

## COMPREHENSIVE DEVELOPMENT PLAN INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("IGA") by and between the Town of Nederland, a Colorado statutory municipal corporation ("Nederland" or the "Town"), and the County of Boulder, a body politic and corporate of the State of Colorado ("Boulder County" or the "County") (collectively, the "Parties") is made to be effective on the Effective Date as defined on the signature page of this IGA.

### RECITALS

**A.** Sections 29-20-101 through 29-29-109, C.R.S. as amended ("LUCEA") 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 to protect the environment. LUCEA specifically authorizes local 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."

**B.** Sections 29-1-201 through 29-1-207, 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).

**C.** The functions described in this IGA are lawfully authorized to 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.

**D.** On March 7, 2002, the Parties entered into a Comprehensive Development Plan Intergovernmental Agreement (the "Original IGA") for a period of 20 years. The Original IGA was amended in 2009 for the Town to annex the 6.68 acre Town Maintenance Shop Parcel.

**E.** The term of the Original IGA as amended ends in March 2022, and the Parties believe it is in the best interests of the citizens of the Town and the County to enter into a new intergovernmental agreement with the goal of continuing the spirit of collaboration that was established by the Original IGA and demonstrated through the Parties' course of dealing throughout the term of the Original IGA.

**F.** In October 2003, the Parties entered into the Boulder County Countywide Coordinated Comprehensive Development Plan Intergovernmental Agreement (the "Super IGA") which is designed to coordinate all of Boulder County's comprehensive development plan IGAs, to recognize and protect each municipality's planning area, and to preserve the rural character of the land outside of each community's respective planning areas.

**G.** The Parties believe that it is in the best interest of the residents of both communities to enter into a new IGA in order to preserve Nederland's unique and individual character through orderly development within a newly defined Nederland Planning Area (the

“NPA”). The NPA contains a Primary Planning Area (“PPA”) where annexation and development may occur in accordance with the provisions of this IGA. The areas of the NPA not designated as PPA are designated as Rural Preservation Area (“RPA”) where the Parties’ intent is to preserve the rural quality of the land.

**H.** The Parties have each held hearings after proper public notice for the consideration of entering into this IGA and the adoption of a comprehensive development plan for the subject lands.

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

**1.0 PURPOSE AND INTENT.** This IGA is intended to protect and enhance the Town's ability to coordinate its future growth into the PPA, and specifically for the following purposes:

1.1 Implementing Comprehensive Plans. This IGA is designed to implement the goals and policies set forth in the Parties’ respective comprehensive plans.

1.1.1. The Nederland Comprehensive Plan (referred to herein as the NCP) emphasizes the Town’s commitment to quality of life, sustainability and preservation of small town character, while addressing the need for quality, affordable housing, a diversified, sustainable local economy, and a compact, walkable land use pattern.

1.1.2. The NCP emphasizes proactively planning for the future and balancing the demands of environmental and economic sustainability with community character, historical preservation and property owners’ rights.

1.1.3. The Boulder County Comprehensive Plan, as amended from time to time, (the “BCCP”) seeks to protect agricultural lands, channel growth to municipal planning areas and consider environmental factors, natural resources, and natural hazards in land use decisions.

1.1.4 BCCP policy CW 1.07 states that “[t]o accomplish a cooperative and coordinated land use planning effort among the region’s municipalities, it is herein the policy of Boulder County to enter into intergovernmental contracts with the municipalities for the purpose of implementing the land use proposals and policies of the jointly adopted municipal comprehensive plans.”

1.2 Recognizing Future Development is Appropriate in the PPA. The Parties through this IGA intend to direct future development within the PPA to: avoid sprawl, ensure the provision of adequate services, provide access to opportunities for affordable housing and living, limit impacts on wildlife, minimize risks related to wildfire and natural hazards, maximize the utility of funds invested in public facilities, transportation and services, distribute fairly and equitably the costs of government services among those persons who benefit therefrom, extend government services and facilities in an efficient, logical fashion, simplify the governmental structure of the affected areas, and reduce and avoid, where possible, conflict between the Parties.

1.2.1 Affordable Housing. The Town and County will seek ways to implement its land use and development regulations in a manner that reflects the community values of diverse housing choice and affordability.

