

RESOLUTION 2019-078
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE
AMENDMENT NUMBER TWO TO THE INTERGOVERNMENTAL
AGREEMENT BETWEEN THE CITY AND LARIMER COUNTY REGARDING
COOPERATION ON MANAGING URBAN DEVELOPMENT WITHIN THE FORT
COLLINS GROWTH MANAGEMENT AREA TO CLOSE THE TRANSFER OF
DENSITY UNITS PROGRAM AND UPDATE CERTAIN REFERENCES

WHEREAS, pursuant to Resolution 2006-107, the City of Fort Collins ("City") entered into that certain Intergovernmental Agreement Regarding Cooperation on Managing Urban Development dated June 24, 2008, (the "Fort Collins-County IGA") with Larimer County, Colorado (the "County"), which IGA superseded all prior intergovernmental agreements entitled "Regarding Cooperation on Managing Urban Development"; and

WHEREAS, the Fort Collins-County IGA was subsequently amended by Ordinance No. 142, 2016 to change the boundary of the City's Growth Management Area; and

WHEREAS, the City and County wish to further amend the Fort Collins-County IGA to remove references to the Transfer of Density Units Program and to correct references to the Larimer County Land Use Code and internal references in substantially the same form as set forth in *Amendment Number Two To Intergovernmental Agreement (Regarding Cooperation on Annexation, Growth Management and Related Issues)* ("Amendment Number Two") attached hereto as Exhibit "A" and incorporated by this reference; and

WHEREAS, on May 16, 2019, Fort Collins Planning and Zoning Board unanimously recommended as part of its adopted consent agenda that City Council approve Amendment Number Two to the Fort Collins-County IGA; and

WHEREAS, City Council has determined that it would be in the best interests of the City to adopt Amendment Number Two to the Fort Collins-County IGA in substantially the same form as set forth in Exhibit "A".

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

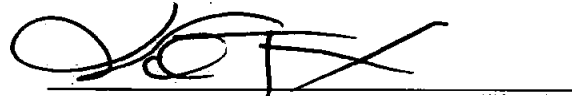
Section 2. That the City Council hereby approves Amendment Number Two to the Fort Collins-County IGA and authorizes the Mayor to execute Amendment Number Two in substantially the same form as set forth in Exhibit "A" subject to minor modifications as the City Manager, in consultation with the City Attorney, determines necessary and appropriate to protect the interests of the City or to effectuate the purposes of this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Manager is hereby authorized to execute an agreement substantially in the form of Exhibit "A", with such modifications and additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 16th day of July, A.D. 2019.



Mayor

ATTEST:


City Clerk



**AMENDMENT NUMBER TWO TO INTERGOVERNMENTAL AGREEMENT
(Regarding Cooperation on Annexation, Growth Management and Related Issues)**

THIS AMENDMENT NUMBER TWO TO INTERGOVERNMENTAL AGREEMENT ("Amendment Number Two") is made and entered into this ____ day of _____, 2019 by and between LARIMER COUNTY, COLORADO, a body politic organized under and existing by virtue of the laws of the State of Colorado ("County") and THE CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipal corporation ("City").

RECITALS

WHEREAS, pursuant to Resolution 2006-107, the City entered into that certain Intergovernmental Agreement regarding Cooperation on Managing Urban Development dated June 24, 2008, (the "Fort Collins-County IGA") with Larimer County, Colorado (the "County"); and

WHEREAS, Amendment Number One to the Fort Collins-County IGA dated January 16, 2017, ("Amendment Number One") was adopted to adjust the Fort Collins Growth Management Area; and

WHEREAS, the County and City desire to further amend the Fort Collins-County IGA to eliminate references to the Transfer of Density Units Program and to correct certain references to the Larimer County Land Use Code and references internal to the Fort Collins-County IGA as set forth in this Amendment Number Two.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. That Section 4 of the Fort Collins-County IGA is hereby replaced in its entirety by the following:

4. Development Regulations. The City acknowledges that the County has adopted certain land use regulations to implement the prior Intergovernmental Agreement for the GMA entered into between the parties on May 5, 1998. These regulations are contained in the Larimer County Land Use Code at Section 4.2.1 (Growth Management Area Overlay Zone District) and Section 8.18 (Large Retail Development). The City acknowledges and agrees that the County through exercise of its legislative authority and discretion may amend these GMA regulations from time to time.

