

RESOLUTION 2003-103

A RESOLUTION APPROVING THE "THIRD AMENDED LONGMONT PLANNING AREA COMPREHENSIVE DEVELOPMENT PLAN INTERGOVERNMENTAL AGREEMENT" BETWEEN THE CITY OF LONGMONT AND COUNTY OF BOULDER, CONCERNING THE COUNTY'S ACQUISITION OF OPEN SPACE IN THE LONGMONT PLANNING AREA ("LPA"), THE CITY'S EXERCISE OF ITS ANNEXATION POWERS IN THE LPA, AND RELATED MATTERS

WHEREAS, the Board of County Commissioners of the County of Boulder ("the Board") and the City Council of the City of Longmont ("the City") (jointly, "the Parties") are authorized to enter into intergovernmental agreements to plan for and regulate land uses pursuant to C.R.S. §§ 29-20-101, et seq.; and

WHEREAS, the Parties believe that a comprehensive development plan which provides for binding commitments by the Parties regarding the future development of lands within the Longmont Planning Area ("LPA"), with respect to such issues as the County's acquisition of open space lands in the LPA, the City's annexation of lands for development within the LPA, and related matters, is in the best interests of the citizens of each of the Parties; and

WHEREAS, to this end, the Parties, through their designated representatives, entered into a "Longmont Planning Area Comprehensive Development Plan Intergovernmental Agreement" effective June 19, 1997, which has been amended since that time ("the IGA"); and

WHEREAS, the Parties now wish to amend the IGA again, in the form of a proposed "Third Amended Longmont Planning Area Comprehensive Development Plan Intergovernmental Agreement" ("Third Amended IGA"), to update the citations to and amend the provisions of the IGA regarding the County's "1041" regulations ("Regulations of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code"), and to update the term of the IGA providing for a term of 20 years following the Third Amended IGA's effective date, with allowance for termination by either party on the tenth anniversary of the effective date of the Third Amended IGA; and

WHEREAS, the proposed Third Amended IGA is attached to and incorporated into this Resolution as Exhibit A, and has been approved following a duly noticed public hearing by the City Council; and

WHEREAS, on August 12, 2003, the County's Board of County Commissioners ("the Board") held a duly noticed public hearing on the proposed Third Amended IGA ("the Public Hearing"), at which hearing the Board considered the proposed IGA as set forth in Exhibit A, and the explanatory comments of the County Attorney, with no members of the public being present to speak to the proposed Third Amended IGA; and


WHEREAS, based on the Public Hearing, the Board determines that the proposed Third Amended IGA, in the form set forth in Exhibit A hereto, serves the best interests of the County's residents, and furthers the County's desire to appropriately protect the rural character of the LPA in conformity with the principles set forth in the Boulder County Land Use Code and the goals and policies of the Boulder County Comprehensive Plan, and should be approved.

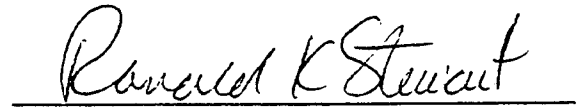
NOW, THEREFORE, BE IT RESOLVED that the Board approves the proposed Third Amended IGA, as set forth in Exhibit A hereto.

A motion to approve the proposed Third Amended IGA, as set forth in Exhibit A hereto, was made by Commissioner Stewart, seconded by Commissioner Danish, and passed by a 2-0 vote, with Commissioner Mayer being excused.

ADOPTED this 19<sup>th</sup> day of August, 2003, nunc pro  
tunc the 12th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS  
OF BOULDER COUNTY:

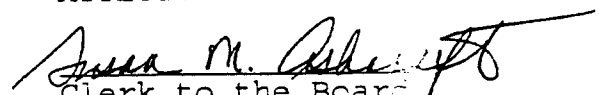
  
Paul D. Danish, Chair

  
Ronald K. Stewart, Vice Chair

\_\_\_\_\_  
Thomas A. Mayer, Commissioner  
(EXCUSED)



ATTEST:

  
Clerk to the Board

**THIRD AMENDED  
LONGMONT PLANNING AREA  
COMPREHENSIVE DEVELOPMENT PLAN  
INTERGOVERNMENTAL AGREEMENT**

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").

