



RECEIVED

FREDERICK BOULDER CREEK PLANNING AREA  
COMPREHENSIVE DEVELOPMENT PLAN  
INTERGOVERNMENTAL AGREEMENT

AUG 12 2008

REC'D BY \_\_\_\_\_

TIME \_\_\_\_\_

**THIS INTERGOVERNMENTAL AGREEMENT** ("Intergovernmental Agreement") by and between the Town of Frederick, a Colorado municipal corporation), incorporated in the County of Weld, State of Colorado ("Frederick" or "Town"), and the County of Boulder, a body politic and corporate of the State of Colorado ("County" or "Boulder County") is made to be effective on the Effective Date as defined on the signature page of this Intergovernmental Agreement. The Town and the County are collectively referred to in this Intergovernmental Agreement as the "Parties."

WITNESSETH

**WHEREAS**, § 29-20-101 *et seq.*, C.R.S. as amended, authorizes the Parties to enter into intergovernmental agreements to plan for and regulate land uses in order to minimize the negative impacts on the surrounding areas and protect the environment, and specifically authorizes local (i.e., town and county) governments to cooperate and contract with each other for the purposes of planning and regulating the development of land by means of a "comprehensive development plan;" and

**WHEREAS**, in order to ensure that the unique and individual character of Frederick and its potential growth area, referred to herein as the "Frederick Area Comprehensive Plan" or "FACP", and of the rural area within Boulder County and Weld County adjacent to Boulder Creek and near the Boulder County line, hereinafter referred to as the "Frederick Boulder Creek Planning Area" or "FBCPA," are preserved, the Parties believe that a comprehensive development plan which recognizes the area of potential urbanization within the FACP which would not be interrupted by Boulder County open space, accompanied by a commitment by Frederick for the preservation of the rural character of lands in the FBCPA, is in the best interest of the citizens of each of the Parties; and

**WHEREAS**, the Parties acknowledge that this Intergovernmental Agreement may control or limit the County's ability to unilaterally acquire some properties along Boulder Creek to the east of the County, but that such control or limitation is justified due to the fact that such properties are located within areas specially affecting the Town's interests, including but not limited to areas adjacent to the Town's current boundaries which represent areas appropriate for municipal expansion and development; and

**WHEREAS**, the Parties find that the acquisition of open space by Boulder County within the FACP without the Town Board's consent does not serve the Town's interest in that the Town's plan for infrastructure and other services to the FACP should occur without unanticipated interruptions brought by open space purchases within the FACP; and

**WHEREAS**, the Parties find that providing for the FBCPA within Boulder County and Weld County to remain as rural in character through the term of this Intergovernmental



Agreement for the purpose of preserving a community buffer serves the economic and civic interest of their citizens and meets the goals of the Parties; and

**WHEREAS**, consistent with the municipal annexation, utility services, and land use laws of the State of Colorado, this Intergovernmental Agreement including, specifically, the annexation and open space portions hereof, is intended to encourage the natural and well-ordered future development of each Party; to promote planned and orderly growth in the affected areas; to distribute fairly and equitably the costs of government services among those persons who benefit therefrom; to extend government services and facilities to the affected areas in a logical fashion; to simplify providing utility services to the affected areas; to simplify the governmental structure of the affected areas; to reduce and avoid, where possible, friction between the Parties; and to promote the economic viability of the Parties; and

**WHEREAS**, the functions described in this Intergovernmental Agreement are lawfully authorized to each of the Parties which perform such functions hereunder, as provided in Article 20 of Title 29; Part 1 of Article 28 of Title 30; Part 1 of Article 12 of Title 31; and Parts 2 and 3 of Article 23 of Title 31, C.R.S., as amended; and

**WHEREAS**, § 29-1-201, *et seq.*, C.R.S., as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties 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

**WHEREAS**, the Parties have each held hearings after proper public notice for the consideration of entering into this Intergovernmental Agreement and the adoption of a comprehensive development plan for the subject lands, as shown on the map attached as Exhibit A; and

**WHEREAS**, the Parties desire to enter into this Intergovernmental Agreement in order to plan for the use of the lands within the FACP and FBCPA through joint adoption of a mutually binding and enforceable comprehensive development plan.