Notwithstanding the foregoing, the County acknowledges that its adoption of the above referenced GMA regulations in their current form was a substantial inducement and consideration for the City's entering into this Agreement and the prior May 5, 1998, Intergovernmental Agreement. The County agrees, therefore, that it shall not legislatively amend or fail to follow the GMA regulations and any subsequently adopted agreed upon GMA regulations until it has first referred such proposed amendment or action to the City for its

recommendation. The City shall provide its written recommendation to the County within ninety (90) days of receipt of the referral for legislative amendments and within thirty (30) days of receipt of the referral for other actions, unless the parties mutually agree upon a longer or shorter time period. In determining whether or not to adopt the proposed amendment or action, the Board of County Commissioners shall give great weight to the recommendation of the City and the extent to which the proposed amendment or action promotes or impairs the purposes of this Agreement, and the various components (elements) of the City's Comprehensive Plan.

In the event the County legislatively amends or fails to follow the current or subsequently adopted agreed upon GMA regulations without the City's approval, the City Council may elect to exercise any or all of the following remedies:

- A. Terminate this Intergovernmental Agreement upon giving sixty (60) days advance notice to the County.
- B. Refuse to annex any lands or specific parcels of land into the City.
- C. Cease to maintain any public infrastructure improvements which the City has theretofore agreed to maintain under Section 8 of this Agreement.
- D. Cease to enforce or attempt to enforce reimbursement agreements for the benefit of the County.
- E. Cease to collect (and remit to the County) funds as may be levied by the City for county-wide/regional improvements, including, without limitation, regional impact fees.

These remedies shall not apply to those occasions when the County modifies such GMA regulations under the provisions and criteria for "Modification of Standards" as contained in the Land Use Code.

2. That Section 5 shall be replaced in its entirety by the following:

5. Applications for Development Within the GMA Zoning District.

A. The County agrees it will not accept any development application, as defined in Section 4.2.1.D. of the Larimer County Land Use Code, for property which has any contiguity to the City limits and, thus, can be made eligible for voluntary annexation to the City whether through a series of annexations or otherwise. The owner of such property shall instead be required, prior to development, to seek annexation to the City. The County also will not accept a development application for any property in the GMA which was part of a parcel eligible for annexation as of December 18, 2000, but which is no longer eligible because of subsequent land divisions resulting in a break in contiguity, except land divisions created by court order from probate, dissolution of marriage or eminent domain proceedings.

B. If the City denies an annexation petition required to be submitted to it pursuant to above Subsection 5.A., the County may accept the application and process and rule on it in accordance with the Larimer County Land Use Code, unless the City has denied the annexation petition because it contained conditions deemed by the City to be unacceptable, in which case the County will not accept the application. If a property owner whose annexation petition was denied by the City because of unacceptable conditions contained in the annexation petition contends that the resulting inability to develop his or her property in either the City or the County constitutes an unlawful taking, the City and County shall make available to such property owner the takings determination process contained in the City's Land Use Code, which process shall be administered by the City but shall be modified to include both the County Manager and City Manager (or their designees) as the decision makers. If a review of the property owner's claim under the takings determination process results in a determination by either the City Manager or the County Manager that denial of the annexation petition, coupled with the inability to develop the property under the County's jurisdiction, would constitute an unlawful taking of the property owner's property, the County shall thereafter accept the application and process and rule on it in accordance with the Larimer County land use regulations.

C. The County and City agree that appeals, interpretations and variances from zoning provisions of the GMA District which are applied at the building permit stage shall be forwarded to the Larimer County Board of Adjustment as provided for in the Larimer County Land Use Code.

D. The County agrees that it shall refer to the City for review and comment all development applications, as defined in above Subsection 5.A., for properties located within the GMA. The City shall advise the County whether or not the proposed development complies with the City's Comprehensive Plan and the GMA regulations in the Larimer County Land Use Code. The City shall provide its comments to the County in writing within the time required for county referrals established by State Law. Except to the extent that the City notifies the County through its written comments that the development does not comply with the standards, the County may assume that the proposed development complies with all applicable standards and the County shall have no responsibility to further review the proposed development for compliance with the standards.

