

INTERGOVERNMENTAL AGREEMENT BETWEEN LEFT HAND WATER DISTRICT AND BOULDER COUNTY UNDER SECTION 8-504 OF THE BOULDER COUNTY LAND USE CODE, REGARDING APPLICATION OF THE COUNTY'S AREAS AND ACTIVITIES OF STATE INTEREST ("1041") REGULATIONS TO LEFT HAND WATER DISTRICT PROJECTS AND DEVELOPMENT

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the Left Hand Water District ("District") and the County of Boulder ("County") (collectively, the "Parties").

WITNESSETH

WHEREAS, §29-1-203, C.R.S. authorizes governments to "cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each . . . if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having power to so approve"; and

WHEREAS, the District and the County, being political subdivisions of the state, are both "governments" as defined in §29-1-202, C.R.S.; and

WHEREAS, pursuant to Article 65.1 of Title 24, C.R.S., the County enacted Articles 8-200 through 8-600 of the Boulder County Land Use Code ("Land Use Code") as the County's Areas and Activities of State Interest regulations, commonly known as the County's "1041" regulations ("Regulations"), which the County has amended on several occasions subsequent to initial adoption of the Regulations in 1994; and

WHEREAS, Section 8-504 of the Regulations, entitled "Intergovernmental Agreements," provides that "[u]pon the request of . . . a political subdivision of the state as defined by §29-1-202(1), C.R.S., proposing to develop in an area of state interest or to engage in an activity of state interest, the requirements of these regulations may be met by approval of an intergovernmental agreement in lieu of a permit application or review as provided by these regulations"; and

WHEREAS, prior to the County enacting the Regulations, the County approved a special district service plan ("Service Plan") for the District under the Colorado Special District Control Act (Article 1 of Title 32, C.R.S.), as set forth in Resolution 89-191 ("Resolution") adopted by the Board of County Commissioners ("County Board") on November 30, 1989 ("Service Plan Approval"); and

WHEREAS, the Service Plan Approval deems certain District projects and activities as material modifications requiring specific approval by the County Board under the provisions of §32-1-207, C.R.S., such projects and activities including: (1) the extension of service or boundaries into a municipal planning area without prior agreement of the affected municipality; (2) service in excess of that allowed by County zoning regulations; and (3) the construction or development of major facilities in Boulder County which are not identified or detailed in the Service Plan, including certain above ground pumping facilities, water treatment plants and plant expansions,

reservoirs, water tanks in excess of 250,000 gallons, and service to municipalities for development in excess of that anticipated in and by an intergovernmental agreement and at urban densities; and

WHEREAS, pursuant to the Service Plan Approval and §32-1-207, C.R.S., the County Board retains final authority over the approval of any such material modifications to the Service Plan utilizing the criteria set forth in §32-1-203, C.R.S., which criteria include compatibility with the County’s Comprehensive Plan; and

WHEREAS, such compatibility is also one of the expressly stated purposes of the Regulations; and

WHEREAS the Parties have entered into an “Agreement Regarding County Zoning Review of Special District Facilities and Uses” executed June 11, 1990 by Boulder County and April 10, 1990 by the District (“1990 Zoning Review Agreement”) which requires certain identified District projects/development that do not constitute major modifications to the Service Plan to be reviewed for environmental and other impacts as more fully set forth therein; and

WHEREAS, in 1996, the County Board determined that District projects/development that constitute material modifications under the Service Plan Approval do not have to undergo County service plan amendment review pursuant to the Special District Control Act if they undergo County review under the Regulations, on the basis that the Regulations serve the same essential purposes as the service plan amendment process, such as required consistency with the Boulder County Comprehensive Plan, and provide a more in-depth and thorough land use assessment of District development; and

WHEREAS, the Parties acknowledge and recognize that the potential growth and land use issues specified in the review process under the Regulations have been satisfactorily addressed and resolved in hearings on the District’s prior applications under the Regulations which were approved by the County; and

WHEREAS, the Parties now wish to memorialize this past history under the Regulations in order to reduce the possibility for future legal conflict over the applicability of the Regulations to development by the District, and to increase the efficiency for both Parties in undergoing and administering the 1041 review process, while preserving the Regulations’ essential role in evaluating the environmental and land use impacts of proposed District projects/developments; and

WHEREAS, the District Board held a duly noticed public meeting on August 16, 2012 to consider this Agreement, and, based on that hearing and for the reasons articulated above, voted to approve this Agreement as set forth herein; and

WHEREAS, the County Board held a duly noticed public hearing on August 21, 2012 to consider this Agreement and, based on that hearing and for the reasons articulated above, also voted to approve this Agreement as set forth herein.

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

1.0 COUNTY LAND USE REVIEW OF ELIGIBLE DISTRICT PROJECTS/DEVELOPMENT.

The Parties agree that the District shall submit applications to the County for binding review and approval under the Boulder County Land Use Code, for eligible District projects/development as specified below. Where this Section 1.0 specifies that no County Land Use review is required for a particular project/development, no land use review at all is required, either under the Land Use Code or the 1990 Zoning Review Agreement.

- (a) A **new water treatment plant** that has a capacity of more than 5 million gallons per day (“MGD”) shall be submitted for County review under the Regulations; a new water treatment plant that has a capacity of less than or equal to 5 MGD shall be subject to County review under the County’s Limited Impact Special Use (“LISU”) regulations.
- (b) The **expansion of a water treatment plant** shall be submitted for County review under the Regulations if such expansion results in: (1) an enlargement of the existing water treatment plant footprint by more than 1,000 square feet; or (2) a treatment capacity increase of more than 5 MGD. If such expansion results in an enlargement of the existing water treatment plant footprint by 1,000 square feet or less, regardless of the plant’s volumetric treatment capacity increase, no County Land Use review will be required unless such capacity increase triggers review under subparagraph (j) below.
- (c) A **new water storage tank** of any size or capacity shall be submitted for County review under the County’s LISU regulations.
- (d) The **replacement of an existing water storage tank** shall not require County Land Use review, provided that: (1) the replacement water storage tank is installed within 50 feet of the original tank’s location; (2) the radius of the replacement water storage tank is not greater than 5 feet more than the radius of the original tank; and (3) the height of the replacement water storage tank is not greater than the height of the original tank. Any replacement tank that exceeds any of these parameters shall be submitted for County review under the County’s LISU regulations; provided, however, that the replacement water storage tank may be located at a distance greater than 50 feet of the original tank’s location under this section if requirement (1), above, is waived by the County’s Land Use Director due to minimal environmental and visual impacts of the replacement water storage tank.
- (e) A **new pump station of any size or capacity** shall be submitted for County review under the County’s LISU regulations. The Parties agree that, due to safety and operational concerns, no new pump station shall be required to be placed below the existing grade of the site.

- (f) The **replacement of an existing pump station** shall not require County Land Use review, provided that: (1) the replacement pump station is installed within 50 feet of original pump station's location; and (2) an enlargement, if any, of the existing pump station's footprint is less than 1,000 square feet. The replacement pump station may be located at a distance greater than 50 feet of original pump station's location under this section if requirement (1), above, is waived by the County's Land Use Director due to minimal environmental and visual impacts of the replacement pump station. Replacement pump stations shall not exceed 17 feet in height from existing grade of the site. The Parties agree that, due to safety and operational concerns, no replacement pump station shall be required to be placed below the existing grade of the site.
- (g) A **new reservoir** and the **expansion of any existing reservoir** that is owned or operated by the District shall be submitted for County review under the Regulations.
- (h) The construction of a **distribution or transmission pipeline outside of an existing pipeline easement or right of way** (except as provided in subparagraph (i) below) **or where no pipeline already exists** shall require review under the Regulations for lines greater than 20 inches in diameter, LISU review for lines between and including 20 inches and 12 inches in diameter, and no review for lines less than 12 inches in diameter.
- (i) **Construction of a distribution or transmission pipeline both within an existing pipeline easement or right of way and where a pipeline already exists** (or within 30 feet from the easement or right of way adjacent to an existing pipeline where construction within the existing easement is not practicable) shall require LISU review for lines over 20" in diameter, and no review for lines that are 20" in diameter or smaller.
- (j) **Any District service extended to municipalities** that would support urban densities within Boulder County (i.e., resulting in development beyond that allowable under the County Land Use Code) that is not authorized by an intergovernmental agreement between County and affected municipality, shall be submitted for County review under the Regulations.

2.0 EXEMPTION FROM CERTAIN STANDARDS AND CRITERIA.

"Eligible development" or "eligible development/project as used in this Agreement includes the following projects:

- (a) *where the proposed development/project is for water service within Boulder County*, the District must be serving its County-approved special district service area under the Resolution, and the service must not be to municipal territory annexed after this Agreement's effective date and such service would be in violation of any applicable land use agreement between the County and that municipality; and

- (b) *where the proposed development/project is located within Boulder County for water service within Weld County*, such development does not exceed the limitations in County Board Resolution 99-28 governing the Weld County/Boulder County Impact Zone (as also incorporated into the District's Dodd Plant Expansion 1041 approval granted in Resolution 2009-126).

For those projects and activities that shall be submitted for County review under the Regulations and/or pursuant to this Agreement, the County agrees not to consider the following 1041 standards, or to require application submittal material responsive solely to those standards, when reviewing such eligible development/projects/activities proposed by the District under the Regulations (with all other applicable standards and application submittal requirements as stated in the Regulations still to apply):

- (a) Section 8-511.B.2. (requiring that the applicant has the necessary expertise and financial capability to develop and operate the proposal consistent with all requirements and conditions);
- (b) Section 8-511.B.3. (requiring that adequate water supplies, as determined by the Colorado Department of Health, are available for the proposal if applicable);
- (c) Section 8-511.B.10. (requiring that the proposal or its associated transmission collector or distribution system will not create undue financial burden on existing or future residents of the County); and
- (d) Section 8-511.D. in its entirety (all of the additional standards for approval of site selection and construction of major new domestic water and sewage treatment systems and major extensions of existing systems).

Notwithstanding any provision of this Agreement to the contrary, any review required by the Regulations or under this Agreement may be waived by the County's Land Use Director under Section 8-402 of the Regulations or by the Director's determination that the project/development involves minimal environmental and visual impacts. Such decision shall be in the sole discretion of the Director and the parties agree that the Director's decision shall not be appealable.

3.0 RELATIONSHIP BETWEEN THIS AGREEMENT AND PRIOR DISTRICT SERVICE PLAN AND 1041 APPROVALS; LIMITATIONS ON APPLICABILITY OF AGREEMENT.

- (a) Where this Agreement specifies an applicable County land use review process (or lack of review process) for future District projects/developments, the specified process (or lack of process) shall control. In all other respects the District shall continue to be bound by the terms of the Special District Control Act and the County's Service Plan Approval under the Act (including the Resolution and the 1990

Zoning Review Agreement), as well as by the County's prior 1041 decisions affecting District projects/development under the Regulations.

- (b) Applications under the Regulations for development (as the term is defined by the Regulations) where the District is not the sole Applicant, but rather proposes development in conjunction with other providers that are co-applicants, or by an entity/organization that includes the District as a member, shall not be considered to be District development, projects, or activities that are subject to this Agreement or to the 1990 Zoning Review Agreement. Such non-District development, projects, or activities may be processed and reviewed under the Regulations (or other applicable zoning regulations) outside of the scope of this Agreement.
- (c) Nothing herein shall be construed as a waiver by the County of any applicable standards, consents, permits or approvals required for certain projects and activities under non-land use/zoning regulations, such as building codes and utility easement regulations.

4.0 LIMITATION OF RIGHT TO CHALLENGE REGULATIONS.

In consideration of the County's covenants and agreements set forth herein, the District agrees to: (i) submit the appropriate 1041 application and materials when required under the Regulations except as modified by this Agreement for eligible development; and (ii) to not bring suit (or raise a defense or assert a counterclaim) against the County challenging the validity of the Regulations or their adoption. However, the District shall retain the right to appeal or challenge any adverse County final decision on a specific application by filing for judicial review of such adverse decision under C.R.C.P. Rule 106(a)(4).

5.0 AMENDMENT

The Parties may amend this Agreement in writing, following the procedures for approval of the original Agreement, under Section 8-504 ("Intergovernmental Agreements") of the Regulations.

6.0 NON-SEVERABILITY

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

7.0 BENEFICIARIES

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

8.0 ENFORCEMENT

Either Party may enforce this Agreement by any legal or equitable means including specific performance, and declaratory and injunctive relief. No other person or entity shall have any right to enforce the provisions of this Agreement.

9.0 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.

10.0 EFFECTIVE DATE AND TERM

This Agreement shall become effective upon the signature of an authorized representative of both Parties. This Agreement shall remain in effect for a period of fifteen (15) years after the effective date.

11.0 COUNTERPARTS

This Agreement may be executed in counterparts, which together shall constitute the Agreement of the Parties.

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LEFT HAND WATER DISTRICT:

BOARD OF DIRECTORS

By: *R J Jull*
Chair

Date: *August 16* , 2012

ATTEST:

 [Signature]
Secretary to the Board

APPROVED AS TO FORM:

 [Signature]
Attorney to the Board

COUNTY OF BOULDER:

BOARD OF COUNTY COMMISSIONERS

By: *[Signature]*
Vice-Chair
Will Toor

Date: *August 21* , 2012

ATTEST:

 Cecilia S. Laay
Clerk to the Board



APPROVED AS TO FORM:

 [Signature]
County Attorney