**NOW THEREFORE**, in consideration of the above and the mutual covenants and commitments made herein, the Parties agree as follows:

**1.0 FREDERICK BOULDER CREEK PLANNING AREA (FBCPA) COMPREHENSIVE DEVELOPMENT PLAN.**

1.1. This Intergovernmental Agreement, including the Map attached to this Intergovernmental Agreement as Exhibit A, is hereby adopted by the Parties as the Frederick Boulder Creek Planning Area (FBCPA) Comprehensive Development Plan (the "Plan"). The Plan shall govern and control the FBCPA, which is the currently unincorporated area of Weld County as designated on Exhibit A, or as subsequently amended in accordance with this Intergovernmental Agreement.



1.2. The Map identifies, designates, and defines areas to be known as the FBCPA. For purposes of this Intergovernmental Agreement, reference to this area shall have the meaning provided by the Map.

2.0 ANNEXATION AND DEVELOPMENT OF PROPERTY.

2.1 Land Within the FACP.

2.1.1 The Town may annex into its corporate boundaries any and all property located within the FACP in accordance with state and local laws governing the exercise of the power of annexation and expansion of the comprehensive plan area. By authorizing the execution of this Intergovernmental Agreement, Boulder County finds and declares that a community of interest exists between all property located within the area designated as the FACP and the Town.

2.1.2 Boulder County represents that, within the FACP as of the Effective Date of this Intergovernmental Agreement, it is not actively pursuing open space acquisitions. Boulder County shall not seek to nor acquire areas within the FACP for open space purposes without the mutual consent of the Town.

2.2 Land in the FBCPA.

2.2.1 The area in the FBCPA is intended to remain outside the Town's corporate limits for the term of this Intergovernmental Agreement, or annexed into the Town's corporate limits only where the land's use is restricted via public ownership interest to agricultural or natural areas or wildlife habitat conservation, or public open space and passive recreational uses, except as further clarified in §3.2.X below.

*dhf*  
*7/22/2008*

2.2.2 The Town shall promptly notify Boulder County of any and all instances in which it receives an inquiry for annexation or an application for annexation of land within the FBCPA within Boulder County.

2.2.3 The parties agree that Boulder County will seek similar restrictions to future development within the FBCPA through an intergovernmental agreement with the Town of Erie. In the event that the Town of Erie attempts to annex, or annexes, or develops land within the FBCPA in violation of their separate IGA with Boulder County, this Agreement shall immediately become null and void.

2.2.4 The parties agree that if Weld County accepts an application for development of land within the FBCPA the requirement of this Agreement that precludes annexation by the Town be modified as to that tract of land; so that the Town shall then be free to negotiate with the land owner regarding annexation and subdivision; however, the only applicable zoning shall be R-E Estate District with a density of no greater than one



home per five acres and clustering shall be required. The purpose of the clustering will be to preserve agricultural land and wildlife habitat in large blocks with residential development on lots of 1 to 2 acres. The land preserved as agricultural or wildlife habitat will be protected by conservation easements that perpetually protect the land. The approval of a Recorded Exemption or other lot division under Weld County regulations creating not more than two lots for single-family residential purposes shall not constitute development under this subsection.

### 3.0 OPEN SPACE.

- 3.1 Any of the lands located within the FBCPA may be acquired as open space by either of the Parties, or at the direction of the Town or County. For purposes of this Intergovernmental Agreement, "open space" shall mean property owned and controlled by the Town, the County, a quasi-governmental authority created by mutual agreement of the Town and County, or a non-profit corporation whose primary purpose is the ownership, control, and management of undeveloped property for land conservation and the reservation of land from development. "Open space" may include lands used or devoted to low impact or contextual public recreational activities such as but not limited to hiking, bicycling, equestrian activities, wildlife viewing, and interpretation, or the like. With the mutual agreement of the parties, "open space" may include:) public parkland (sod, landscaping, improved bike trails, playing fields, or modestly-improved parking facilities); the construction of contextually scaled development designed to provide education and short term shelter from the weather, restroom, or comfort facilities for visitors, and applicable maintenance of the open space. "Open space" shall not include lands used for or devoted to motorized recreational vehicles.
- 3.2 Boulder County agrees that for the term of this Intergovernmental Agreement it will not purchase or otherwise acquire any of the lands within the FACP for open space purposes, excepting only: (a) those lands which are designated as "open space" on the Town's Comprehensive Plan or otherwise changed to open space designation pursuant to an amendment of the Town's Comprehensive Plan; and (b) those lands which are on the Effective Date of this Intergovernmental Agreement under contract or for which a letter of intent has been sent to the owner and which have been referred to the Town; and (c) those lands designated by mutual agreement of the Town's Board of Trustees and the Boulder County Commissioners as appropriate for purchase or acquisition for open space. Nothing in this section is intended to affect the continued ownership and maintenance of open space lands within the FBCPA which are owned by Boulder County, are currently under a contract for purchase by Boulder County, or for which a letter of intent has been sent to the owner and which have been referred to the Town for comment.