3. That Section 7 shall be replaced in its entirety by the following:

7. Annexations.

A. It is the City's intent to annex properties within the GMA as expeditiously as possible consistent with the terms of this Agreement. Except as provided in below Subsection 7.B., the City agrees to consider the annexation of any parcel or parcels of land located within the GMA which are eligible for voluntary annexation pursuant to the provisions of Title 31, Article 12 Colorado Revised Statutes.

B. To the extent permitted by law, and except for properties located within the GMA boundary lying south of County Road 32, the City agrees it will not

annex property south of County Road 32 (also known as the "Fort Collins/Loveland Corridor") unless the County either requires the landowner to petition for annexation or requests that the City consider annexation. The foregoing limitations on annexation shall not apply to the annexation of publicly owned open space, trails or parklands.

C. The City agrees to annex all County Road rights-of-way, easements, etc., adjacent to a voluntary annexation in accordance with Title 31, Article 12 Colorado Revised Statutes; provided, however, that the City may decline to annex such County roads and rights-of-way if annexation of such roads and rights-of-way would impede future annexations anticipated by the City to be accomplished by the use of a "flagpole" configuration or if such County road is primarily used by County development. In the event the City declines to annex any such roads or rights-of-way, it shall provide a written explanation in the annexation impact reports provided to the County outlining the City's reasons for not annexing such roads or rights-of-way.

D. The City agrees to pursue involuntary annexation of any parcel that becomes eligible for involuntary annexation.

E. The City agrees to pursue annexation of any parcel whose owner has signed an annexation agreement.

F. The County agrees that the City, in its sole discretion, (except as provided in above Subsection 7.B. of this Agreement) may annex outside the Fort Collins GMA. The City agrees that proposed annexations outside the GMA will be sent by certified mail to the Board of County Commissioners for review and comment at least thirty-five (35) days prior to the scheduled public hearing on the annexation before the City Council.

G. The County agrees to require a binding agreement for future annexation in the form attached as Exhibit 2 as a condition of approval of any development application requiring approval by the Larimer County Board of Commissioners, which is located within the GMA but is not, at the time of development approval, eligible for voluntary annexation to the City.

4. That Section 8 shall be replaced in its entirety by the following:

8. Improvements to and Maintenance of Public Facilities. The County agrees to require development proposals within the GMA to make improvements to County roads consistent with the Larimer County Urban Road Standards for the GMA which, to the extent reasonably feasible (as this term is defined in the Fort Collins Land Use Code), will be consistent with the multi modal and level of service standards for road improvements required by the City inside the City limits. The City agrees to provide routine maintenance and inspection of such public infrastructure improvements (whether on or off the development site) which, but for the design requirements established in Larimer County Land Use Code Section 8.18 for large retail development, would not otherwise have been required by Larimer County Urban Standards. (Examples of such improvements may include transit facilities, bicycle lanes, or parkway/median landscaping.)

The City agrees to apply its Off-Site Street Improvements Policy to any development within the City limits which has an identifiable impact on the County road system which may require the developer to make certain improvements to County roads outside the City limits. If improvements are to be made to County roads outside the City limits, the City agrees to send plans of said improvements to the Larimer County Planning Department and Larimer County Public Works Department for review and comment. The City also agrees to provide routine maintenance and inspection of all such public infrastructure improvements (whether on or off the development site) which, but for the design requirements established in Larimer County Land Use Code Section 8.18 for large retail development, would not have been required by Larimer County Urban Standards. (Examples of such improvements may include transit facilities, bicycle lanes, or parkway/median landscaping.)

5. That except as expressly modified by this Amendment Number Two, the Fort Collins-County IGA and Amendment Number One shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment Number Two to be effective as of the day and year first written above.

CITY OF FORT COLLINS, COLORADO

By: _____
Wade O. Troxell, Mayor

ATTEST:

City Clerk

Approved as to form:

Assistant City Attorney

LARIMER COUNTY, COLORADO

By: _____
Chair, Board of County Commissioners

ATTEST:

Approved as to form:

County Attorney