**WITNESSETH:**

WHEREAS, §29-20-101 et seq., CRS as amended, enables 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., 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

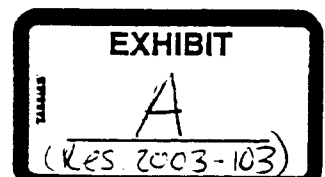
WHEREAS, in order to ensure that the unique and individual character of Longmont and of the rural area within Boulder County outside the Longmont Planning Area (hereinafter "the LPA") are preserved, the Parties believe that a comprehensive development plan which recognizes the area of potential urbanization within the LPA which would not be interrupted by Boulder County open space, accompanied by a commitment by Longmont for the preservation of the rural character of lands surrounding the LPA within Boulder County, is in the best interest of the citizens of each of the Parties; and

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

WHEREAS, the Parties find that providing for the area outside the LPA within Boulder County to remain as rural in character through the term of this Agreement for the purpose of preserving a community buffer serves the economic and civic interest of their citizens and meets the goals of the Boulder County Comprehensive Plan; and

WHEREAS, with respect to the annexation provisions herein, the City of Longmont declares that the area outside the LPA within Boulder County is not appropriate for urban development, unless certain criteria are met, during the term of this Agreement; and

WHEREAS, consistent with the municipal annexation, utility service, and land use laws of the State of Colorado, this 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 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; CRS, as amended; and

WHEREAS, §29-1-201, et seq., CRS, 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 Agreement and the adoption of a comprehensive development plan for the subject lands, hereinafter referred to as the "Plan Area", as shown on the map attached hereto 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 Plan Area 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. LONGMONT PLANNING AREA (LPA) COMPREHENSIVE DEVELOPMENT PLAN.

This Agreement, including the Map attached hereto as Exhibit A, is adopted by the Parties as the Longmont Planning Area (LPA) Comprehensive Development Plan (the "Plan") governing the Plan Area. The "Plan Area" is hereby defined as the unincorporated area of Boulder County outside the Longmont Planning Area as shown on Exhibit A, or as subsequently amended in accordance with this Agreement.

2. ANNEXATION PROVISIONS.

(a) Longmont agrees that it will disclose to Boulder County any and all instances in which they receive an application for annexation of land outside the LPA within Boulder County. Further, Longmont commits that it is not currently pursuing any annexations within the Rural Preservation Area. Also, Boulder County commits that it

will not actively pursue open space acquisitions in the LPA not currently designated as open space.

(b) The area outside the LPA is intended to remain in Boulder County's regulatory jurisdiction for the term of this Agreement, unless changed by mutual agreement of the Parties. Further, the City Council of the City of Longmont, by authorizing the execution of this Agreement, finds and determines that there is no community of interest between said area and the City for the term of this Agreement, and the City will annex lands outside the LPA within Boulder County only pursuant to mutual agreement of the Parties.

(c) The City agrees that, during the term of this Agreement, it will expand the LPA within Boulder County only pursuant to mutual agreement of the Parties. Expansion would include only properties adjacent to the then existing LPA boundary, and would not be comprised of flagpoles to nonadjacent properties. The City and Boulder County agree to the following set of criteria by which proposals for expansion of the LPA will be allowed by the City Council and the Board of County Commissioners.

(1) Transfer of Development Rights - (TDR) receiving sites, in accordance with the Longmont TDR IGA, and TDR sending sites in accordance with the map attached thereto.

(2) Major Industrial User -if land inside LPA does not meet the needs of the development. The developer must demonstrate that factors other than land price preclude building within the LPA.

(3) Changes in the rural character of land (e.g., existing unincorporated residential subdivisions) outside the LPA that would be better served by the urban structure of Longmont (e.g., creation of significant institutional uses or the presence of existing residential subdivisions on surrounding unincorporated area properties).