1.2.2 Wildlife. Upon annexation and review of any development proposals the Town will consider and limit to the extent possible impacts to wildlife. The cumulative impacts of development on elk migration in the Nederland area is of particular importance, and the Town and County will consider opportunities to establish a plan to address this topic.

1.2.3 Natural Hazards. Upon annexation and review of any development proposals the Town will consider and seek to limit and mitigate risks related to natural hazards, with a particular emphasis on minimizing risk related to wildfire given the community's location and proximity to heavily forested land.

1.2.4 Parcel-Specific Provisions. The language within this Section 1.2.4 reflects the Parties' understanding that it is appropriate to consider annexation of developed parcels adjacent to the current municipal boundary. The Town's water and sewer infrastructure has the capacity to accommodate additional service area, and connection to the Town's services would benefit water quality. Recognizing the Town's long-held interest in maintaining its unique character, and that additional development would have impacts on wildlife, transportation, and the environment, this IGA allows for very limited expansion and additional intensity of use of areas eligible for annexation, identified as Primary Planning Area in Exhibit B. The Parties' intent is to generally restrict additional residential density beyond that which is currently allowed under county jurisdiction, with the exception of Area 3(a).

1.2.4.1 Area 1. Lots 1 through 5 of Caribou Ranch-Sherwood Gulch may be annexed subject to the deed restrictions recorded on May 29, 2013 in the real property records of the Boulder County Clerk and Recorder at Reception Nos. 3315352, 3315353, 3315354, 3315355, 3315356 respectively.

1.2.4.2 Area 2. Area 2 is composed primarily of developed parcels in County-approved subdivisions. It contains single-family development in forested areas with some steep slopes. The area is very susceptible to wildfire and has limited access. The Town has indicated it has capacity in its water and sewer systems to serve some of the existing development if properties in Area 2 were annexed. Providing services may benefit water quality and protect wildfire. The County and Town agree that Area 2 is eligible for the Town to annex. This area is suitable for a limited increase in development density, recognizing that any additional development would require a heightened level of attention to wildfire mitigation and wildlife impacts.

1.2.4.3 Area 3(a) ("Eldora Road Parcel Southeast"). The parcel contains a number of development constraints that must be addressed at the time of annexation. Consistent with previous development proposals, this parcel shall only be annexed for the purpose of multi-unit housing to address the community's need for more diverse and affordable housing options. As a result, annexing this

parcel is contingent upon the following limits, which restrictions shall be implemented at the time of annexation through a mechanism acceptable to both the Town and County: (a) Residential development on the parcel may not exceed 50 units; (b) Prior to annexation, the property owner must agree to restrict at least 50 percent of the total number of units to be affordable. Of those units with affordability requirements, 50 percent (i.e., one-quarter of the total number of units on the property) will be deed-restricted as permanently affordable units. The remainder of the units with affordability requirements at the time of development may be sold at market rate after a period of no less than 30 years.

In addition, special consideration will be given to areas of the property with high landslide susceptibility based on County mapping, and any proposed development must be referred to the Colorado Geological Survey. Prior to any development on the parcel, the following plans for the site must be established with input from the County: wildfire mitigation, safe routes to school, access location and improvements to address issues such as visibility and sight lines, and a plan for how impacts to elk migration will be minimized.

1.2.4.4 Area 3(b) (“Eldora Road Parcel, Northeast”). The Town has indicated it has capacity in its water and sewer systems to serve existing development if the “Eldora Road Parcel, Northeast” was annexed. Providing services would benefit water quality. Therefore, the County and Town agree that the parcel is eligible for the Town to annex. Any additional development on the property should be designed with a goal to add to the community’s diversity of housing types.

1.2.4.5 Area 3(c) (“Water Utility Parcel”). The County and Town agree that the parcel is eligible for the Town to annex.

1.2.4.6 Area 3(d) (the “Nederland High School Parcel”). The Nederland High School Parcel is eligible for the Town to annex.

1.2.4.7 Areas 4 & 5. The County requests that any development in these areas be completed in a manner that is sensitive to natural resources and habitat, and does not conflict with the County’s trail network. In recognition of potential cumulative impacts on elk migration in the Nederland area, the County requests establishment of a plan, with input from the County, for how impacts to elk migration will be minimized.

1.3 Maintaining Community Buffer. This IGA is intended to keep the RPA and the land outside the NPA rural in character to preserve a community buffer.