**4.0 NELSON LAKES RESERVOIR NO. 1.**

4.1 The storage capacity of Nelson Lakes Reservoir No. 1 by the Town of Frederick is to be used in drought conditions only. Frederick may store water at anytime on a space available basis. Releases for Frederick from water decreed to Nelson Lake #1 can be made in drought conditions when the Colorado Big Thompson quota is below 50% to the extent that the water can be obtained by Frederick by gravity flow from the reservoir at no cost to Frederick. Water stored by Frederick will be spilled if the decree for Nelson Lakes Reservoir No. 1 is in priority. Evaporative losses will be apportioned between Williams and Frederick if the Town has water stored in the reservoir. Frederick can use the carriage contract the Williams Family Farm has with the Plumb and Dailey Ditch Company but must pay any resulting carriage fees associated with running water to Nelson Lakes Reservoir No. 1 by Frederick.

**5.0 IMPLEMENTATION PROCEDURES.**

5.1 The Parties each agree to undertake all steps to adopt procedures, plans, policies, and ordinances or other regulations as may be necessary to implement and enforce the provisions of this Plan. The Parties agree that in adopting such procedures, plans, policies, ordinances or regulations, each will give the other Party sufficient advance notice of such action as will enable such Party, if it so desires, to comment upon the planned actions of that Party. Sufficient advance notice shall generally mean notice delivered to the other party fifteen (15) days before the date of any public hearing or, where no public hearing will be conducted, before any deadline for the submission of public comment.

5.2 This agreement becomes effective upon:

5.2.1 Boulder County successfully attaining an intergovernmental agreement with the Town of Erie to restrict annexation and/or development within the FBCPA as specified in section 3.0 and providing executed copies thereof to the Town, and

5.2.2 The Town amending its comprehensive plan to include the area identified on Exhibit A as the FBCA area. The land use assigned to this area will be Rural and will allow no more than one home per five acres. The current land use of Rural Residential will be amended to Very Low Density Residential. An amendment to the Town's zoning code will also be processed to distinguish the densities allowed within these two land use designations.

**6.0 REFERRALS.**

6.1 The Town shall refer in writing to the County:

6.1.1 Any written inquiry or application for annexation in the FBCPA;



- 6.1.2 Any proposed amendment to the Town's Comprehensive Plan for lands within the Plan area;
- 6.1.3 Any proposed acquisition of land for open space within the FBCPA initiated by the Town or by any other person or entity at the direction or request of the Town.
- 6.2 The County shall refer in writing to the Town:
- 6.2.1 Any proposed acquisition of land for open space within the Plan Area initiated by the County or by any other person or entity at the direction or request of the County.
- 6.3 For any application or proposal required by section 7.1 or 7.2 to be referred, no action shall be taken on such application or proposal by the referring Party until the receiving Party has been provided a reasonable opportunity to respond concerning the proposal's conformity to this Plan and any other land use concerns, provided those comments are made within existing state and local regulations regarding the processing of the application. For purposes of this section, a "reasonable opportunity to respond" shall mean:
- 6.3.1 For any written inquiry or application for annexation for lands in the FBCPA, at least thirty (30) days from the date of receipt of the referral or such lesser time as may be required by applicable state statute.
- 6.3.2 For any proposal for amendment of a comprehensive plan or land use plan, at least thirty (30) days from the date of the referral.
- 6.3.3 For any proposal for acquisition of open space, at least thirty (30) days from the date of the referral.
- 6.4 Failure to timely respond within the time allotted for comment by section 7.3 shall entitle the referring party to assume that the receiving party has no comment concerning the application or proposal.
- 6.5 For any application or proposal required to be referred by section 7.1 or 7.2, the referring party shall use its best efforts to keep the other party apprised of the status of each application or proposal, including but not limited to, mailing to the other party notices of public hearings and meetings, staff reports, public memoranda concerning the status of the application or proposal, and notification of other activities and events associated with the processing of the application or proposal. Upon any final decision concerning the application or proposal, the referring party shall notify the other party in writing of the final decision including a general summary of any terms, conditions, or other details of the decision.