(4) Enclaves of more than one home site per five (5) acres and which result from annexation that has left county property an island surrounded by Longmont, and where the provision of infrastructure from the City of Longmont would be more beneficial to property owners.

(d) Longmont Planning Area: The Map portion of this Plan identifies areas encompassing the LPA, which are currently located within unincorporated Boulder County but which may in the future and possibly during the term of this Agreement, be annexed to the City of Longmont. By authorizing the execution of this Agreement, Boulder County finds and declares that a community of interest in the area designated as the LPA on Exhibit A of this Plan, which is attached hereto and incorporated herein, exists with the City of Longmont.

(e) Any property located within the current municipal limits of Longmont, and any property which hereafter annexes to Longmont in accordance with the provisions of this Agreement, which subsequently is disconnected from the municipality, shall thereafter, for purposes of this Agreement, continue to be within the LPA unless excluded by action of the City.

### 3. OPEN SPACE.

(a) Any of the lands shown on the attached Exhibit A of the Plan outside the LPA may be acquired as open space by either of the Parties.

(b) Boulder County agrees that, for the term of this Agreement, it will not purchase any of the lands within the LPA for open space purposes, excepting only those lands which are designated "open space" on the Longmont Area Comprehensive Plan or otherwise changed to open space pursuant to an LACP amendment, and excepting those lands which are currently under contract or for which a letter of intent has been sent to the owner and which have been referred to the City of Longmont and except for those lands for which the consent of the City Council has been obtained as provided in section 5. Nothing in this section is intended to affect the continued ownership and maintenance of open space lands within the LPA which Boulder County currently owns or which are currently under contract with Boulder County or for which a letter of intent has been sent to the owner, and which have been referred to the City for comment.

(c) For lands within the LPA upon which Boulder County currently owns a conservation easement (identified on Exhibit A), Longmont agrees that it will annex said land only after release of the conservation easement thereon by Boulder County (except for those easements which automatically terminate upon annexation by any municipality) and will thereafter approve development of said land only in accordance with the provisions for TDR receiving and sending sites in the Longmont TDR Comprehensive Development Plan Intergovernmental Agreement (hereinafter "TDR Agreement") previously executed by these Parties. Upon expiration of said TDR Agreement and for the term of this Agreement, these lands will continue to be governed by the provisions of the TDR Agreement, said provisions being incorporated into this Agreement as if fully set forth herein. It is the intent of the Parties that this Agreement, and to the extent cross-referenced herein the Longmont TDR IGA, be and is the sole mutually adopted comprehensive plan related to these lands. However, nothing herein shall be construed to rescind Longmont's adoption and application of its comprehensive plan(s) to these lands.

(d) In the event Boulder County purchases 40 acres of John M. Keyes Trust farm, located within the LPA, Boulder County agrees it will provide Longmont the right-of-way necessary for the extension of Pike Road across said parcel upon such terms and conditions as are mutually agreed, including at least 120 foot width for an arterial street, and located as shown on the Longmont Comprehensive Plan, unless otherwise mutually agreed. Boulder County further agrees to allow Longmont to construct, operate, and maintain a trail under its St. Vrain River Greenways program, across the Keyes parcel through which the St Vrain River runs.

#### 4. CITY OF LONGMONT UTILITIES AND ARTERIAL HIGHWAYS

It will be necessary for the City to seek additional water supplies, water storage, and water and sewer transportation and treatment facilities, both within and without the Plan Area. The areas designated in the Map portion of Exhibit A as the LPA shall be deemed to be the City's "Service Area" for all purposes, including, but not limited to, Boulder County's Regulations of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code. To the extent such supplies and facilities are necessary to serve development within the LPA which is consistent with the provisions of this Agreement, the County agrees to use its best efforts in good faith to take action under any permitting requirements without undue delay, recognizing applications for such permits as being in conformance with this comprehensive development plan.

