

CLOVER BASIN WATER TRANSMISSION LINE, HIGHWAY 66 STORM DRAINAGE PROJECT, PESCHELL PROPERTY ANNEXATION, PIPELINE PERMITTING, AND TERM EXTENSION AMENDMENT TO THE THIRD AMENDED LONGMONT PLANNING AREA COMPREHENSIVE DEVELOPMENT PLAN AND SUPER IGA INTERGOVERNMENTAL AGREEMENTS

This Intergovernmental Agreement by and between the City of Longmont, a Colorado home rule municipal corporation (Longmont), and the County of Boulder, a body politic and corporate of the State of Colorado (Boulder County); (collectively the "Parties") is made and entered into to be effective October 18th, 2011.

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WITNESSETH:

WHEREAS, §29-20-101 et seq., CRS as amended, enables the Parties to enter into Intergovernmental Agreements (IGA's) 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., City and County) governments to cooperate and contract with each other for the purpose of planning and regulating the development of land by means of a "comprehensive development plan"; and

WHEREAS, pursuant to §29-20-105, C.R.S., as amended, the Parties have previously entered into a succession of comprehensive development plan IGAs to limit County development approvals and open space acquisitions within the area of the Longmont Planning Area Comprehensive Plan (hereinafter the "LPA"), limit development approvals by the County in the area surrounding the LPA, and limit annexations by the City in the area outside the LPA; and

WHEREAS, the most recent iteration of said IGA is the Third Amended Longmont Planning Area Comprehensive Development Plan IGA (hereinafter "Third Amended IGA"), which, since its approval by the Parties in 2008 has been amended by the PUMA 66/Lykins Gulch Amendment; and

WHEREAS, the Parties desire to further amend the Third Amended IGA by the approval of this Clover Basin Water Transmission Pipeline, Highway 66 Storm Drainage Project, Peschell Property Annexation, Pipeline Permitting, and Term Extension Amendment to the Third Amended Longmont Planning Area Comprehensive Development Plan and Super IGA Intergovernmental Agreements (hereinafter the "2011 IGA Amendments"), for the following purposes:

- 1) By Resolution No. 2003-31, Boulder County conditionally approved an "HB1041" permit application for a water pipeline installation in Docket #SI-02-04. By its own terms, the authorized permit will expire on March 11, 2013. Due to various circumstances, Longmont has not yet installed the pipeline. Longmont seeks amendment of the conditional approval of the Docket to provide for installation of a

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smaller diameter pipeline, to be buried at 5 +/- feet, production of a water treatment master plan or water demand evaluation in satisfaction of Condition 2 of Resolution No. 2003-31. Revised wording of Condition 4.a. thereof and desires to obtain an extension of the period of the permit, the term to extend for so long as the Third Amended IGA and any extension by IGA amendment thereof remains in effect, which as a result of this IGA Amendment Agreement, will currently extend the approval to and including October 16, 2023.

- 2) The Third Amended IGA is currently due to expire by its own terms on August 12, 2023. However, Section 13 of said IGA provides for a unilateral opt-out termination in the period up to ninety days prior to August 12, 2023. The Parties desire to extend the term of the Third Amended IGA to end contemporaneously with the end of the term of the "Super IGA" (Boulder County Countywide Coordinated Comprehensive Development Plan IGA), to and including October 16, 2023, or beyond that date if the Parties voluntarily elect to extend the term of the Third Amended IGA pursuant to Section 13.
- 3) The Super IGA will expire by its own terms on October 16, 2023. However, Section 14 of said Super IGA provides for a unilateral opt-out termination of the IGA in the period up to ninety days prior to October 16, 2023. In consideration of the provisions of this IGA Amendment, Longmont desires to waive any right it has to "opt-out" of the Super IGA under Section 14; and

WHEREAS, Boulder County by and through its Board of County Commissioners, finds that these requests are reasonable and amendment of Resolution No. 2003-31 as requested is not a major modification of the terms of the conditional approval of Docket #SI-02-04, assuming compliance by Longmont with the other terms, conditions, and commitments of record upon which the permit's approval was conditioned.

