

INTERGOVERNMENTAL AGREEMENT
FOR
BOULDER VALLEY TDR
COMPREHENSIVE DEVELOPMENT PLAN

This Intergovernmental Agreement, by and between the City of Boulder, a Colorado home rule municipal corporation ("Boulder"), and the County of Boulder, a body politic and corporate of the State of Colorado ("Boulder County") (collectively the "Parties"), made to be effective on the ____ day of _____, 1995,

WITNESSETH:

WHEREAS, §29-20-101 et seq., C.R.S., 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 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, §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 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; §31-12-101, et seq.; and parts 2 and 3 of article 23 of title 31, C.R.S., as amended; and

WHEREAS, Boulder and Boulder County have previously entered into a jointly adopted comprehensive plan for the entirety of the Boulder Valley (the "Boulder Valley Comprehensive Plan," hereinafter "BVCP"), which provides in general terms for the preservation of the rural character of those lands designated thereunder as "Area III;" and

WHEREAS, the Parties believe that a comprehensive development plan which provides binding commitments by Boulder County for the preservation of the rural character of lands within Area III and other designated lands as shown on Exhibit A, attached hereto and incorporated herein by this reference (hereinafter, the "Plan Area") through the use of the County's non-urban planned unit development ("NUPUD") and transferrable development right ("TDR") programs, combined with a commitment by Boulder for accommodation of development from transferred development rights within Boulder's Community Service Area, is in the best interests of the citizens of each of the Parties; and

WHEREAS, the prohibition of approval of non-contiguous NUPUD (NC-NUPUD) receiving sites within the "Northern Tier" portion of the Plan Area, as shown on Exhibit A, of NC-NUPUDs from the balance of the Plan Area, and of NUPUDs where located within the

"Planning Reserve Area" portion of Area III, and the prohibition within the Plan Area of annexation or development by Boulder, except in accordance with the policies and criteria set forth in the BVCP, are intended to preclude increased development and urban sprawl which would extend urban development into Area III, would extend the effective boundaries of Boulder beyond its defined community service area and would, if development were permitted in the unincorporated area, require the provision of urban services by Boulder County, in contravention of provisions of the BVCP; and

WHEREAS, the Parties find that providing a TDR program in the Plan Area, with the ability to locate that development within the community service area of Boulder, will assist in preserving the rural character of the lands in Area III for the purpose of preserving a community buffer, which will serve the economic and civic interest of their citizens and meet the goals of the BVCP; and

WHEREAS, the Parties find it desirable to monitor the progress of such TDR program in order to assure that timely modifications to the program can be made in an expedited fashion, when necessary; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement in order to plan for and regulate the use of the lands within the Plan Area through joint adoption of a mutually binding and enforceable comprehensive development plan; 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 Plan Area, as shown on the map attached hereto as Exhibit A;

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

1. BOULDER VALLEY TDR COMPREHENSIVE DEVELOPMENT PLAN;
REPEALER.

This Agreement is adopted by the Parties as the Boulder Valley TDR Comprehensive Development Plan (the "Plan") governing the Plan Area. This Agreement supersedes the Area III Interim Comprehensive Development Plan Intergovernmental Agreement, as amended and extended, and said former Intergovernmental Agreement is hereby repealed in its entirety as of the effective date hereof.

2. DEFINITIONS:

As used in this Agreement, the following terms are intended to have the meanings as set forth herein:

DEVELOPMENT: Construction or establishment of structures, parking areas, and/or

surfaced vehicular roadways (except expansion of existing roads), or establishment of new land uses.

PLAN AREA: Lands included within the boundaries of the designated Plan Area as set forth in Exhibit A, including right-of-way, setback areas, and parcels subject to the Plan's development regulations.

STRUCTURE: Any thing which is 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 built up or composed of parts joined together in some definite manner, but excluding fences, retaining walls under 6 feet in height, and buried utility lines.

3. CONTROLLING REGULATIONS.

Restrictions on use and development of lands within the Plan Area shall control and supersede local regulations of the Regulatory Party to the extent they conflict. For purposes of this Plan, the "Regulatory Party" is that Party having regulatory jurisdiction over the subject property at the time or seeking to acquire such jurisdiction through annexation. A Party shall be deemed to be "seeking" annexation as of the date when an annexation petition is filed. No Party shall agree with any landowner or other person or entity interested in any parcel within the Plan Area to allow any use or development which does not comply with the Plan without first obtaining a Plan Amendment as set forth herein.

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. Any Party adopting such procedures, plans, policies, ordinances or regulations shall give each of the other Parties sufficient advance notice of such action as will enable such Party, if it so desires, to comment upon the planned actions of that Party.

To the extent that this Plan is silent as to a particular land use matter, existing local land use regulations of the Regulatory Party having jurisdiction over the property as amended from time to time shall control.

Approval of a NUPUD within the Planning Reserve Area or of a NCNUPUD receiving site within the Plan Area is prohibited unless approved by the governing bodies of each Party. Any proposed use, development or annexation of any portion of the parcels within the Plan Area shall conform to the provisions of this Agreement, or, where not in conformity with this Plan, shall require amendment of the Plan in the manner provided in this Agreement.