**7.0 AMENDMENTS.**

This Plan contains the entire agreement between the Parties. Amendment of the Plan shall take place only upon approval by resolution or ordinance adopted by the governing body of each of the Parties, after notice and hearing as may be required by law. No Party shall approve nor permit any development or change of use, or acquisition for open space, of any parcel in the Plan Area by any means in a manner inconsistent with this Intergovernmental Agreement until and unless the Plan has been amended so that the proposed development, use, or acquisition of such parcel is consistent with the Plan.

**8.0 NON-SEVERABILITY.**

If any portion of this Intergovernmental Agreement is held by a court in a final, non-appealable decision to be *per se* invalid or unenforceable as to any Party, the entire Intergovernmental Agreement shall be terminated, it being the understanding and intent of the Parties that every portion of the Intergovernmental Agreement is essential to and not severable from the remainder.

**9.0 BENEFICIARIES.**

The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of the Intergovernmental Agreement, and no other person or entity is so intended.

**10.0 ENFORCEMENT.**

Any one or more of the Parties may enforce this Intergovernmental Agreement by any legal or equitable means including specific performance, declaratory, and injunctive relief. No other person or entity shall have any right to enforce the provisions of this Intergovernmental Agreement.

**11.0 DEFENSE OF CLAIMS/INDEMNIFICATION.**

If any person allegedly aggrieved by an provision of the Intergovernmental Agreement and who is not a Party to the Intergovernmental Agreement should bring any claim against any Party concerning such Intergovernmental Agreement provision, the named or served Party shall, and the unnamed/unserved Party 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.

**12.0 GOVERNING LAW AND VENUE.**

This Intergovernmental Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the appropriate court(s) for Weld County, Colorado.



13.0 TERM.

This Agreement shall remain in effect for a period of ten (10) years from the effective date, unless otherwise terminated earlier by agreement of all the Parties.

14.0 PARTY REPRESENTATIVES.

Referrals made under the terms of this Agreement shall be sent to the Parties' representatives as follows:

Entity:  
County of Boulder

Representative:  
Director of Parks and Open Space  
5201 St. Vrain Rd.  
Longmont, Colorado 80503

Town of Frederick

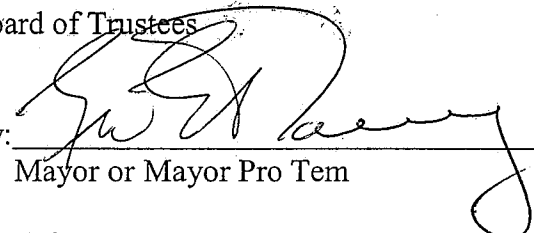
Town Administrator  
401 Locust Street  
P.O. Box 435  
Frederick, CO 80530

Name and address changes for representatives shall be made in writing and mailed to the other representatives at the then current address.

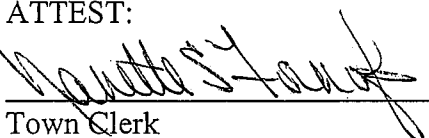
15.0 COUNTERPART. This Intergovernmental Agreement may be executed in counterparts, which, together, shall constitute the agreement of the Parties.


THIS AGREEMENT is made and entered into to be effective on the later of the dates of approval by the Town of Frederick, or Boulder County, or the delivery of the executed copies of the Intergovernmental Agreements as specified in subsection 6.2 above (the "Effective Date").

TOWN OF FREDERICK  
Board of Trustees

By:   
Mayor or Mayor Pro Tem

Date: , 2008

ATTEST:  
  
Town Clerk

APPROVED AS TO FORM:  
  
Town Attorney





COUNTY OF BOULDER  
Board of County Commissioners

*Ben Pearline*  
Chairperson

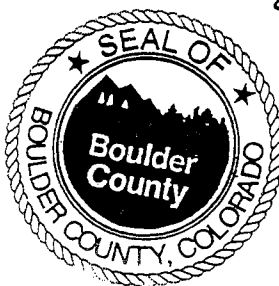
Date: July 22, 2008

ATTEST:

*W. J. Snyder*  
Clerk to the Board

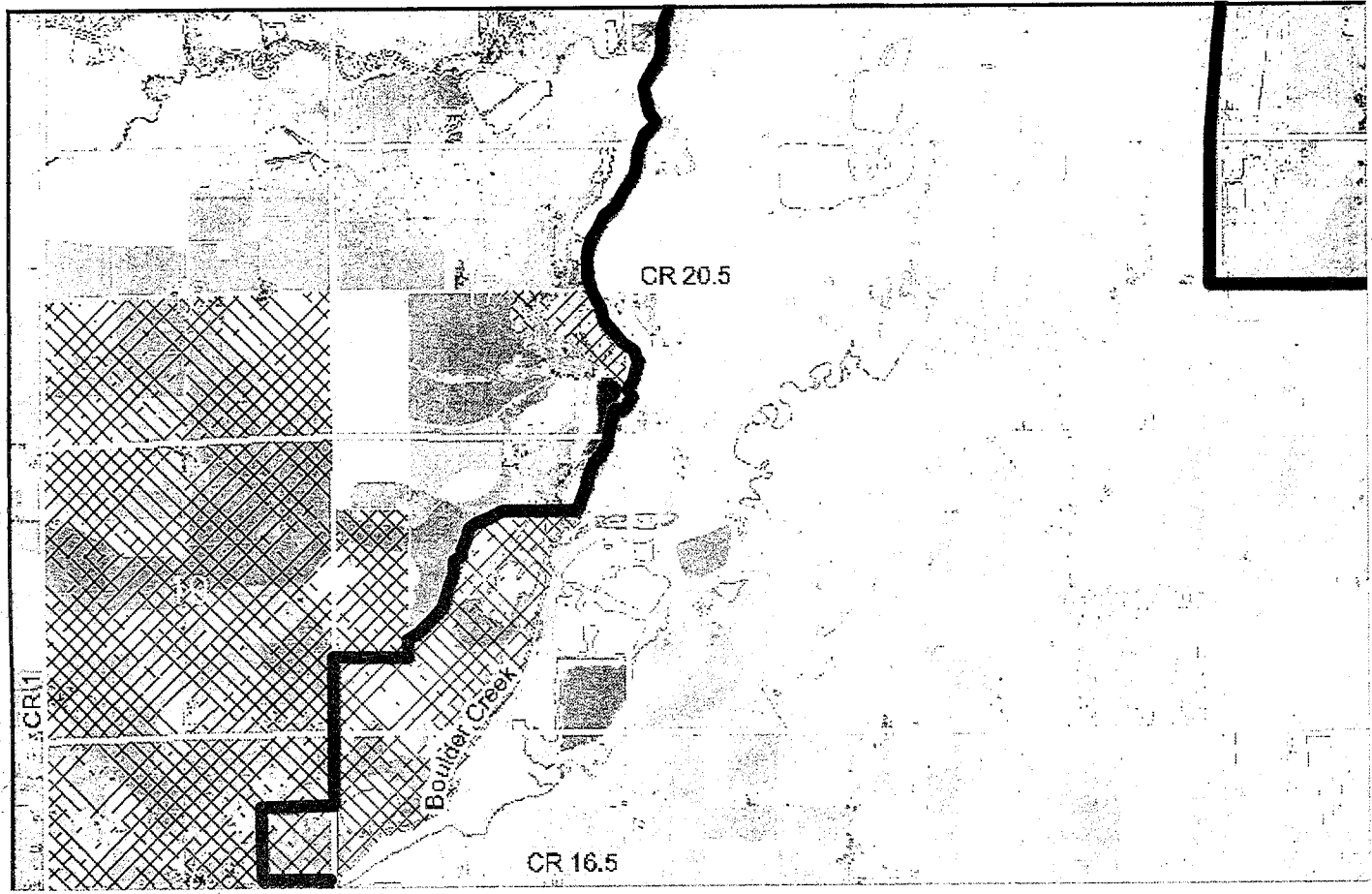
APPROVED AS TO FORM:

*[Signature]*  
County Attorney



"EXHIBIT A"



RECORDER'S NOTE:  
SCANNED AS RECEIVED.  
IMAGE REFLECTS QUALITY  
OF RECORDED DOCUMENT

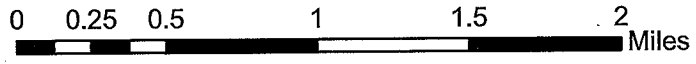


# Frederick Boulder Creek Planning Area

March 9, 2007

## Legend

-  Frederick Area Comprehensive Plan
-  Frederick Boulder Creek Planning Area



Town of Frederick, Planning Division, 401 Locust Street, Frederick, CO 80530  
Aerial Information Provided by NAIP 2005  
Legend items added and minor layout revisions made by Boulder County  
Parks & Open Space GIS, February 27, 2008.