To this end, the County agrees that the City, in applying for such permits under the provisions of the Regulation of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code, shall not be required to demonstrate compliance with the following provisions of said Regulation: Sections 8-511 B.3, 10, 11, 12, 13 & 14 C.1 & 2.a, D & E. Section 8-511 C.2.b shall not apply to applications for projects that involve the removal of native agricultural water rights after the effective date of this agreement from land located within the Longmont Planning Area or TDR Receiving Sites located within the TDR Area. For the purposes of this Agreement, TDR Receiving Sites and TDR Area shall have the same meanings as set forth in the Intergovernmental Agreement Between the City of Longmont and County of Boulder Concerning Transferred Development Rights which was effective as of February 5, 1996. Sections 8-511 B.5.c & d shall only be applicable to sanitary sewage facilities. Sections 8-511 B.5.b, e, f & g, B.6, 7 & 8 shall apply to site location, construction and operation of facilities within areas designated on Maps 2, 3 & 4 of the Boulder County Comprehensive Plan, and with respect to other areas shall be limited in its application to construction and operation of such facilities. The application of Section 8-511 B.7 concerning archeological resources shall be limited to a determination whether archeologically-significant resources will be negatively impacted by the proposed project, and if so, provide for mitigation of those impacts. The application of Section 8-511 B.5.h concerning geologic hazards shall be limited to resolution of floodplain issues. The remaining portions of Section 8-511 shall only be applicable to the direct, site specific, impacts of the proposal. The County through the Board of County Commissioners finds pursuant to Section 8-504 of the Boulder County Land Use Code, that this intergovernmental agreement shall serve in lieu of review of permit applications under those regulations of Article 8, Section 5 of the County land Use Code which are limited herein, to the extent of such limitations. Section 8-407 shall exempt all upgrades to existing facilities that are required maintenance or otherwise required by federal, state, or County regulations, including repairing and/or replacing old or outdated equipment, or installing new equipment, provided the improvements do not expand levels of service beyond the design capacity, and provided further that the upgrade does not alter the location of the existing facility.

Boulder County agrees to exempt Longmont from the Regulations of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code, if Boulder County passes amendments to those regulations governing arterial highways and interchanges. Specifically, this exemption shall apply to:

- (a) the site section and construction of arterial highways and interchanges by Longmont within the LPA, which are designated on the Longmont Comprehensive Plan as adopted as of the effective date of this Agreement; and
- (b) areas around arterial highway interchanges (as those areas are defined in the County's regulations). which interchanges are designated on the Longmont Comprehensive Plan, as adopted as of the date of this Agreement.]

## 5. IMPLEMENTATION PROCEDURES.

A plan amendment agreed to by both the city and county must occur in order to annex, or allow any use or development, or acquire for open space any parcel within the



Plan Area where such annexation, use or development, or acquisition does not comply with the Plan. Where the County seeks to acquire land for open space within the LPA after referral as provided in section 6(a), the City Council may, by resolution, agree to such acquisition and may condition its consent, and substantial compliance with such conditions shall be required for such acquisition to proceed.

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.

## 6. REFERRALS

(a) Any application for annexation or development on any parcel outside the LPA, and/or any proposal for acquisition of open space within the LPA, shall be referred in writing to the other Party, and no action shall be taken thereon by the referring Party until the receiving Party has had the 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. All such responses shall be sent within 30 days of the date of receipt of the referral by the receiving Party.

(b) The City shall refer in writing to the County, any application for annexation and/or development, for an amendment to the Longmont Comprehensive Plan, for any parcel within the LPA and outside of the Municipal Service Area, unless otherwise determined through this Agreement.

(c) The County shall refer in writing to the City, any application for discretionary development and/or amendment to the Boulder County Comprehensive Plan for any parcel within the St. Vrain Valley Planning Area, Longmont Planning Area, or Municipal Service Area unless otherwise determined through this Agreement.