Prior to approval of an NUPUD within the Rural Preservation Area pursuant to Boulder County's PUD regulations, Boulder County shall provide Boulder the opportunity for review and comment. If Boulder so requests, Boulder County shall allow Boulder an

additional 30 day review period in which to address its concerns or attempt to negotiate appropriate amendments with affected applicants.

4. ANNEXATION AND UTILITY SERVICE.

As more specifically provided in the BVCP for those annexations which require four-body review and approval, Boulder agrees that it will not annex nor serve with water or sewer utilities such lands within the Plan Area without first complying with the provisions of the BVCP.

5. TDR SENDING SITES WITHIN THE PLAN AREA.

Lands within the Plan Area shall be permitted to participate in the TDR program which has been adopted by Boulder County upon final determination by Boulder County that such land meets the criteria for sending sites under the regulations of said TDR program.

6. TDR RECEIVING SITES WITHIN BOULDER COMMUNITY SERVICE AREA.

Boulder agrees to permit the use of development rights transferred from the Plan Area to locate development upon approved receiving sites within the boundaries of its community service area. Upon approval of a TDR sending site by Boulder County and issuance and recordation of the Certificate(s) of Development Rights, the owner of the Certificate(s) of Development Rights may obtain from Boulder final approval to locate and develop any unit(s) represented by said Certificate(s) upon land which is currently within the City or which is being contemporaneously annexed in accordance with the provisions of the BVCP, or upon other lands within Area III, which have been reviewed and approved for "new urban development" under the provisions of the BVCP, or may market said Development Rights to others.

Boulder County and Boulder, either individually or collectively, upon acquisition of Development Rights from lands within the Plan Area, shall be entitled to market those rights to others who may seek to locate and develop any unit(s) represented by the Certificate(s) within Boulder's community service area.

Boulder shall permit up to 250 Development Rights units to be located within its community service area, upon proper application and approval of such development in accordance with its existing regulations and regulations to be developed and adopted concerning annexation and approval of receiving sites located within the annexed portion of the community service area.

7. CONSERVATION EASEMENTS

Within the Plan Area, Boulder County shall obtain conservation easements as required

by its TDR regulations and shall require said easements to be granted to both Boulder County and Boulder, jointly. Further, the Parties agree that they will continue to explore the necessity for and advisability of reciprocal grants to each other in the right to enforce all conservation easements now held by Boulder or Boulder County within the Plan Area.

8. JOINT MONITORING COMMITTEE

Upon execution of this Agreement, The Parties shall establish a committee including, but not limited to, members of the governing bodies of Boulder County and Boulder to monitor the progress of their TDR programs in order to ensure that the mutual goals of the Parties as expressed herein are being implemented and to provide opportunity for timely adjustments to be made in such programs to accomplish the same.

9. 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. 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. Boulder County shall not apply any modification of the NUPUD or NCNUPUD regulations from those which exist on the effective date of this Agreement to lands within the Plan Area without the consent of Boulder. The Regulatory Party shall not approve nor permit any development or change of use of any parcel in the Plan Area 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.

10. SEVERABILITY.

If any portion of this Plan is held by a court in a final, non-appealable decision to be 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.

11. 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.

12. 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.

13. DEFENSE OF CLAIMS.

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, such Party shall, and the other Party may, defend such claim upon receiving timely and appropriate notice of pendency of such claim. Defense costs shall be paid by each Party providing such defense.

In the event that any person not a Party to the Plan should obtain a final money judgment against 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, such Party shall, without contribution from the other Party, be responsible for the payment or other satisfaction of said judgment.

14. 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.

15. TERM AND EFFECTIVE DATE.

This Agreement shall become effective upon signature of an authorized representative of the governing bodies of each of the Parties. This Agreement shall remain in effect for a period of ten years provided, however, that Boulder County may, upon demonstration that Boulder has not exercised its best efforts to implement this Agreement, withdraw from this Agreement by giving notice making such demonstration during a period between April 1, 2000 and June 1, 2000, and either party may terminate this Agreement pursuant to the terms of Section 10 above or by mutual agreement of the Parties.

16. PARTY REPRESENTATIVES.

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

PLANNING DIRECTOR OF BOULDER COUNTY
P.O. Box 471
Boulder, CO 80306-0471

CITY MANAGER OF BOULDER
P.O. Box 791
Boulder, CO 80306-0791

CITY OF BOULDER

By: Leslie Durgin
Leslie Durgin, Mayor

May 8, 1995
Date

ATTEST:

APPROVED AS TO FORM:

Alicia D. Lewis
City Clerk

Joseph N. de Raismes, III
City Attorney

COUNTY OF BOULDER

BY: BOARD OF COUNTY COMMISSIONERS

Homer Page
Homer Page, Chair

4-25-95
Date

ATTEST:

APPROVED AS TO FORM:

Susan M. Ashcraft
Clerk to the Board

H. Lawrence Hoyt
County Attorney