

- Feb - 28

INTERGOVERNMENTAL AGREEMENT
Superior Area
Comprehensive Development Plan
Road Maintenance Agreement

This Intergovernmental Agreement by and between the Town of Superior, a Colorado statutory town (Superior); and the County of Boulder, a body politic and corporate of the State of Colorado (Boulder County); (collectively the "Parties") is made to be effective on the 8th day of MAY, 1997.

φ

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, in order to ensure that the unique and individual character of Superior is preserved, the Parties believe that a Comprehensive Development Plan which recognizes the annexed areas and development approved by Superior, accompanied by binding commitments by the responsible jurisdictions for the preservation of the rural character of surrounding lands within the Plan Area, is in the best interest of the citizens of each of the Parties; and

WHEREAS, the prohibition of rezoning or other discretionary land use approvals by Boulder County, and of annexation or development of certain lands within the Plan Area by Superior, is intended to preclude unplanned development and urban sprawl which, if permitted in the unincorporated area, require the provision of urban services by Boulder County, in contravention of provisions of the Boulder County Comprehensive Plan; 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 find that designating a portion of the Plan Area to remain as rural development 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 Town of Superior declares that the rural preservation designations

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and land use regulations contained in this Agreement affect its future development, and that, consistent with the municipal annexation, utility service, and land use laws of the state of Colorado, this Agreement, including specifically the annexation and utility service 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 the 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 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, described as the Superior Influence Area, the Superior Town Limits, and the Rural Preservation Area as shown on the map portion of the Development Regulations ("Regulations") attached hereto as **Exhibit A** (the "Plan Area").

WHEREAS, a portion of McCaslin Boulevard located south of Superior ("McCaslin Portion") and a portion of Coalton Road located east of Superior ("Coalton Portion") which are shown on **Exhibit B** ("Streets") are within Boulder County which requires Boulder County to travel through Superior to maintain such roads; and

WHEREAS, Boulder County, Superior, and Superior Metropolitan District No. 2 ("District No. 2") are involved in a condemnation action for approximately 2.9 acres of property acquired by Boulder County ("2.9 Acre Parcel") and District No. 2 has deposited \$200,000 for such parcel with the court; and

WHEREAS, Boulder County has requested that Superior or its designee take over the maintenance responsibility for the Streets and Superior Metropolitan District No. 3 ("District No. 3") is willing to do so pursuant to the terms of this Agreement and that certain Intergovernmental Agreement among superior, District No. 2 and District No. 3 of even date herewith ("Street Maintenance IGA"); and

WHEREAS, Boulder County and Superior have not been able to agree historically on the terms for Superior to collect the County one-quarter of one percent (.25%) use tax for open space purposes ("Open Space Use Tax") and the terms herein resolve the disputes among them so that Superior will collect the Open Space Use Tax; 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.; parts 2 and 3 of article 23 of title 31; C.R.S., as amended; 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

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

1. SUPERIOR AREA BOULDER COUNTY COMPREHENSIVE DEVELOPMENT PLAN. This Agreement, including Regulations (both text and map portions) attached hereto as Exhibit A, is adopted by the Parties as the Superior Area Boulder County Comprehensive Development Plan (the "Plan") governing the Plan Area.

2. CONTROLLING REGULATIONS. Restrictions on use and development of lands within the Plan Area as established in Exhibit A 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 or seeking to acquire such jurisdiction through annexation or purchase. A Party shall be deemed to be "seeking" annexation as of the date when an annexation petition is filed. A Party shall be deemed to be "seeking" purchase as of the date when an offer to purchase or sell a property within the Plan Area is made by or to the property owners. No Party shall agree with any landowner or other person or entity interested in any parcel within the Plan Area to purchase the property or 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 Party sufficient advance notice of such action as will enable such other Party, if they so desire, to comment upon the planned actions of that Party.

To the extent 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.

3. ANNEXATION\PURCHASE PROVISIONS.

- a. Superior commits that it is not currently pursuing any annexations within the Rural Preservation Area.
- b. Boulder County commits that it is not currently pursuing any purchase within the Superior Influence Area or the Superior Town Limits.
- c. Superior Influence Area: The Map portion of this Plan identifies areas currently located within unincorporated Boulder County which may in the future be annexed to the Town of Superior. Nothing in this section is intended to require the Town of Superior to annex such area. However, Boulder County agrees that, for purposes of the Municipal Annexation Act, there is a community of interest in the area so designated on the Map portion of this Plan with the Town of Superior and the County will not object to annexation of such areas by the Town of Superior and Boulder County will not attempt to acquire such areas.

4. REFERRALS. Any petition, application or other proposal for annexation or development on any parcel within that portion of the Plan Area designated "Rural Preservation" or on any of the parcels set forth in section 5 of the Regulations set forth in Exhibit A shall be immediately referred in writing by the Regulatory Party to the other Party. Any offer, proposal, request, or application to purchase any parcel within that portion of the Plan Area designated Superior Influence Area or the Town Limits of Superior or on any of the parcels set forth in section 5 of the Regulations set forth in Exhibit A shall be immediately referred in writing by the Regulatory Party to the other Party. No action shall be taken thereon by the referring Party until the other Party has had the opportunity to respond concerning the proposals conformity to this Plan and other land use concerns, all such responses to be received within 20 days of date of referral. No action shall be taken thereon by the referring party unless it is in compliance with this Agreement and the Plan or an amendment thereto is agreed upon by the Parties.

5. ROAD CONSTRUCTION AND MAINTENANCE. Boulder County shall reconstruct the McCaslin Portion to establish a twenty-year life for the McCaslin Portion in accordance with mutually acceptable standards ("McCaslin Improvements") on or before December 31, 1997. Boulder County shall contribute Four Hundred Thousand Dollars (\$400,000) to the costs of such reconstruction. Superior shall



share equally with Boulder County the cost of such improvements over \$400,000 up to a maximum project cost of \$500,000, for a maximum contribution by Superior of \$50,000.

Pursuant to the Street Maintenance IGA, District No. 3 has agreed to be responsible for Superior's obligations under this Section 5 for costs of construction, and after completion of construction, for the maintenance of the Streets.

6. CONVEYANCE AND ANNEXATION OF ROADS. Upon execution of this Agreement, Boulder County shall:

- a. Convey to Superior the Coalton Portion.
- b. Convey title to the 2.9 Acre Parcel by Commissioners' Deed to District No. 2 and enter into a stipulation to dismiss the condemnation action therefor in substantially the same form as attached hereto as **Exhibit C**.
- c. Convey to Superior the McCaslin Portion and all those slope easements described in **Exhibit D**.

Upon conveyance of the McCaslin Portion and Coalton Portion, Superior shall annex the Streets.

7. COUNTY OPEN SPACE USE TAX. The Parties agree to amend the existing IGA between the Town and Superior regarding collection of the County use tax for Solid Waste Recycling to include collection of the Open Space Use Tax imposed by the County, in substantially the same form as **Exhibit E** attached hereto.

8. 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, or by any Party seeking to become the Regulatory Party through annexation. 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 acquire any parcel, or approve or 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 acquisition, development or use of such parcel is consistent with the Plan.

9. 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.

10. 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.

11. 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.

12. DEFENSE OF CLAIMS/INDEMNIFICATION. If any person allegedly aggrieved by the Rural Preservation Area provisions of this Agreement or the Plan and who is not a Party to the Plan should sue any Party concerning such Plan provisions, Boulder County shall, and Superior 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. The defense by Boulder County shall include defending the Town of Superior, unless the Town requests otherwise.

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 the Rural Preservation Area provisions of this Agreement or the Plan or regulations adopted by the Regulatory Party implementing said provisions of the Plan, Boulder County shall, to the extent permitted by law, indemnify such Party for the amount of said judgment.

13. 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.

14. TERM AND EFFECTIVE DATE. This Agreement shall become effective upon signature of an authorized representative of the governing bodies of the Parties. Except as provided herein, this Agreement shall remain in effect for a period of twenty (20) years from the effective date, unless terminated prior thereto by agreement of the Parties or pursuant to the terms of section 6 above.

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



ENTITY:
County of Boulder
P.O. Box 471
Boulder, CO 80306

REPRESENTATIVE:
Director, Land Use Department

Town of Superior
124 E. Coal Creek Dr.
Superior, CO 80027

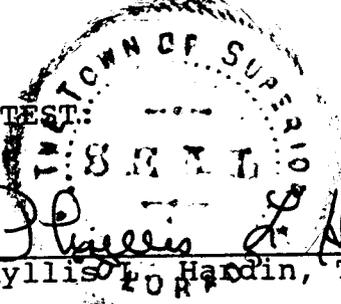
Town Manager

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

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

TOWN OF SUPERIOR, COLORADO

ATTEST:



Ted T. Asti
Ted T. Asti, Mayor

Phyllis L. Hardin
Phyllis L. Hardin, Town Clerk

APPROVED AS TO FORM:

Kathleen E. Haddock
Kathleen E. Haddock, Town Attorney

COUNTY OF BOULDER
BOARD OF COUNTY COMMISSIONERS

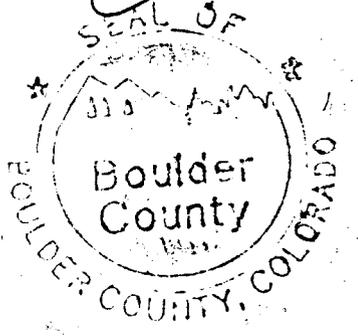
ATTEST:

Ronald K. Stewart
Ronald K. Stewart, Chair 5/8/97

Susan M. Ashcraft
Clerk to the Board

APPROVED AS TO FORM:

H. Lawrence Hoyt
H. Lawrence Hoyt, County Attorney





Boulder County Clerk, CO AG

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IGA EXHIBIT LIST

- Exhibit A - Comprehensive Development Plan Regulations (attached) and Map
- Exhibit B - Description and/or Map of Coalton Portion and McCaslin Portion
- Exhibit C - Stipulation of Dismissal of 2.9 Acre Parcel Condemnation Action (attached)
- Exhibit D - Description of Slope Easements for McCaslin Portion (attached)
- Exhibit E - Amendment to Solid Waste Recycling IGA (attached)



Exhibit A
(attached to Superior Area Boulder County IGA)

COMPREHENSIVE DEVELOPMENT PLAN REGULATIONS

(text portion)

1. INTRODUCTION:

This Comprehensive Development Plan (hereinafter "CDP") has been jointly developed and adopted by the Parties, and is entered into by Intergovernmental Agreement of said entities.

These Regulations are intended to provide specific land use and development restrictions governing parcels located within the subject Plan Area, the boundaries of which are set forth on the attached Map.

2. DEFINITIONS:

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 on the map, including right-of-way, setback areas, and parcels subject to the Plan's development regulations.

STRUCTURE: Anything which is built or constructed, 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 not over 6 feet in height, storm drainage facilities, and buried utility lines.

3. REGULATION OF USE AND DEVELOPMENT OF "RURAL PRESERVATION" PARCELS.

For parcels designated as "Rural Preservation" below and on the Map, those existing uses of such parcels which conform to Boulder County's regulations, or which are legally nonconforming, shall be permitted to continue, either as legal or legal nonconforming uses. No density increase beyond the limits currently permissible under the Boulder County Land Use Code shall be approved for any such parcel, nor shall any such parcel be annexed to Superior, unless the same is approved through the Plan amendment procedure set forth in Section 6 of the Agreement above.

Pursuant to regulations in the Boulder County Land Use Code as it may exist from time to time, parcels within the Rural Preservation



Area may be "sending parcels" for purposes of transferring development rights (TDRs). However, such parcels shall not serve as "receiving parcels" without amendment of this Agreement. TDR units shall not be "sent" from parcels designated in this Agreement as Rural Preservation to be located upon a receiving site within the adopted comprehensive plan area of Superior without the consent of Superior.

Development on parcels for which "vested rights" for further development have been acquired through an estoppel against Boulder County for parcels designated "Rural Preservation," or against Superior for parcels in the Superior Influence Area or the Superior town limits, precluding the prohibition of such development established by a final, non-appealable court judgment in a proceeding of which Superior has been given timely notice and the opportunity to join or intervene shall be permitted notwithstanding the provisions of this Agreement and Plan, to the extent such development is in conformance with the rights so acquired and occurs within the vested period. Boulder County represents to Superior that it has disclosed all vested rights for any of the properties in the Plan Area that may have been established or approved by Boulder County.

Establishment of uses and development in conformance with the zoning (including approved PUD plans) and other land use and development regulations applicable to the property on the effective date of this Plan shall be permitted, where such uses or development continue to be permitted under the provisions of the Boulder County Land Use Code at the time at which they are sought to be established. Permission for such development shall be processed through the normal procedures otherwise established by Boulder County. Approval of an NUPUD with residential density no greater than 2 units per 35 acres by Boulder County upon such lands is permitted pursuant to the regulations generally applicable therefor at the time of application submittal, and such approval is not for purposes of these regulations an increase in density. Where Parcels 1 through 12 described in section 5 below are located within the Superior Influence Area, upon annexation of such Parcel(s) by Superior, the specific regulations set forth in section 5 together with the general regulations of Superior shall govern such Parcels use and development, and the regulations set forth in this section 3 shall no longer apply.

Any proposed use, development or annexation of any portion of the parcels designated for Rural Preservation shall conform to the provisions of this Agreement, or, if nonconforming, shall require amendment of the Plan in the manner provided in the Agreement. Any proposed rezoning, subdivision, special use or other regulatory process, or amendment or modification of any existing zoning, PUD, special or conditional use, or subdivision plat, or issuance of a building permit, or proposed annexation, whether or not coupled



with any such regulatory process, entered into for any lands designated for rural preservation, shall conform to the Plan, or with an approved amendment thereof, in order to be approved-by the Regulatory Party.

Notwithstanding anything in the Agreement or these Regulations to the contrary, the existing uses on Parcel 6 shall be permitted to continue and the property owner shall have the right to use the property as allowed pursuant to the Town's applicable zoning, and other ordinances; provided however, the Town shall not rezone the property or permit any uses on the property not presently allowed by right or by special review under the existing zoning without obtaining approval by the County as provided in this Agreement. The Town has not approved any plans for development of the property to date.

4. REGULATION OF TRANSFER AND USE OF PARCELS WITHIN THE TOWN LIMITS OF SUPERIOR OR THE SUPERIOR INFLUENCE AREA.

For parcels designated as Superior Influence Area below and on the Map, those existing uses of such parcels which conform to Boulder County's regulations, or for Parcel 6, those uses which conform to existing Town ordinances, or which are legally nonconforming, shall be permitted to continue, either as legal or legal nonconforming uses. Boulder County shall not allow any density increase or change of use beyond the limits currently permissible under the Boulder County Land Use Code on any such parcel. Superior may annex any of such parcels and allow for development on such parcels as allowed by Superior's ordinances and state law without restriction by Boulder County. Boulder County shall not acquire any parcel within the Town Limits of Superior or the Superior Influence Area below or on the Map, unless such acquisition is approved through the Plan amendment procedure set forth in Section 8 of the Agreement above.

5. SPECIFIC PARCEL DEVELOPMENT REGULATIONS:

The following specific development regulations shall apply to certain parcels within the Plan Area. Parcel descriptions set forth in brackets are intended solely to assist in locating the parcel, and have no substantive purpose or effect. Parcels are numbered on the Map portion of these Regulations attached hereto.

PARCEL AREA NO. 1: Rural Preservation {North of Marshall Road}

PARCEL AREA NO. 2: Superior Influence Area [Cox/Liss]

PARCEL AREA NO. 3: Superior Influence Area [North Mayhoffer] (located north of a line 100' north of and parallel to the Community Ditch.)



PARCEL AREA NO. 4: Rural Preservation [South Mayhoffer] (located south of a line 100' north of and parallel to the Community Ditch.)

PARCEL AREA NO. 5: Superior Influence Area [Barcus, Scriffiny, Spicer] (Future Study Area: study of existing environmental ecosystem on land to be conducted jointly by the Parties.)

PARCEL AREA NO. 6: Rural Preservation [Rothman Estate]. Upon purchase by the County for open space, the County shall submit a petition to disconnect the property and Superior shall disconnect the property and so much of Coal Creek Drive as the Town determines it no longer needs to serve the properties remaining within the Town.

PARCEL AREA NO. 7: Rural Preservation [North Lastoka] (Located north of a line 100' south of and parallel to Rock Creek, except for that portion north of Rock Creek which is a portion of Parcel Area No. 8.)

PARCEL AREA NO. 8: Superior Influence Area [South Lastoka] (Located south of a line 100' south of and parallel to Rock Creek and north of said line adjacent to McCaslin Boulevard as shown on the attached map.) The area within 100' on either side of the centerline of Rock Creek to remain free of development, for open space/trail corridor purposes.

PARCEL AREA NO. 9: Superior Influence Area [Smith]

PARCEL AREA NO. 10: Superior Influence Area [Bolejack]

PARCEL AREA NO. 11: Rural Preservation [Zaharias/Thomas Boulder County Open Space]: Annexed area owned by Boulder County for open space purposes which property cannot be developed under existing County laws governing the property, excepting only creation of hiking trails, fencing and other minimal improvements for the agricultural and passive recreational use of the property. Boulder County shall submit a petition to disconnect the property within thirty (30) days of this Agreement and Superior shall disconnect the property. No development may be authorized by the County or occur on Parcel No. 11 unless the parcel is first reannexed to Superior. Any use by right of any interested party other than use by the County of its agricultural lessees for recreational or agricultural purposes shall be subject to the regulations of Superior which would have been applicable if the property remained within Superior's jurisdiction as well as applicable County regulations. To the extent such regulations conflict, the more restrictive shall control.

PARCEL AREA NO. 12: Rural Preservation [Scriffiny]

Exhibit A
Superior Area
Comprehensive Development
Plan Map

-  Town of Superior
-  Superior Influence Area
-  Superior Influence Area / Study Area
-  other Municipal Limits
-  Rural Preservation
-  Rural Preservation - Annexed
-  County or Municipal Open Space



Adopted May 5, 1997
Boulder County
Town of Superior



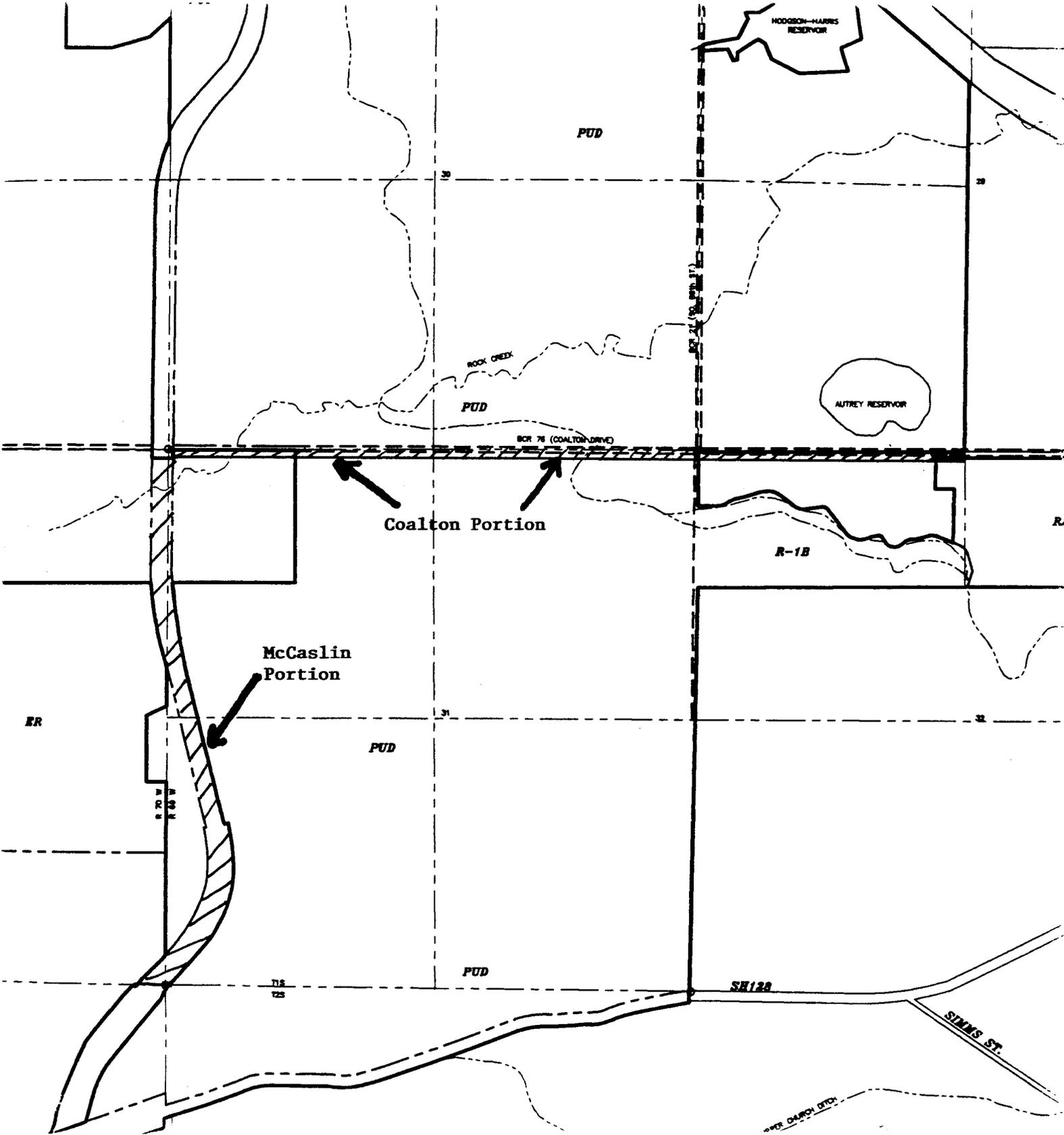
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Recorder's Note: 8/13/97
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EXHIBIT B - STREETS





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DISTRICT COURT, COUNTY OF BOULDER, COLORADO

Case No. 94 CV 618

Division 3

STIPULATION FOR DISMISSAL WITH PREJUDICE

SUPERIOR METROPOLITAN DISTRICT NO. 2,
a quasi-municipal corporation,

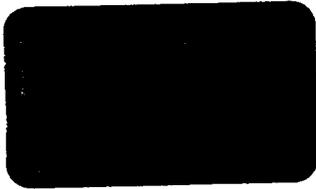
Petitioner.

v.