(d) Annexation applications of 10 or more acres within the LPA, and Longmont Area Comprehensive Plan amendments shall adhere to the following referral process unless otherwise determined through this Agreement:

(i) The staff of the referring party shall send the receiving party the pertinent information.

(ii) The staff of the receiving party shall have 30 days from the date of receipt of the referral to respond in writing to the referring party, unless otherwise required by state statute. The receiving party will call the referring party for clarification on questions and to give an idea of issues before sending formal comments. If the referring party does not receive a response within the 30 day period, the referring party may assume that the receiving party has no conflict with the proposal.

(e) Annexation applications of less than 10 acres within the LPA and County discretionary review processes other than PUD development, shall adhere to the following referral process unless otherwise determined through this Agreement:

- (i) The staff of the referring party shall mail the receiving party the pertinent information.
- (ii) The staff of the receiving party shall have 14 days from the date of receipt of the referral to respond in writing to the referring party, unless otherwise required by state statute. The receiving party will call the referring party for clarification on questions and to give an idea on issues before sending formal comments. If the referring party does not receive a response within the 14 day period, the referring party may assume that the receiving party has no conflict with the proposal.
- (f) Every six months, each party shall provide the other party with a written notice of the status of each referral, including but not limited to, the status of the proposal within the approval process and, if applicable, the final density approved for a proposal.

## 7. AMENDMENTS.

This Plan contains the entire agreement between the Parties. Any proposed amendment of the Plan affecting the jurisdiction over lands or the development regulation of lands must be referred to the other Party by the Regulatory Party. The "Regulatory Party" is hereby defined as the Party having final land use or annexation approval jurisdiction, as the context requires. 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. The Regulatory Party shall not approve nor permit any development or change of use of any parcel in the Plan by any means in a manner inconsistent with this Agreement until and unless the Plan has been amended so that the proposed development or use of such parcel is consistent with the Plan.

## 8. NON-SEVERABILITY.

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

## 9. BENEFICIARIES.

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

## 10. ENFORCEMENT.

Any one or more of the Parties may enforce this 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 Agreement.

11. DEFENSE OF CLAIMS/INDEMNIFICATION.

If any person allegedly aggrieved by any provision of the Plan and who is not a Party to the Plan should sue any Party concerning such Plan provision, Boulder County shall, and any other 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.

In the event that any person not a Party to the Plan should obtain a final money judgment against any Party who is the Regulatory Party for the diminution in value of any regulated parcel resulting from regulations in the Plan or regulations adopted by such Party implementing the Plan, Boulder County shall, to the extent permitted by law, indemnify such Party for the amount of said judgment.

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.

13. TERM AND EFFECTIVE DATE.

This Agreement shall become effective when signed by authorized representatives of the governing bodies of each of the Parties. Except as provided herein, this Agreement shall remain in effect for a period of twenty (20) years, unless terminated prior thereto by agreement of all the Parties or pursuant to the terms of section 7 above.

At any time until ninety days prior to the tenth anniversary of the effective date of the Agreement, either Party may give written notice to the other Party by first class certified mail that it intends to terminate the Agreement effective on that anniversary and may, accordingly, terminate the Agreement.

Each Party shall, at least 90 days before the then current expiration date, hold a duly noticed public hearing to determine whether the term of this Agreement shall be extended an additional five (5) years from the expiration date then in effect. Notices of the hearing and subsequent action of the Party shall be sent to the other Party.

14. PARTY REPRESENTATIVES.

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

ENTITY: REPRESENTATIVE:

County of Boulder  
Director, Land Use Department  
P.O. Box 471  
Boulder, CO 80306

City of Longmont  
Director of Community Development  
Civic Center Complex  
350 Kimbark Street  
Longmont, CO 80501

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

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

CITY OF LONGMONT

By: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

COUNTY OF BOULDER  
BY: BOARD OF COUNTY COMMISSIONERS

\_\_\_\_\_  
Paul D. Danish, Stewart, Chair

ATTEST:

\_\_\_\_\_  
Clerk to the Board

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney