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JENNIFER F. KEMP  
ALLISON C. FOGG

## MEMORANDUM

**TO:** Tim Cox, City Attorney, City of Lakewood  
**FROM:** White Bear Ankele Tanaka & Waldron, Attorneys at Law  
**DATE:** October 15, 2018  
**RE:** Big Sky Metropolitan District Nos. 1-7

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### **I. Special Districts - Background**

Special districts are quasi-municipal corporations and political subdivisions of the State of Colorado, formed pursuant to Sections 32-1-101, *et. seq.*, C.R.S. (the "Special District Act"). Special districts are organized for the purpose of financing the cost of public infrastructure and providing services related to such public infrastructure. Special districts are formed by submittal of a service plan to the jurisdiction in which the property to be served is located. The service plan sets forth the powers that the special district will have, or in the alternative, sets forth limitations on the powers afforded to special districts by the Special District Act. Common limitations include caps on the authorized amount of debt a special district may issue or the maximum mill levy a special district may impose on property within its boundaries. All service plan applications are evaluated on an individual basis; the evaluation of one service plan does not apply in any respect to the evaluation of another, and findings are made by the jurisdiction as they relate to the specific service plan application, independent of any other proposed service plan. Among the findings to be made by the approving jurisdiction before a service plan may be approved are the following: that (a) there is sufficient existing and projected need for organized service in the area to be served by the Districts; (b) the existing service in the area to be served by the Districts is not adequate for present and projected needs; and (c) the Districts are capable of providing economic and sufficient service to the area within its proposed boundaries.

Upon approval of the Service Plan by the approving jurisdiction, a Petition for Organization is filed with the District Court requesting that the District Court order an election on questions related to formation of the special districts, the election of boards of directors, and issues related to incurrence of Debt and imposition of taxes. Following the election, the results are certified to the District Court which then issues an Order and Decree declaring that the special district has been duly organized. At this point, the special district may function as a quasi-municipal corporation and conduct its business subject to the limitations of its service plan and the Special District Act.

Special districts are governed by five or seven member boards of directors who are

elected to staggered four year terms of office. Directors are elected from among the “Eligible Electors” of the special district. An Eligible Elector is an individual who registered to vote in the State of Colorado and who resides in, or who owns or whose spouse owns or has a contract to purchase taxable property within the boundaries of the special district. Since special districts are typically organized prior to any development taking place within property to be served, the proponents of the special district become qualified as Eligible Electors by entering into agreements to purchase taxable property within the special districts. The proponents of the service plan are typically employees or principals of the company that owns the property and intends to develop it. This enables the proponents of the special district to participate in the organization of the special district and see to its affairs in the early stages of development. The developer will pay the property taxes assessed by the district for as long as it owns property within the district. Once property within a special district is sold to an individual property owner, they are eligible to submit their name for election to the board of directors at the next regular election, or to be appointed to any vacant seat on the board of directors.

Special districts, like municipalities, must comply with open meeting laws, TABOR, public bidding requirements, budget and audit law, and any restrictions or limitations of its service plan. The board of directors typically meets on a regular basis to handle the business of the special district.

Unless limited by the service plan, special districts are authorized by the Special District Act to provide many types of public infrastructure, including: streets, safety protection, parks and recreation, water, sanitation, transportation, mosquito control, television relay and translation, and fire protection improvements. Metropolitan districts such as Big Sky Metropolitan District Nos. 1-7 are organized to provide two or more of these services. Public infrastructure is typically financed by the issuance of tax-exempt bonds which are repaid from legally available revenues of the special district. The most common form of special district revenue is property taxes levied against the property within the special district’s boundaries. Special districts may also impose fees for the payment of debt or operations services. The Taxpayers Bill of Rights (“TABOR”) requires approval by the eligible electors of a special district to incur debt for each type of public infrastructure proposed to be financed by the special district and to impose taxes for the repayment of such debt. TABOR authorization is generally obtained as part of the organizational election associated with the special district so that the special district may undertake financing as development moves forward.

## **II. Big Sky Metropolitan District Nos. 1-7**

The Service Plan (“Service Plan”) for the Big Sky Metropolitan District Nos. 1-7 (individually “District No. 1”, “District No. 2”, “District No. 3”, “District No. 4”, “District No. 5”, “District No. 6”, and “District No. 7”, and collectively the “Districts”) was proposed by the current owner of the property within the Districts, CDN Red Rocks, LP, to serve the Big Sky Project (the “Project”). It was approved resolution of the City Council on September 22, 2014, after a public hearing at which evidence and testimony was presented and the City Council made the required findings to approve the Service Plan. After approval of the Service Plan the Jefferson County District Court ordered an election to be held on November 4, 2014. At the

organizational election, the eligible electors of the Districts voted in favor of the organization of the Districts, elected the initial Boards of Directors (the "Boards") and authorized each of the Districts, among other things, to incur debt to finance the cost of public infrastructure, to impose taxes for the repayment of debt, up to a maximum amount for each type of public infrastructure. Once again, it is important to note that at this early stage of development, these eligible electors consist of the employees and principals of entities owning taxable real or personal property within the district. Following the organizational elections, the results were certified to the Jefferson County District Court and orders and decrees were issued declaring each of the Districts organized.

**a. District Boundaries/Service Area**

The Districts were organized with the boundaries of District Nos. 1, 3-7 overlapping on 1.4 acre parcel on the west side of C-470. District No. 2's boundaries contain the balance of the Project as contemplated at the time the Service Plan was approved (the "Initial District Boundaries"). The Service Plan permits property to be included into one of the Districts as development progresses in phases and it is contemplated that as development progresses; the construction of public infrastructure can be phased. As each phase develops, it is contemplated that property will be included into one of the Districts and excluded from District No. 2 in order to avoid overlapping boundaries and tax burdens. Inclusions and exclusions are very specific legal terms and processes governed under Sections 32-1-401 and 501 *et. seq.*, C.R.S., respectively. The Service Plan also allows for the inclusion of property not within the Initial District Boundaries, which is described in the Service Plan as the "Inclusion Area" (the property within the Inclusion Area is now commonly referred to as the Indigo at Red Rocks property and has not been included in the Districts' boundaries at this time. The Indigo property is currently owned by Cardel Homes.) Further, the Districts may include property not described in the Inclusion Area upon petition by the fee owner or owners of 100 percent of such property as provided in the Special District Act. Together, the Initial District Boundaries and the Inclusion Area comprise the "Service Area" of the Districts. The Service Area represents the extent of the potential taxing authority of the Districts, but as discussed below, does not limit the property which may be served by the Districts.

**b. Powers of the Districts:**

Under the Service Plan the Districts are specifically afforded the "power and authority to provide public infrastructure and related operation and maintenance services within and without the boundaries of the Districts as such power is described in the Special District Act, other applicable statutes, common law, and the Colorado Constitution, subject to the limitations of the Service Plan." Further, the Districts are specifically authorized in the Service Plan to "operate and maintain park and recreation, sewer, and landscape improvements and other improvements owned by the Districts". The Special District Act authorizes special districts to enter into contracts affecting the affairs of the special district, and to furnish services and facilities without (meaning outside) the boundaries of the special district and establish rates, fees, tolls, penalties, and charges for such services and facilities. The Special District Act authorizes special districts to enter into contracts affecting its affairs. The Special District Act authorizes special districts to provide sewer service. The Service Plan does not limit the Districts from entering into

intergovernmental agreements or extraterritorial service agreements, or from providing services and facilities outside their boundaries.

**c. Financial Authorization/Limitations:**

The Service Plan limits the total debt issuance of the District to a maximum of \$30,000,000, (the “Total Debt Issuance Limitation”) and limits the maximum mill levy that may be imposed for the payment of such debt to 50 mills (subject to certain specified increases) (the “Maximum Debt Mill Levy”) for a term of no longer than 40 years (the “Maximum Debt Mill Levy Imposition Term”). The amount of debt that can be issued is ultimately tied to the total assessed value of the properties at buildout.

At the organizational election the voters authorized the issuance of debt in the total aggregate amount of \$600,000,000 with a total aggregate repayment of \$4,920,000,000. This amount represents debt authorization for each specific category of public infrastructure (ie. streets, water, sewer, parks and recreation etc.) up to the total of \$40,000,000<sup>1</sup> in debt, and assumes the largest possible payment of principal and interest. Special districts typically structure TABOR issues on ballots in this manner to allow flexibility to accommodate unknown development and construction costs. Debt authorization under TABOR is typically valid for 20 years after it is approved at an election, and any debt to be issued after 20 years would need to be reauthorized at a subsequent TABOR election. Since one of the primary purposes of the Districts is to serve as a financing vehicle pursuant to the underlying Service Plan authorization, the TABOR authorization obtained as part of the underlying organizational election is integral to provide for the financing as the development moves forward. Notwithstanding the voter approved debt, the Districts will remain expressly limited by the Service Plan Total Debt Issuance Limitation. Without an amendment to the Service Plan, approved by the City Council at a public hearing, the District may not issue more than is authorized under the Service Plan regardless of the voted authorization. Furthermore, all debt, when issued, must be approved at a duly noticed public meeting of the Board.

**III. Green Mountain IGA for Extraterritorial Service**

After years of discussion, related litigation, and negotiation, District No. 1 and Green Mountain Water and Sanitation District (“Green Mountain”) entered into the Intergovernmental Agreement for Extra-Territorial Sewer Service (the “IGA”). The IGA was approved at a meeting of the Board of Directors of Green Mountain on May 8, 2018.

The IGA is a comprehensive document, but its key terms are simple. Green Mountain has agreed that it will “accept Wastewater from District No. 1, which is collected from and generated within the Big Sky Service Area and Big Sky Expanded Service Area and does not exceed a peak hour flow rate of 1.267 MGD” which will ultimately result in increased revenues to Green Mountain. The IGA does not provide for water service in any way. The Big Sky Service Area

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<sup>1</sup> The election questions for each of the District included the maximum of \$40,000,000 rather than the debt limitation included in the Service Plan because at the time the ballot questions were certified, the proponents of the Districts were considering a request for a debt limitation of \$40,000,000 rather than the \$30,000,000 that was ultimately approved in the Service Plan.

and Big Sky Expanded Service Area include property owned by CDN Red Rocks, LP, Cardel Homes, and the 3 Dinos, LLC. Green Mountain further promises that it will reserve sufficient capacity in its Green Mountain Wastewater Collection System to accommodate a peak hour flow rate of 1.267 MGD received from District No. 1, which is collected from and generated within the Big Sky Service Area and Big Sky Potential Expanded Service Area (the “Reserved Capacity”) for a period of fifteen (15) years from the effective date of the IGA, provided that District No. 1 is in compliance with the terms and conditions of the IGA. District No. 1 will pay the costs of a lift station and other infrastructure required to serve the Big Sky Service Area and Big Sky Expanded Service Area without cost to Green Mountain. District No. 1 will also make a payment of \$1.3 million to the Fossil Ridge Metropolitan District No. 1 (“Fossil Ridge”) to reimburse Fossil Ridge for the costs it incurred in oversizing the Fossil Ridge Sewer System to accommodate wastewater flows from a Future Development Area which included the Big Sky Service Area and the Big Sky Potential Expanded Service Area. This oversizing had been required by Green Mountain in intergovernmental agreements between Green Mountain and Fossil Ridge dating back to 2008 in anticipation of Green Mountain serving the remainder of the Rooney Valley at some point in the future.

**a. IGA Service Area and Districts’ Boundaries:**

The IGA does not serve to alter in any way the legal boundaries of the Districts. Although the geographic areas identified for service or potential services are referred to by the name “Big Sky” it does not alter the physical boundaries of the Districts. An alteration of the Districts’ legal boundaries is governed by the legal process set forth in the Special District Act and would require petition of the property owner, approval of such petition at a public meeting, and an order from the District Court. No alterations have been made to the legal boundaries of the Districts under the IGA nor is this contemplated as part of the IGA.

The Districts have the statutory authority to furnish service and facilities outside their boundaries without expanding the physical boundary. The IGA does nothing more than allow District No. 1 to provide services and facilities outside its physical boundaries to the geographic areas from which Green Mountain agreed to receive wastewater, subject to the conditions of the IGA. The legal boundaries of the Districts remain unchanged from their original configuration at organization.

**b. IGA and Purpose of the Districts**

The Service Plan allows for financing, operation, and maintenance of Public Improvements within and without the boundaries of the Districts as provided in the Special District Act, and other laws. Such powers and authority include “solid waste disposal facilities or waste services” and “solid waste disposal facilities or collection and transportation of solid waste”. There are no limitations on the Districts under the Service Plan with respect to sanitation powers and the full authorization of the Special District Act is applicable. Nevertheless, District No. 1 does not intend to provide sewer services to the extent of the full authorization provided under the Special District Act. Rather, it only intends to transmit wastewater through its facilities to Green Mountain and collect related fees from the users of the sewer transmission system.

The Districts are authorized by statute to “furnish service and facilities without the boundaries of the special district and to establish fees, rates, tolls, penalties, or charges for such services and facilities.” By entering into the IGA, Green Mountain authorized District No. 1 to provide sewer transmission services within the Districts and to properties outside the Districts’ boundaries. District No. 1 will essentially act as a master meter for the properties it serves both within the Districts’ boundaries and without which it is authorized by the Special District Act to provide. These services are not inconsistent with the stated purposes for which the Districts were organized.

The Districts are authorized to enter into contracts affecting the affairs of the Districts, and the IGA provides necessary service to the Districts and affects the affairs of the Districts. Without such service, development of the Project could not take place. The affairs of the Districts include the facilities, operations and services they provide and are not limited only to those within the boundaries of the Districts.

Providing facilities and services to property outside the Districts’ boundaries also does not increase the burden placed on property owners and taxpayers of the Districts. The property owners and taxpayers of the Districts pay property tax and applicable fees to support the facilities and services provided to them, and, in order to ensure that the residents taxes are not used to support services without the boundaries, the Districts are authorize to impose fees for such services, so everyone pays for the facilities and services they receive. Under the IGA, facilities within and without the Districts will be required to be oversized, and the cost of such oversizing will be borne by the areas receiving service. Enabling development within the Rooney Valley has the potential to increase property values of the future residents of the Districts. It also has the potential attract new public amenities which may be enjoyed by the future residents of the Districts.

The IGA provides the services necessary for the Districts and provides the means for additional properties to receive sewer service from Green Mountain without the need of separate service agreements with Green Mountain. The IGA provides a streamlined approach to sewer service in the Rooney Valley which has the added benefit of avoiding duplication of facilities and services, and makes sewer facility construction and transmission of wastewater to Green Mountain the most efficient and economical solution, which is all intended to benefit the Districts, the properties served, and Green Mountain.

#### **IV. Compliance with Service Plan**

The Service Plan specifically provides that it was designed with “sufficient flexibility to enable the Districts to provide the required services and facilities under evolving circumstances without the need for numerous amendments”. This provision is to be read in context with the whole language of the Service Plan, which does not limit the Districts authority to enter into the IGA or provide the sewer transmission services. By entering into the IGA, District No. 1 has not violated any provision of the Service Plan or any applicable statutory provision. Should the Districts take action that does violate specific provisions of the Service Plan, such actions would be deemed material modifications to the Service Plan and would as a result require a service plan amendment. Furthermore, the legal boundaries of the Districts have not changed from the time at

which the Districts were originally organized, and the essential services of the Districts are as authorized by the Service Plan. The Service Plan does not limit the Districts authority to provide sewer facilities or services within or without the legal boundaries of the Districts, nor does it limit the types of agreements the Districts may enter into.

The Districts are committed to continual compliance with the requirements of the Service Plan, the Special District Act, and other applicable statutes. The Districts recognize that the City has continued jurisdiction over the Service Plan and the Districts intend to comply with its provisions in accordance with the law, including providing required notices, disclosures and reports.

## Tim Cox

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**From:** Tim Cox <tim@mcm-legal.com>  
**Sent:** Monday, November 05, 2018 4:53 PM  
**To:** Tim Cox  
**Subject:** FW: Big Sky

Timothy P. Cox  
**Michow Cox & McAskin LLP**  
6530 S. Yosemite St., Suite 200  
Greenwood Village, CO 80111  
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**From:** Silvia Fejka  
**Sent:** Monday, November 05, 2018 4:31 PM  
**To:** Tim Cox <tim@mcm-legal.com>  
**Subject:** RE: Big Sky

Hello!

I hope you had a wonderful weekend!

I had every intention of finishing the memo last week and ended up spending most of MY energy on the energy district (figures). The memo is almost there, and if I don't finish it tonight, it will be tomorrow.

I haven't found any violations of the service plan. Mr. Henderson cites a lot of the really broad language in the introduction to the service plan, but if you take a closer look at the service plan, it doesn't limit extraterritorial provision of services. In fact, extraterritorial provision of services is explicitly permissible under state law. It's questionable whether the City could abrogate this, even with specific service plan language.

Another thing you might point out is that Mr. Henderson's evaluation erroneously assumes that the additional service area referred to in the IGA was included into Big Sky boundaries. That is not the case. The 3 Dinos parcels are still outside of Big Sky boundaries, but that doesn't prevent Big Sky from providing services. Big Sky can still impose fees on that area to fund services; it just can't impose taxes. Inclusion of property into a district is a specific statutory process, and the significance is that it changes the district's taxable boundaries. Big Sky never included the 3 Dinos property. All technical details regarding above will be included in the memo.

(I don't know if this will come up, but Mr. Henderson's description of the Cardel property is also inaccurate. The above applies, with the distinction that Big Sky could easily include the Cardel property into its taxable boundaries without



additional approval under the service plan as is otherwise required. That is because the service plan already anticipates the inclusion of that area. Whether or not it was ever included, I do not know. But again, Big Sky can provide extraterritorial services under state statute.)

Also, my dad was so excited about the hockey tickets! We'll definitely be joining you, at least on the November date. Keep us posted on the December tickets, and maybe we can touch base closer to the date (but if no one else wants them, we are in!).

Silvia Fejka  
Michow Cox & McAskin, LLP  
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Direct: 303-459-4855  
[silvia@mcm-legal.com](mailto:silvia@mcm-legal.com)

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**From:** Tim Cox  
**Sent:** Monday, November 5, 2018 3:51 PM  
**To:** Silvia Fejka <[Silvia@mcm-legal.com](mailto:Silvia@mcm-legal.com)>  
**Subject:** Big Sky

Hi! – Just checking on an ETA for the Big Sky analysis memo. At tonight's council meeting there will be some brief talk about the Green Tree metro district and I'm sure it will come up. Please advise as to when your evaluation will be ready, and if possible, a line or two summarizing what we have found? For instance, Mr. Henderson alleged that Big Sky violated the statute by doing a major modification without city approval. Have we reached a conclusion on that allegation?

I'm not concerned that we don't have the evaluation done – I'm just trying to offer them something of substance to hold them over until it's done. I will probably print and bring Kristen's memo and make them aware of some of her thoughts.

Thanks! If we need to talk, call either my cell 303-250-3534 or desktop 303-987-7451.

Timothy P. Cox  
**Michow Cox & McAskin LLP**  
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## Tim Cox

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**From:** Kathie Guckenberger <kathie@mcm-legal.com>  
**Sent:** Monday, November 05, 2018 3:54 PM  
**To:** Tim Cox  
**Subject:** Lakewood litigation - still getting my arms around it, but here's what I got.

Tim: Here's what I know, followed by what showed up as open in a search of Colorado state courts for the term "City of Lakewood." On that list, I highlighted open matters. This is the best I can do on this notice, but it is in progress and will be a thing of beauty, I hope, when complete.

Kathie

### Police - currently active

- Jason Cappelli and Vincent Todd v. Sgt. William Hoover, Detective Jimmy Torsak, Agent Michael Griffith, Agent Janna Schmmels, and John Doe, an unidentified Agent of the Bureau of Alcohol Tobacco and Firearms – federal court.
- St. George, Eric (prisoner) v. Larson (Lakewood PD Detective) – state court.
- St. George, Eric (prisoner) v. City of Lakewood, Lakewood Police Department, Agent Devon Trimmer, Sergeant Jason Maines, Detective Jeff Larson and Chief of Police Dan McAsky – federal court.

### Workers' Compensation

NAME	DOI	INJURY	DEPT
West, Charles	3/29/2018	Back	Streets
Key, Jonathon	7/4/2014	PT-GS	PD
Collins, Kim	7/4/2014	GS	PD
Faubion, Nicolette	6/27/2016	Arm	AC
Maez, Toby	6/22/2018	Head	PD
Odonnell, Mark	8/2/2018	Multi	PD
Davies, Tamara			

### Tort/Other

- Waiting for clarification from Seerie later this week- list I have is outdated.
- Waiting on "quick and dirty" list from Tom Lyons' firm - will forward when receive.
- [Shueman and Dorman - dismissed or very close].
- Others as noted from search of state courts are below. I don't know much about those.

# Litigation naming LW in CO state courts - 11/5/18

Monday, November 5, 2018






































3:38 PM

## Search Criteria:

Business Name Search: City of Lakewood


Search Options: All Court Cases

Search Result Total: 441

Case Number		Location	Case Caption
<a href="#">2017C036595</a>	 	Adams County	<a href="#">Metro Collection Service Inc v. Tovar, Sylvia</a>
<a href="#">2012C048595</a>	 	Adams County	<a href="#">Bonded Business Serv Ltd v. Apple Dumplin Ranch LLC et al</a>
<a href="#">2009C065242</a>	 	Adams County	<a href="#">Lynv Funding LLC v. Duran, William</a>
<a href="#">2007C051652</a>	 	Adams County	<a href="#">Midland Credit Mgmt Inc v. Adams, Mark L</a>
<a href="#">2007C047454</a>	 	Adams County	<a href="#">Apollo Credit Agency Inc v. Gines, Justin E et al</a>
<a href="#">2002CV001352</a>	 	Adams County	<a href="#">Hammond, Jasper v. City Of Lakewood et al</a>
<a href="#">2001CV002367</a>	 	Adams County	<a href="#">Hammond, Jasper v. City Of Lakewood et al</a>
<a href="#">1997C206625</a>	 	Arapahoe County - Aurora	<a href="#">Payco Genrl Amer Credits Inc v. Peitersen, Dawn Marie et al</a>
<a href="#">1997C205197</a>	 	Arapahoe County - Aurora	<a href="#">Foote Read Co v. Peitersen, Jeff L et al</a>
<a href="#">2000CV000583</a>	 	Boulder County	<a href="#">Occupational Healthcare Mgmt Services et al v. Hoffman, Danielle Lynn et al</a>
<a href="#">1989CV002359</a>	 	Boulder County	<a href="#">Maley, Gail v. Douglass, Rex F et al</a>
<a href="#">1983DR000190</a>	 	Chaffee County	<a href="#">Coolbaugh, Alberta Marie and Hardesty, Roger D</a>
<a href="#">2017CA001605</a>	 	Court of Appeals	<a href="#">Big Sur Waterbeds v City of Lakewood</a>
<a href="#">2016CA001494</a>	 	Court of Appeals	<a href="#">City of Lakewood v Armstrong, J</a>
<a href="#">2015CA002039</a>	 	Court of Appeals	<a href="#">City of Lakewood v Safety National Casualty</a>
<a href="#">2014CA000835</a>	 	Court of Appeals	<a href="#">HBG Neighborhood v City of Lakewood</a>
<a href="#">2011CA002300</a>	 	Court of Appeals	<a href="#">Rockymtn Wellness v City of Lakewood</a>
<a href="#">2010CA002576</a>	 	Court of Appeals	<a href="#">Mann, B v State of Co</a>
<a href="#">2009CA001035</a>	 	Court of Appeals	<a href="#">Starr, A v City of Lakewood</a>
<a href="#">2008CA001371</a>	 	Court of Appeals	<a href="#">Mann, B V State of Colorado</a>

Search Criteria:  
 Business Name Search: City of Lakewood  
 Search Options: All Court Cases

Search Result Total: 441

Case Number		Location	Case Caption
<a href="#">2011CV004391</a>	 	Denver County - District	<a href="#">Thompson, Tobias R v. Crandall, Curtis J et al</a>
<a href="#">2011CV000344</a>	 	Denver County - District	<a href="#">Nguyen, Xe et al v. Public Serv Co Of Colo et al</a>
<a href="#">2010CV007306</a>	 	Denver County - District	<a href="#">Beckley, Scott v. City Of Lakewood et al</a>
<a href="#">2008CV010661</a>	 	Denver County - District	<a href="#">Aarmor Affordable Constr LLC v. Tower 1 Constr Co et al</a>
<a href="#">2006CV012326</a>	 	Denver County - District	<a href="#">Mann, Joseph J et al v. St Of Colo et al</a>
<a href="#">1996CV000645</a>	 	Denver County - District	<a href="#">Cox, Helen et al v. City Of Lakewood et al</a>
<a href="#">1981CV007335</a>	 	Denver County - District	<a href="#">Braun, Merry L et al v. City Of Lakewood et al</a>
<a href="#">2013CV000529</a>	 	Douglas County	<a href="#">City Of Lakewood Police Duty Death Disab et al v. McRill, Thomas</a>
<a href="#">2010CR000573</a>	 	Douglas County	<a href="#">The People of the State of Colorado v. Shauley, Nicholas Lee</a>
<a href="#">2018CV000225</a>	 	Jefferson County	<a href="#">Perez, Frank D JR v. City Of Lakewood</a>
<a href="#">2018CV031304</a>	 	Jefferson County	<a href="#">Us Bank National Association v. Estate Of Clifford Graves et al</a>
<a href="#">2018CV031138</a>	 	Jefferson County	<a href="#">Ridgeline Site Services Inc v. City Of Lakewood et al</a>
<a href="#">2018CV031119</a>	 	Jefferson County	<a href="#">Mesa View Estates Homeowners Association v. Rhoades, Scott et al</a>
<a href="#">2018CV030865</a>	 	Jefferson County	<a href="#">Franklin, Mason v. City Of Lakewood</a>
<a href="#">2018CV030282</a>	 	Jefferson County	<a href="#">City Of Lakewood Colorado v. Ew Gp Associates LLC et al</a>
<a href="#">2018CV030153</a>	 	Jefferson County	<a href="#">City Of Lakewood v. Jansen, Evan</a>
<a href="#">2018CV000028</a>	 	Jefferson County	<a href="#">City Of Lakewood v. Cessa, Christopher</a>
<a href="#">2017CV032042</a>	 	Jefferson County	<a href="#">Solterra LLC et al v. Green Tree Metropolitan District No 1 et al</a>
<a href="#">2017CV031437</a>	 	Jefferson County	<a href="#">Dorman, Steven v. City Of Lakewood et al</a>
<a href="#">2017CV031228</a>	 	Jefferson County	<a href="#">Malekzadeh, Marie v. City Of Lakewood</a>

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## MEMORANDUM

**TO:** Tim Cox, City Attorney, City of Lakewood  
**FROM:** White Bear Ankele Tanaka & Waldron, Attorneys at Law  
**DATE:** October 15, 2018  
**RE:** Big Sky Metropolitan District Nos. 1-7

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### **I. Special Districts - Background**

Special districts are quasi-municipal corporations and political subdivisions of the State of Colorado, formed pursuant to Sections 32-1-101, *et. seq.*, C.R.S. (the “Special District Act”). Special districts are organized for the purpose of financing the cost of public infrastructure and providing services related to such public infrastructure. Special districts are formed by submittal of a service plan to the jurisdiction in which the property to be served is located. The service plan sets forth the powers that the special district will have, or in the alternative, sets forth limitations on the powers afforded to special districts by the Special District Act. Common limitations include caps on the authorized amount of debt a special district may issue or the maximum mill levy a special district may impose on property within its boundaries. All service plan applications are evaluated on an individual basis; the evaluation of one service plan does not apply in any respect to the evaluation of another, and findings are made by the jurisdiction as they relate to the specific service plan application, independent of any other proposed service plan. Among the findings to be made by the approving jurisdiction before a service plan may be approved are the following: that (a) there is sufficient existing and projected need for organized service in the area to be served by the Districts; (b) the existing service in the area to be served by the Districts is not adequate for present and projected needs; and (c) the Districts are capable of providing economic and sufficient service to the area within its proposed boundaries.

Upon approval of the Service Plan by the approving jurisdiction, a Petition for Organization is filed with the District Court requesting that the District Court order an election on questions related to formation of the special districts, the election of boards of directors, and issues related to incurrence of Debt and imposition of taxes. Following the election, the results are certified to the District Court which then issues an Order and Decree declaring that the special district has been duly organized. At this point, the special district may function as a quasi-municipal corporation and conduct its business subject to the limitations of its service plan and the Special District Act.

Special districts are governed by five or seven member boards of directors who are

elected to staggered four year terms of office. Directors are elected from among the “Eligible Electors” of the special district. An Eligible Elector is an individual who registered to vote in the State of Colorado and who resides in, or who owns or whose spouse owns or has a contract to purchase taxable property within the boundaries of the special district. Since special districts are typically organized prior to any development taking place within property to be served, the proponents of the special district become qualified as Eligible Electors by entering into agreements to purchase taxable property within the special districts. The proponents of the service plan are typically employees or principals of the company that owns the property and intends to develop it. This enables the proponents of the special district to participate in the organization of the special district and see to its affairs in the early stages of development. The developer will pay the property taxes assessed by the district for as long as it owns property within the district. Once property within a special district is sold to an individual property owner, they are eligible to submit their name for election to the board of directors at the next regular election, or to be appointed to any vacant seat on the board of directors.

Special districts, like municipalities, must comply with open meeting laws, TABOR, public bidding requirements, budget and audit law, and any restrictions or limitations of its service plan. The board of directors typically meets on a regular basis to handle the business of the special district.

Unless limited by the service plan, special districts are authorized by the Special District Act to provide many types of public infrastructure, including: streets, safety protection, parks and recreation, water, sanitation, transportation, mosquito control, television relay and translation, and fire protection improvements. Metropolitan districts such as Big Sky Metropolitan District Nos. 1-7 are organized to provide two or more of these services. Public infrastructure is typically financed by the issuance of tax-exempt bonds which are repaid from legally available revenues of the special district. The most common form of special district revenue is property taxes levied against the property within the special district’s boundaries. Special districts may also impose fees for the payment of debt or operations services. The Taxpayers Bill of Rights (“TABOR”) requires approval by the eligible electors of a special district to incur debt for each type of public infrastructure proposed to be financed by the special district and to impose taxes for the repayment of such debt. TABOR authorization is generally obtained as part of the organizational election associated with the special district so that the special district may undertake financing as development moves forward.

## **II. Big Sky Metropolitan District Nos. 1-7**

The Service Plan (“Service Plan”) for the Big Sky Metropolitan District Nos. 1-7 (individually “District No. 1”, “District No. 2”, “District No. 3”, “District No. 4”, “District No. 5”, “District No. 6”, and “District No. 7”, and collectively the “Districts”) was proposed by the current owner of the property within the Districts, CDN Red Rocks, LP, to serve the Big Sky Project (the “Project”). It was approved resolution of the City Council on September 22, 2014, after a public hearing at which evidence and testimony was presented and the City Council made the required findings to approve the Service Plan. After approval of the Service Plan the Jefferson County District Court ordered an election to be held on November 4, 2014. At the

organizational election, the eligible electors of the Districts voted in favor of the organization of the Districts, elected the initial Boards of Directors (the "Boards") and authorized each of the Districts, among other things, to incur debt to finance the cost of public infrastructure, to impose taxes for the repayment of debt, up to a maximum amount for each type of public infrastructure. Once again, it is important to note that at this early stage of development, these eligible electors consist of the employees and principals of entities owning taxable real or personal property within the district. Following the organizational elections, the results were certified to the Jefferson County District Court and orders and decrees were issued declaring each of the Districts organized.

**a. District Boundaries/Service Area**

The Districts were organized with the boundaries of District Nos. 1, 3-7 overlapping on 1.4 acre parcel on the west side of C-470. District No. 2's boundaries contain the balance of the Project as contemplated at the time the Service Plan was approved (the "Initial District Boundaries"). The Service Plan permits property to be included into one of the Districts as development progresses in phases and it is contemplated that as development progresses; the construction of public infrastructure can be phased. As each phase develops, it is contemplated that property will be included into one of the Districts and excluded from District No. 2 in order to avoid overlapping boundaries and tax burdens. Inclusions and exclusions are very specific legal terms and processes governed under Sections 32-1-401 and 501 *et. seq.*, C.R.S., respectively. The Service Plan also allows for the inclusion of property not within the Initial District Boundaries, which is described in the Service Plan as the "Inclusion Area" (the property within the Inclusion Area is now commonly referred to as the Indigo at Red Rocks property and has not been included in the Districts' boundaries at this time. The Indigo property is currently owned by Cardel Homes.) Further, the Districts may include property not described in the Inclusion Area upon petition by the fee owner or owners of 100 percent of such property as provided in the Special District Act. Together, the Initial District Boundaries and the Inclusion Area comprise the "Service Area" of the Districts. The Service Area represents the extent of the potential taxing authority of the Districts, but as discussed below, does not limit the property which may be served by the Districts.