1.4 Protecting View Corridors, Watersheds and Allowing Only Compatible Development in the NPA. This IGA acknowledges the importance to both Parties of protecting sensitive natural areas, maintaining view corridors, enforcing nuisance ordinances and ensuring that new development is compatible with the character of both Nederland and adjoining County properties.

1.5 Fostering Intergovernmental Cooperation. This IGA encourages the Parties to collaborate to achieve common goals, including becoming more socially, economically and environmentally sustainable and supporting the public and private provision of cultural, educational, social and healthcare services in the NPA.

1.6 Encouraging Transparent and Timely Decisions. This IGA is intended to encourage transparent, open communication between the Parties and to ensure that decisions pertaining to this IGA are made in a timely and efficient manner.

## **2.0 NEDERLAND COMPREHENSIVE DEVELOPMENT PLAN (IGA Plan).**

2.1 IGA Plan Defined. This IGA, including the Maps attached hereto as Exhibits A and B, is hereby adopted by the Parties as the Nederland Comprehensive Development Plan, and shall be known herein as the IGA Plan, as distinguished from the NCP. The IGA Plan shall govern and control the NPA, which is defined as the unincorporated area of Boulder County as shown on Exhibit A, or as subsequently amended in accordance with this IGA. With the exception of the Super IGA, this IGA Plan replaces and supersedes any and all previous agreements between the Parties concerning the NPA.

2.2 Nederland Planning Area Designations. Exhibit A and B identify, designate and define the land to be known as the NPA, which consists of the Primary Planning Area (the "PPA") and the Rural Preservation Area (the "RPA").

2.2.1 The PPA is the land that is planned for the expansion of the Town limits and which the Parties recognize is appropriate and intended for development.

2.2.3 The RPA represents areas that are expected to remain rural for the duration of this IGA, unless the Parties agree to an amendment of this IGA pursuant to section 11, below.

## **3.0 ANNEXATION AND DEVELOPMENT OF PROPERTY.**

### **3.1 Land within the Primary Planning Area.**

3.1.1 The Town may annex into its corporate boundaries any and all property located within the PPA, in accordance with state and local laws governing annexation. The Town agrees that it will only annex parcels in their entirety, not portions of a parcel, into the Town, unless mutually agreed to by the Parties. By executing this IGA, the County finds and declares that a community of interest exists between the Town and all property located within the PPA. The County will make reasonable efforts to cooperate with Town efforts to annex land in the PPA.

3.1.2 Any property that is disconnected from the Town after the Effective Date of this IGA (whether currently located within the municipal limits of the Town or later annexed into the Town after the Effective Date of this IGA) shall continue to be within the PPA for purposes of this IGA unless it is specifically excluded by a duly executed amendment to this IGA.

3.1.3 The Town and the County acknowledge and agree that the property within the RPA is intended to remain in the County's regulatory jurisdiction and shall not be annexed or developed by the Town during the term of this IGA, unless mutually agreed to by the Parties.

3.1.4 The Town agrees that in establishing the boundaries of any area proposed to be annexed, any portion of a platted street that is within, or directly adjacent to, the area to be annexed, the entire width of said street or alley shall be included within, or directly adjacent to, the area annexed.

### **3.2 Land Outside of the NPA.**

3.2.1 The area outside the NPA is intended to remain in the County's regulatory jurisdiction for the term of this IGA, unless otherwise provided herein or by a duly executed amendment to this IGA.

3.2.2 The Town may annex lands outside of the PPA and expand the NPA only in accordance with Section 4 of this IGA.

3.3 Developing Areas with Constraints. When evaluating development applications within their respective areas of responsibility, both Parties will consider the impact of proposed development on the floodplain, natural areas, wildlife habitat, steep slopes, watershed and historically-and archaeologically-significant areas, and will require impacts to be reasonably minimized and mitigated.

### **4.0 EXPANSION OF THE NPA**

4.1 Mutual Agreement. During the term of this IGA, expansion of the PPA, RPA, or NPA may only occur with the mutual agreement of the Parties and the corresponding amendment of Exhibits A and B in accordance with this IGA.

4.2 Nederland Planning Process. Any request for expansion of the PPA, RPA, or NPA must be consistent with the BCCP and the NCP and the Nederland Public Process.