WHEREAS, the Parties desire to amend the Third Amended IGA and the comprehensive development plan approved therein (the "Plan") by the approval of this amendment intergovernmental agreement; and

WHEREAS, the Parties desire to further clarify the terms and conditions of the Boulder County Longmont Intergovernmental Agreement regarding the open space purchase of the Puma property north of Longmont and lying within the Longmont Planning area for the purposes of defining certain characteristics of the storm drainage control improvements to be constructed by the City of Longmont; and

WHEREAS, the parties desire to facilitate annexation of the jointly owned Peschell property to the City of Longmont in order to assist Longmont with boundary control in Weld County and provide municipal jurisdictional control of the property for the purposes of law enforcement, surface use control, and cooperative management of mineral rights; and

WHEREAS, it is the intent of the Parties that the present jointly approved IGAs which are the subject of these amendments by the Parties shall remain in full force and effect except as expressly provided herein; and

WHEREAS, the functions described in this 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; section 31-12-101, et seq.; parts 2 and 3 of article 23 of title 31; C.R.S., as amended; and

WHEREAS, section 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, Section 18(2); and

WHEREAS, the Parties have each held hearings after proper public notice for the consideration of entering into this Agreement and associated amendments to existing intergovernmental agreements.

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

Section 1. Extension of Longmont 1041 Permit for Water Pipeline.

The effective term of the “HB1041” permit of Longmont for a water pipeline installation conditionally approved by Boulder County in County Land Use Docket #SI-02-04, previously set to expire by its own terms on March 11, 2013, is hereby extended to and including October 16, 2023. It shall be further extended by any subsequent IGA that amends the Third Amended IGA to extend its term beyond that date, so that the expiration of the conditional approval of Docket #SI-02-04 shall be the same date as the expiration of such extended Third Amended IGA. Boulder County finds that this request is reasonable and such amendment is not a major modification of the conditionally approved Docket’s terms.

Section 2. Amendment of Certain Other Conditions of Approval of Docket #SI-02-04.

Boulder County hereby amends the conditional approval of Docket SI-02-04, as stated in Resolution No. 2003-31, as follows:

- a. Longmont may install a smaller diameter pipeline buried at a typical depth of 5+/- feet over the approximate 6,700 foot length of the permitted pipeline;
- b. Longmont may satisfy Condition 2 by providing Boulder County, prior to the issuance of any permits for the installation, a copy of Longmont’s most recent treated water master plan or water demand evaluation;
- c. Condition 4.a. is modified to state: “The Applicant shall make reasonable attempt to mitigate the construction impacts according to the terms and conditions of all acquired

property rights, permits and approvals required for the project.”

- d. All other terms, conditions of said Resolution, and the commitments of record in the Docket, remain in full force and effect.

Section 3. Extension of Longmont Planning Area Third Amended IGA.

The effective term of the Third Amended Longmont Planning Area Comprehensive Development Plan Intergovernmental Agreement (as referenced herein, the “Third Amended IGA”) shall be and hereby extended to and including October 16, 2023, and the right of each Party to terminate the Third Amended IGA upon its tenth anniversary (August 12, 2013), as provided for in Section 12 of the said IGA, is hereby rescinded.

Section 4. Waiver of “Opt-Out” of Super IGA.

The Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement (herein, “Super IGA”) will expire by its own terms on October 16, 2023. However, Section 14 of said Super IGA provides for a unilateral opt-out of the IGA in the period up to ninety days prior to October 16, 2013, terminating the Super IGA as to that Party. In consideration of the provisions of this IGA Amendment, Longmont hereby waives any right it has to “opt-out” of the Super IGA under Section 14.

Section 5. Comprehensive Development Plan is Amended.

The Comprehensive Development Plan approved in the Third Amended IGA is hereby amended by the provisions expressly set forth in this Amendment IGA.

