and approval by the City.

2.2 The City and Boulder County agree to adopt their own procedures, plans, policies, ordinances, or other regulations to implement and enforce the provisions of this Agreement, and to give the other party notice to comment on the same.

2.3 This Agreement shall not restrict the City's authority to annex property, or regulate the use and Development on any annexed property or other property within its boundaries,

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according to Colorado law, the Longmont Municipal Charter, and Longmont Municipal Code, as amended from time to time.

2.4 This Agreement shall not restrict Boulder County's ability, under its regulations, to approve receiving sites outside the LPA, and to approve Development on receiving sites outside and not contiguous to the LPA.

3 TDR Sending Sites

3.1 The Parties agree that all land within the TDR Sending Sites shall be eligible to participate in Boulder County's transferred development rights planned unit development program.

4 TDR Receiving Sites

4.1 The Parties agree that all land within the TDR Receiving Sites shall be eligible to participate in Boulder County's transferred development rights planned unit development program.

4.2 Upon confirmation by Boulder County that the land is within the TDR Sending Sites, and after Boulder County's issuance and recordation of its certificate(s) of development rights, according to its regulations, Boulder County and the City may jointly approve the location of Development represented by the certificate(s) of development rights upon land within the TDR Receiving Sites located within or contiguous to the LPA.

4.3 Boulder County and the City, either individually or collectively, upon acquisition of certificate(s) of development rights from land within the TDR Sending Sites, shall have the right to market those rights to others who may seek Development within the TDR Receiving Sites.

5 Conservation Easements in the TDR Area

5.1 Within the TDR Area, Boulder County shall obtain conservation easements for continued agricultural production or preservation of the land's identified environmental resource values on land in the TDR Sending Sites that participates in the Boulder County transferred development rights planned unit development program, and shall require the easements to be granted to Boulder County and the City jointly.

5.2 Within the LPA, Boulder County shall obtain conservation easements on land participating in the Boulder County transfer development rights planned unit development program, and shall require the easements to be granted to Boulder County and the City jointly. The conservation easements shall require that such lands remain open, but may provide for other recreational uses beyond those permitted under paragraph 5.1 above, as may be agreed by Boulder County and the City at the time such easements are granted. Upon the annexation by the City of any land within the LPA upon which a conservation easement has been obtained pursuant to this Agreement, Boulder County shall forthwith deed to the City its interest in the conservation easement.

5.3 Any conservation easements granted jointly to Boulder County and the City, under this Agreement, shall not be construed as county-owned open space under C.R.S. § 31-12-104(1)(a).

6 Agreement Term

6.1 The term of this Agreement shall commence on the Effective Date, and continue for ten years thereafter unless renewed or extended by the mutual consent of the City and Boulder County. However, either party may terminate this Agreement, at any time and for any reason, upon one year written notice to the other party. The City and Boulder County agree that

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termination shall not affect the validity of conservation easements, nor Development approvals, that may occur during the term of this Agreement.

7 Defense of Claims

7.1 If any person, other than the Parties, allegedly aggrieved by any provision of this Agreement should sue Boulder County or the City concerning this Agreement, Boulder County shall, and the City may, defend such claim upon receiving timely and appropriate notice of pendency of such claim. Defense costs shall be paid by the party providing such defense. If any person, other than Boulder County, should obtain a final money judgment against the City for the diminution in value of any regulated parcel resulting from regulations in this Agreement or regulations adopted by the City in implementing this Agreement, Boulder County shall, to the extent permitted by law, indemnify the City for the amount of said judgment. Nothing contained in this Agreement shall constitute any waiver by the City or Boulder County of the provisions of the Colorado Governmental Immunity Act or other applicable immunity defense. This provision shall survive termination of this Agreement, and be enforceable until all claims are precluded by statutes of limitation.

8 Notice

8.1 Any notice required by this Agreement shall be in writing. If such notice is hand delivered or personally served, it shall be effective immediately upon such delivery or service. If given by mail, it shall be effective upon receipt, and addressed as follows:

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City of Longmont

Attention: Community Development Director

Civic Center Complex

408 Third Avenue

Longmont, Colorado 80501

County of Boulder

Attention: Land Use Director

P.O. Box 471

Boulder, Colorado 80306-0471

9 Miscellaneous Provisions

9.1 Amendments. This Agreement may be amended only by mutual agreement of the Parties and shall be evidenced by a written instrument authorized and executed with the same formality as accorded this Agreement.

9.2 Headings for Convenience. All headings, captions and titles are for convenience and reference only and of no meaning in the interpretation or effect of this Agreement.

9.3 Governing Law and Venue. This Agreement, and the rights and obligations of the Parties hereto, shall be interpreted and construed according to the laws of the State of Colorado, and venue shall be in the County of Boulder.

9.4 Severability. If this Agreement, or any portion of it, is for any reason held invalid or unconstitutional in a final and non-appealable decision by any court of competent jurisdiction, the entire Agreement shall terminate. The Parties agree that every provision of this Agreement is essential and not severable from the remainder.

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9.5 Provisions Construed as to Fair Meaning. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party of the source of the language in question.

9.6 Compliance with Ordinances and Regulations. This Agreement shall be administered consistent with all current and future laws, rules, charters, ordinances and regulations of the City and Boulder County.

9.7 No Implied Representations. No representations, warranties or certifications, express or implied, between the Parties exist except as specifically stated in this Agreement.

9.8 No Third Party Beneficiaries. None of the terms, conditions or covenants in this Agreement shall give or allow any claim, benefit, or right of action by any person not a party hereto. Any person other than the City or Boulder County receiving services or benefits under this Agreement shall be only an incidental beneficiary.

9.9 Integrated Agreement and Amendments. This Agreement is an integration of the entire understanding of the Parties with respect to the matters stated herein. The Parties shall only amend this Agreement in writing with the proper official signatures attached thereto.

9.10 Financial Obligations. This Agreement shall not be deemed a pledge of the credit of the City or Boulder County. Nothing in this Agreement shall be construed to create a multiple-fiscal year direct or indirect debt, or financial obligation.

9.11 Waiver. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.

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IN WITNESS WHEREOF, the Parties have executed this Agreement.

CITY OF LONGMONT



ATTEST:

By: *Lona Stecher*
Mayor

Valeria G. Skitt
City Clerk

Date: 1-26-96

APPROVED AS TO FORM:

[Signature]
Deputy City Attorney

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**COUNTY OF BOULDER, by its Board of
County Commissioners**

By: Ronald K Stewart
Chair

ATTEST:

Brian M. Ashcraft
Clerk to the Board

Date: 2-6-96

APPROVED AS TO FORM:

H. Lawrence
County Attorney