**5.0 OPEN SPACE.** Acquisitions within the PPA. The County agrees that for the term of this IGA it will not purchase or otherwise acquire any land within the PPA for open space purposes, including conservation easements and transfer of development right sending sites without the approval of the Town.

**6.0 COMMUNITY BUFFER.** The County agrees not to process any zoning map amendments other than a change to Mountain Institutional that would allow more intensive zoning designation for lands remaining in the County's regulatory jurisdiction within the PPA and RPA, unless mutually agreed to by the Parties.

### **7.0 TOWN OF NEDERLAND UTILITIES.**

7.1 Nederland Service Area. It may be necessary for the Town to seek additional water supplies, water storage, and water and wastewater treatment and delivery facilities, both within and

outside the NPA. The areas designated in the Map portion of Exhibit A as the NPA shall constitute the Town's "Service Area" for all purposes, including but not limited to the County's Regulations of Areas and Activities of State Interest in Article 8 of the Boulder County Land Use Code.

## **8.0 IMPLEMENTATION PROCEDURES.**

8.1 Plan Amendment Required. A Plan amendment, agreed to by both the Town and the County, must occur in order to annex or to allow any use or development , or acquire for open space any parcel within the PPA where such annexation, use or development, or acquisition does not comply with the IGA Plan. The provisions of Section 11.0 of this IGA shall apply to any such Plan amendment.

8.2 Notice Required. The Parties each agree to undertake all steps necessary 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 notice of such action as will enable such Party, if it so desires, to comment upon the planned actions of that Party. Sufficient notice shall generally mean notice delivered to the other Party at least 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.

8.3 County Zoning Changes within the NPA. Where the County seeks to approve changes to the zoning of properties within the NPA after referral as provided herein, the Board of Trustees shall respond by resolution, approving or disapproving such change or suggesting conditions of approval.

## **9.0 REFERRALS.**

9.1 Nederland Referrals to Boulder County. The Town shall refer in writing to the County:

9.1.1 Any application for annexation; and

9.1.2 Any proposed amendment to the NCP affecting any lot, tract, or parcel within the NPA.

9.2 Boulder County Referrals to Nederland. The County shall treat the Town as a formal referral agency and shall refer in writing to the Town:

9.2.1 Any application for zoning, rezoning, subdivision, PUD, replat, special use, limited impact special use, vacation, transfer of development rights, conservation easement or development (including site plan reviews) for any lot, tract, easement, rights-of-way or parcel within the NPA; and

9.2.2 Any proposed map amendment to the BCCP affecting any lot, tract, or parcel within the NPA; and

9.2.3 In addition to referring the foregoing applications and proposals to the Town, the County agrees to advise any applicant owning land in the PPA during the pre-application

process (i.e., prior to formal application submittal) for any of the categories of development listed in Section 9.2.1 of the possibility of annexation into the Town, to encourage any such applicant to contact the Town concerning possible annexation, and to provide such applicants with the Town's appropriate contact information.

9.3 Referral Period and Waiver of Period for Response to Referrals. The standard period for referrals shall be 30 days. Either Party may, for any given referral, elect to waive or reduce the period of time it requires to submit a response, and such election shall be made by written letter or electronic mail.

9.4 Failure to Respond to Referrals. Failure by either Party to respond to a referral shall entitle the referring Party to assume that the receiving Party has no comment concerning the application or proposal.

9.5 Communication with referral party. For any application or proposal required to be referred by Section 9.1 or 9.2, 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, non-confidential 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.

## **10.0 PARTNERSHIPS.**

10.1 Intergovernmental Cooperation. The Parties recognize and acknowledge the need for intergovernmental cooperation on important local and regional land use matters and to achieve common goals. In accordance with the NCP, the Town and the County agree to cooperate in good faith in:

10.1.1 Collaborating to design, fund and construct regional trails that connect Nederland to Boulder County open space and other municipalities;

10.1.2 Working with the Colorado Department of Transportation, the Regional Transportation District and the Denver Regional Council of Governments to improve Nederland's multimodal transportation system, including continuing to explore ways to improve bus service between the Town, its neighboring communities, and Boulder County destinations and to reduce emissions;

10.1.3 Continuing to freely share geographic information system data, maps and expertise;

10.1.4 Identifying and implementing programs to enhance opportunities for senior housing and affordable housing within the Town and the NPA; and

10.1.5 Cooperating in the identification of sites to provide more efficient governmental services, including, without limitation, sustainable waste management activities, and solar or other forms renewable energy generation facilities.