Section 6. Approval Process for these 2011 IGA Amendments.

The Parties have approved this 2011 IGA Amendment IGA following all required statutory and charter procedures (if any).

Section 7. Third Amended IGA as Amended Continues in Full Force and Effect.

This 2011 IGA Amendment further amends the Third Amended IGA. Nothing contained herein is intended by implication to revise, or rescind any term or provision of the Third Amended IGA, except those revisions and rescissions to the terms thereof which are expressly set forth herein. All other provisions of the Third Amended IGA, as previously amended by the PUMA 66/Lykins Gulch Amendment, shall remain in full force and effect.

Section 8. Pipeline Diversion and Extension.

Longmont currently has a raw 24-inch diameter water pipeline that has served its now-decommissioned water treatment plants on Highway 66 east of Lyons. Longmont has proposed to extend this raw water pipeline for an additional approximate 100 feet to divert this water into the Highland Ditch to feed into its Nelson-Flanders water treatment plant. Based upon the

determination, acknowledged by the County there are no significant impacts from this project that would otherwise be mitigated through a 1041 County regulatory permitting process. The County agrees that Longmont may proceed to install said pipeline along the course set forth on Exhibit A of this agreement, without a County 1041 permit.

Section 9. Highway 66 Storm Drainage Project Improvements Description.

To prevent storm water inundation of the Elliot and Dirks properties during a 100 year event, a small berm (maximum of 24 inches of height) is proposed to be added to the eastern bank of the existing tail water swale along the western boundary of the Puma Open Space (the “property”). The City shall remove the expanded berm and swale and shall restore the land to its contours and condition for agricultural use as of the date of this agreement. If the County purchases the Elliot Farm for open space and provides the City with inundation easements for the portions of the Elliot and Dirks properties that would be impacted in a flood event caused by the removal of the berm. The area of proposed grading will extend from a point approximately 500 feet north of the southwest corner of the property, extending along the western boundary of the property approximately 1,000 feet. Further details regarding the improvements described within this section are included on Exhibit B and Exhibit C of this agreement.

Section 10. Annexation of the Peschell Property.

Boulder County and the City of Longmont jointly own a parcel of open space property located along Weld County Road 1 in Weld County south of SH 119. In order to provide continuity of Longmont’s municipal boundary, enable municipal authority of law enforcement, and surface and mineral rights management beneficial to both parties, Boulder County agrees to execute an annexation petition for the Peschell property upon request by the City.

Section 11. Non-severability.

If any provision in these 2011 IGA Amendments to the Third Amended IGA as applied to any Party or to any circumstance shall be adjudged by a court, in a final, non-appealable decision, to be *per se* invalid or unenforceable as to any Party, the entire 2011 IGA Amendments shall be terminated. The understanding and intent being that the Parties portion of the Agreement and Plan is essential to and not severable from the remainder. If these 2011 IGA Amendments are terminated pursuant to the provisions of this Section, the Third Amended IGA, as previously amended by the PUMA 66/Lykins Gulch Amendment, shall continue in full force and effect as if this Amendment IGA had not existed.

Section 12. Governing Law And Venue.

This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Boulder.

THIS AGREEMENT is made and entered into to be effective on the date as set forth above.

CITY OF LONGMONT



By: 
Bryan Baum, Mayor

ATTEST:

APPROVED AS TO FORM:


Valeria Skitt, City Clerk


James Rourke, Deputy City Attorney

COUNTY OF BOULDER
BY: BOARD OF COUNTY COMMISSIONERS

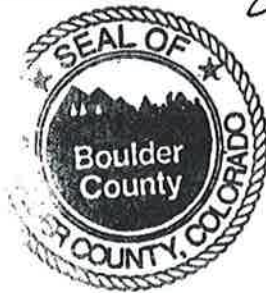

Ben Pearlman, Chair

ATTEST:

APPROVED AS TO FORM:


Mike Ryder, Deputy Clerk to the Board


H. Lawrence Hoyt, County Attorney



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