THE COUNTY OF BOULDER, a body corporate and politic,
THE TOWN OF SUPERIOR, COLORADO, and
ANY AND ALL PERSONS CLAIMING A RIGHT IN AND
TO THE PUBLIC RIGHT-OF-WAY, and
THE BOULDER COUNTY TREASURER,

Respondents.

The parties hereto, by and through their counsel of record,
stipulate to the following:

1. This action was commenced by Superior Metropolitan District No. 2 to condemn a certain 2.9 acre parcel of land owned by Boulder County.
 2. Immediate possession of the property was granted to Superior Metropolitan District No. 2 upon deposit of the sum of Two Hundred Thousand Dollars (\$200,000) in accordance with an Order of Immediate Possession dated March 17, 1995, which sum was withdrawn by Boulder County in accordance with that Order.
 3. The parties have reached certain further agreements with regard to this property, pursuant to which the property is to be conveyed by Boulder County to the Petitioner. Therefore, it is agreed as follows:
 - a. This action shall be dismissed with prejudice, with each party to bear its own costs and attorneys' fees.
 - b. Boulder County shall be entitled to retain all amounts withdrawn pursuant to the Order of Immediate Possession.
 - c. The lis pendens recorded in this action on June 6, 1994, at Reception No. 01434529 of the records of the Clerk and Recorder for Boulder County shall be released.
- 



Boulder County Clerk, CO AG

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DATED this ____ day of _____, 1997.

Respectfully submitted,

MCGEADY SISNEROS, P.C.

By: _____

Larry G. Johnson, #8728
1675 Broadway, Suite 2100
Denver, Colorado 80202
Telephone: (303) 592-4380
Attorneys for Superior Metropolitan
District No. 2

William M. Schell
Opperman & Associates
511 - 16th Street, #411
Denver CO 80202
Attorneys for Boulder County

Kathleen E. Haddock
Dietze and Davis, P.C.
2060 Broadway #400
Boulder CO 80302
Attorneys for Town of Superior

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DISTRICT COURT, COUNTY OF BOULDER, COLORADO

Case No. 94 CV 618

Division 3

ORDER FOR DISMISSAL WITH PREJUDICE

SUPERIOR METROPOLITAN DISTRICT NO. 2,
a quasi-municipal corporation,

Petitioner.

v.

THE COUNTY OF BOULDER, a body corporate and politic,
THE TOWN OF SUPERIOR, COLORADO, and
ANY AND ALL PERSONS CLAIMING A RIGHT IN AND
TO THE PUBLIC RIGHT-OF-WAY, and
THE BOULDER COUNTY TREASURER,

Respondents.

THIS MATTER comes before the Court on the Stipulation of the parties, and the Court being fully advised,

ORDERS:

1. This action shall be dismissed with prejudice, with each party to bear its own costs and attorneys' fees.
2. Boulder County shall be entitled to retain all amounts withdrawn by it in accordance with the Immediate Possession Order.
3. The lis pendens referring to this action recorded at Reception No. 01434529 on June 6, 1994, in the records of the Clerk and Recorder for Boulder County shall be released.

DATED this _____ day of _____, 1997.

BY THE COURT:

District Court Judge

SLOPE EASEMENT AGREEMENT

This Slope Easement is granted this _____ day of _____, 1997, from _____ ("Grantor"), the owner of property affected by the _____ ("the Project"), to _____, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is 141 Union Boulevard #150, Lakewood, Colorado 80228 ("District"), for the use of certain property in the construction of the Project.

In consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Grantor, the Grantor hereby grants to the District a permanent, non-exclusive easement for the purpose of constructing and maintaining slopes, cuts and fills upon land adjacent to the Project to ensure proper support for and drainage from said road (the "Easement"). The Easement is granted upon certain parcels of land owned by the Grantor, which parcels are described in the attached Exhibit A (the "Premises") and are hereby incorporated herein by this reference. The Premises may be used by the Grantor for any lawful purpose so long as such use does not have any material adverse effect on the slopes to or support of McCaslin Boulevard (the "Road") or drainage along, over, or under said Road, or on the purposes for which this Easement is granted.

The District agrees that after it has exercised its right to use this Easement in any manner that disturbs the surface of the



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Premises it will reasonably restore said surface to the condition it was in prior to the use of this Easement, except as the surface may be permanently modified by the use of this Easement.

The Grantor agrees that the District, its officers, agents and employees shall have the perpetual, non-exclusive right of entry and access in, to, through, on, over, under, and across the Premises at any and all times for any purposes necessary or convenient for the full enjoyment of the rights granted to it in this Easement.

The Grantor hereby covenants and agrees that it has good title to the Premises and that it has good and lawful right to grant this Easement and that it will warrant and forever defend title and quiet possession thereof against the claim of all persons claiming title by, through, or under it, except those encumbrances set forth on Exhibit B attached hereto and incorporated herein by this reference ("Title Exceptions").

The District agrees that at such time and in the event that this Easement be abandoned that this Easement shall terminate and the real property interest represented by this Easement shall revert to the Grantor.

The Grantor agrees that no building, structure, or other above or below ground obstruction that may interfere with the purposes



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for which this Easement is granted may be placed, erected, installed or permitted upon the Premises. The Grantor further agrees that in the event the terms of this paragraph are violated, such violation shall immediately be eliminated upon written notice from the District or the District shall have the immediate right to correct or eliminate such violation at the sole expense of the Grantor, which shall promptly reimburse the District for any expense related thereto.

This Easement shall inure to the benefit of and be binding upon the parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Slope Easement as of the day and year first above written.

"GRANTOR"

"DISTRICT"

By: _____

By: _____



Boulder County Clerk, CO AG

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EXHIBIT A
(the "Premises")



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EXHIBIT B
("Title Exceptions")



FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
REGARDING COLLECTION OF COUNTY USE TAX BETWEEN
BOULDER COUNTY AND THE TOWN OF SUPERIOR

This Intergovernmental Agreement is entered into to be effective this _____ day of April, 1997 between the Town of Superior, a Colorado corporation, (Town) and the Board of County Commissioners of Boulder County, a body corporate and politic of the state of Colorado (County).

WHEREAS, the Town and the County entered into an Intergovernmental Agreement for the Town to collect the one-tenth of one percent (.10%) use tax imposed by the County for solid waste recycling purposes dated March 27, 1995 (the "Solid Waste Recycling IGA"); and

WHEREAS, the County had imposed a one quarter of one percent (.25%) County wide sales and use tax for the purchase of open space properties; however, the County and the Town were not able to agree on the terms for which the Town would collect such use tax for the County; and

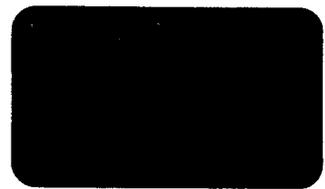
WHEREAS, the County's one quarter of one percent (.25%) tax was adopted by County Resolution No. 94-174; and

WHEREAS, the Town and the County have entered into an Intergovernmental Agreement which settles numerous issues between them, including that upon signature of the Intergovernmental Agreement by Boulder County, the Town agrees to collect the one quarter of one percent (.25%) open space use tax on behalf of the County; and

WHEREAS, in order to implement this use tax collection, the Town and the County desire to amend the existing Intergovernmental Agreement for collection of County use taxes regarding the solid recycling tax.

NOW, THEREFORE, in consideration of the mutual covenants and commitments, the parties agree as follows:

1. The Solid Waste Recycling IGA is amended as follows:
 - a. A(a) Collect, administer and enforce the County wide use tax of one tenth of one percent (.10%) for the privilege of using or consuming in accordance with County Resolution No. 94-162 AND COLLECT, ADMINISTER AND ENFORCE THE COUNTY WIDE USE TAX OF ONE QUARTER OF ONE PERCENT (.25%) FOR THE PRIVILEGE OF USING OR CONSUMING IN ACCORDANCE WITH AND PURSUANT TO COUNTY RESOLUTION NO. 92-174 and Sections 29-2-101, et seq., as amended in the same





manner as use taxes are collected by the Town of Superior pursuant to the Town of Superior's sales and use tax ordinance and to the extent that the County wide use tax is consistent with the use tax imposed by the Town.

- b. The first sentence paragraph A(b) is amended to read:

Notify and provide the Town with any and all amendments to County Resolution No. 94-162 AND COUNTY RESOLUTION NO. 93-174.

- c. UNLESS TERMINATED AS PROVIDED FOR HEREIN, THIS AGREEMENT SHALL TERMINATE AS TO THE ONE TENTH OF ONE PERCENT (.10%) TAX, UPON EXPIRATION OF THE TAX ON DECEMBER 31, 2001 AND AS TO THE ONE QUARTER OF ONE PERCENT (.25%) TAX, UPON EXPIRATION ON DECEMBER 31, 2010, UNLESS SOONER TERMINATED HEREIN. NOTWITHSTANDING ANYTHING ELSE HEREIN TO THE CONTRARY, THIS AGREEMENT SHALL TERMINATE ON DECEMBER 31 OF ANY YEAR HEREOF IF THE TOWN PROVIDES NOTICE TO THE COUNTY OF ITS INTENT TO TERMINATE THE AGREEMENT BY SUCH DECEMBER 31.

2. All of the terms and conditions of the Solid Waste Recycling IGA not amended herein shall remain in full force and effect.

3. The Solid Waste Recycling IGA shall now be known as the Collection of Use Tax for County IGA.

TOWN OF SUPERIOR, COLORADO

ATTEST:

Ted T. Asti, Mayor

Phyllis L. Hardin, Town Clerk

COUNTY OF BOULDER
BOARD OF COUNTY COMMISSIONERS

ATTEST:

Ronald K. Stewart, Chair

Clerk to the Board



Boulder County Clerk, CO AG

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**OFFICE OF THE COUNTY ATTORNEY**

H. Lawrence Hoyt, County Attorney

P.O. Box 471, Boulder, CO 80306-0471; Phone: 303-441-3435

FAX: 303-441-4794

e-mail hoyca@boco.co.gov

July 28, 1997

VIA FAX

Bruce Williams
Superior Town Manager
124 E. Coal Creek Dr.
Superior, CO 80027

RE: Revision to proposed language for Superior IGA attachments

Dear Bruce:

Based upon your further comments on July 22nd and those of Kathy Haddock of today's date, here is our current offer of resolution of the issues related to the IGA exhibits.

Slope Easements D-1 through D-5:

"Easements for the area shown on attachments D-1 through D-5 for maintenance of cut and fill slopes and drainage in connection with the McCaslin Boulevard roadway shall be granted by the County to the Town or its public district designee. For a conveyance at the time of closing on the IGA, Grantee shall pay the base amount set forth below. For such conveyance in the future, Grantee shall pay the base amount set forth in the following schedule, plus 2 per cent (2%) per annum to the date of conveyance, which conveyance shall be upon the form set forth in this Exhibit D. Grantee agrees that, irrespective of when such conveyance takes place, use by Grantee of the easements so conveyed will not occur unless and until the expansion project for McCaslin Blvd. begins.

Easements D-1, D-3 & D-4, together with the portion of D-2 located in section 36: \$2228/acre.
Easement D-5, together with the portion of Easement D-2 located in section 31: \$6656/acre."

Slope Easement D-6: This easement has been determined to be unnecessary for current and future road and drainage improvements, and therefore will not be included in the conveyances under this Agreement.

Draft copies of Commissioners' Deeds for the Coalton Road and McCaslin Blvd. rights-of-way to

BOARD OF COUNTY COMMISSIONERS

Ronald K. Stewart
Chair

Jana L. Mendez
Vice-Chair

Paul D. Danish
Commissioner



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be conveyed are attached. A temporary construction easement form from the Town to the County to permit the County to proceed with the reconstruction/repair project on McCaslin is also attached.

If you agree with the foregoing disposition of these issues, please note same by execution of the signature line below. I would suggest that we schedule a "closing" on this transaction, hopefully some time next week, in order to make the exchange of the executed originals of all documents contemplated by the IGA and this letter agreement.

Thanks again for your attention to this matter.

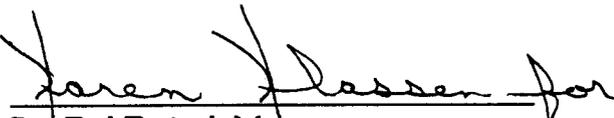
Sincerely,


H. Lawrence Hoyt
County Attorney

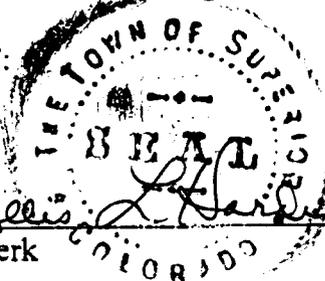
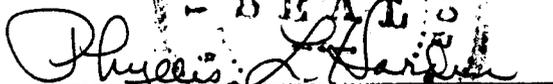
enc.

ACKNOWLEDGED AND AGREED this 28th day of July, 1997.

TOWN OF SUPERIOR


By: Ted T. Asti, Mayor

ATTEST:



Town Clerk

cc: Kathy Haddock, Esq.
Board of County Commissioners
Larry Matel, Dir. of Transportation