- 10.1.7 Enforcing nuisance ordinances to improve the appearance of properties in the NPA.
- 10.1.8 Implementing the Boulder County Sustainable Energy Plan.
- 10.8.9 Implementing the Boulder County Regional Affordable Housing Strategic Plan.
- 10.1.10 Cooperating on joint ventures to finance and provide for cultural and recreational opportunities for Town residents and people living in the NPA and surrounding neighborhoods.
- 10.1.11 Collaborating to construct a cost effective, highly diverse, and resilient wastewater treatment system to serve the NPA that is both environmentally beneficial and aesthetically pleasing.
- 10.1.12 Cooperating on the provision of water and sewer services to properties in the RPA by the Town.
- 10.1.13 Cooperating to preserve historic and cultural resources within the NPA.

## **11.0 AMENDMENTS.**

11.1 Entire Agreement. This IGA, together with the Super IGA, contains the entire agreement between the Parties and, with the exception of the Super IGA, supersedes any other or prior agreements concerning the same subject matter.

11.2 Changes to IGA. Any proposed amendment to the IGA 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" shall mean the Party having final land use or annexation approval jurisdiction, as the context requires. Amendment of the IGA shall take place only upon approval by resolution or ordinance adopted by the governing body of both 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 within the NPA by any means in a manner inconsistent with this IGA until and unless the IGA has been amended so that the proposed development or use of such parcel is consistent with the IGA.

11.3 Timely Decisions on Amendments to IGA. The Parties agree that within thirty (30) days after receipt by one Party of an amendment proposed by the other Party, the Parties will agree on and establish a schedule for processing and taking final action upon the amendment proposal.

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

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

**14.0 ENFORCEMENT.** Either or both of the Parties may enforce this IGA by any legal or equitable means including specific performance, declaratory relief, and injunctive relief. No other person or entity shall have any right to enforce the provisions of this IGA. The Parties agree to discuss and attempt to resolve any dispute in the interpretation or application of this IGA, including but not limited to any dispute regarding a request to terminate this IGA, but if they are unable to do so, either Party may request that the matter be presented to a mediator selected and paid for jointly by the Parties.

**15.0 DEFENSE OF CLAIMS/INDEMNIFICATION** If any person allegedly aggrieved by a provision of this IGA who is not a party to the IGA asserts or attempts to assert any claim against any Party concerning such IGA provision, Boulder County shall, and the Town may, defend such claim upon receiving timely and appropriate notice of the 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 IGA should obtain a final money judgment against the Town for the diminution in value of any regulated parcel resulting from regulations in the IGA or regulations adopted by the Town implementing the IGA, the County shall, to the extent permitted by law, indemnify the Town for the amount of said judgment.

**16.0 GOVERNING LAW AND VENUE** This IGA shall be governed by the laws of the State of Colorado and venue shall lie in the appropriate court(s) for Boulder County, Colorado.

**17.0 TERM AND TERMINATION** This IGA shall remain in effect until [date], 2032, unless otherwise terminated earlier by mutual agreement of the Parties.

**18.0 PARTY REPRESENTATIVES** Referrals made under the terms of this IGA shall be sent to the Parties' representatives as follows:

**County of Boulder**

Director, Land Use Department  
P.O. Box 471  
Boulder, Colorado 80306

With a copy to:  
Boulder County Attorney's Office  
PO Box 471  
Boulder, Colorado 80306

**Town of Nederland**

Karen Gerrity, Town Administrator  
P.O. Box 396  
45 W. First Street

Nederland, Colorado 80466

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

**19.0 COUNTERPART.** This IGA may be executed in any number of counterparts which together shall constitute the agreement of the Parties.

**20.0 EFFECTIVE DATE.** The effective date of this IGA shall be the date on which both Parties have approved and executed the IGA by signing where indicated below.

**TOWN OF NEDERLAND:  
Board of Trustees**

By: \_\_\_\_\_ Mayor  
Kristopher Larsen, Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

**COUNTY OF BOULDER:  
BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_  
Elise Jones, Chair

Date: \_\_\_\_\_, 2019

ATTEST:

\_\_\_\_\_

APPROVED AS TO FORM:

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DRAFT