**b. Powers of the Districts:**

Under the Service Plan the Districts are specifically afforded the "power and authority to provide public infrastructure and related operation and maintenance services within and without the boundaries of the Districts as such power is described in the Special District Act, other applicable statutes, common law, and the Colorado Constitution, subject to the limitations of the Service Plan." Further, the Districts are specifically authorized in the Service Plan to "operate and maintain park and recreation, sewer, and landscape improvements and other improvements owned by the Districts". The Special District Act authorizes special districts to enter into contracts affecting the affairs of the special district, and to furnish services and facilities without (meaning outside) the boundaries of the special district and establish rates, fees, tolls, penalties, and charges for such services and facilities. The Special District Act authorizes special districts to enter into contracts affecting its affairs. The Special District Act authorizes special districts to provide sewer service. The Service Plan does not limit the Districts from entering into

intergovernmental agreements or extraterritorial service agreements, or from providing services and facilities outside their boundaries.

**c. Financial Authorization/Limitations:**

The Service Plan limits the total debt issuance of the District to a maximum of \$30,000,000, (the “Total Debt Issuance Limitation”) and limits the maximum mill levy that may be imposed for the payment of such debt to 50 mills (subject to certain specified increases) (the “Maximum Debt Mill Levy”) for a term of no longer than 40 years (the “Maximum Debt Mill Levy Imposition Term”). The amount of debt that can be issued is ultimately tied to the total assessed value of the properties at buildout.

At the organizational election the voters authorized the issuance of debt in the total aggregate amount of \$600,000,000 with a total aggregate repayment of \$4,920,000,000. This amount represents debt authorization for each specific category of public infrastructure (ie. streets, water, sewer, parks and recreation etc.) up to the total of \$40,000,000<sup>1</sup> in debt, and assumes the largest possible payment of principal and interest. Special districts typically structure TABOR issues on ballots in this manner to allow flexibility to accommodate unknown development and construction costs. Debt authorization under TABOR is typically valid for 20 years after it is approved at an election, and any debt to be issued after 20 years would need to be reauthorized at a subsequent TABOR election. Since one of the primary purposes of the Districts is to serve as a financing vehicle pursuant to the underlying Service Plan authorization, the TABOR authorization obtained as part of the underlying organizational election is integral to provide for the financing as the development moves forward. Notwithstanding the voter approved debt, the Districts will remain expressly limited by the Service Plan Total Debt Issuance Limitation. Without an amendment to the Service Plan, approved by the City Council at a public hearing, the District may not issue more than is authorized under the Service Plan regardless of the voted authorization. Furthermore, all debt, when issued, must be approved at a duly noticed public meeting of the Board.

**III. Green Mountain IGA for Extraterritorial Service**

After years of discussion, related litigation, and negotiation, District No. 1 and Green Mountain Water and Sanitation District (“Green Mountain”) entered into the Intergovernmental Agreement for Extra-Territorial Sewer Service (the “IGA”). The IGA was approved at a meeting of the Board of Directors of Green Mountain on May 8, 2018.

The IGA is a comprehensive document, but its key terms are simple. Green Mountain has agreed that it will “accept Wastewater from District No. 1, which is collected from and generated within the Big Sky Service Area and Big Sky Expanded Service Area and does not exceed a peak hour flow rate of 1.267 MGD” which will ultimately result in increased revenues to Green Mountain. The IGA does not provide for water service in any way. The Big Sky Service Area

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<sup>1</sup> The election questions for each of the District included the maximum of \$40,000,000 rather than the debt limitation included in the Service Plan because at the time the ballot questions were certified, the proponents of the Districts were considering a request for a debt limitation of \$40,000,000 rather than the \$30,000,000 that was ultimately approved in the Service Plan.



and Big Sky Expanded Service Area include property owned by CDN Red Rocks, LP, Cardel Homes, and the 3 Dinos, LLC. Green Mountain further promises that it will reserve sufficient capacity in its Green Mountain Wastewater Collection System to accommodate a peak hour flow rate of 1.267 MGD received from District No. 1, which is collected from and generated within the Big Sky Service Area and Big Sky Potential Expanded Service Area (the “Reserved Capacity”) for a period of fifteen (15) years from the effective date of the IGA, provided that District No. 1 is in compliance with the terms and conditions of the IGA. District No. 1 will pay the costs of a lift station and other infrastructure required to serve the Big Sky Service Area and Big Sky Expanded Service Area without cost to Green Mountain. District No. 1 will also make a payment of \$1.3 million to the Fossil Ridge Metropolitan District No. 1 (“Fossil Ridge”) to reimburse Fossil Ridge for the costs it incurred in oversizing the Fossil Ridge Sewer System to accommodate wastewater flows from a Future Development Area which included the Big Sky Service Area and the Big Sky Potential Expanded Service Area. This oversizing had been required by Green Mountain in intergovernmental agreements between Green Mountain and Fossil Ridge dating back to 2008 in anticipation of Green Mountain serving the remainder of the Rooney Valley at some point in the future.

**a. IGA Service Area and Districts’ Boundaries:**

The IGA does not serve to alter in any way the legal boundaries of the Districts. Although the geographic areas identified for service or potential services are referred to by the name “Big Sky” it does not alter the physical boundaries of the Districts. An alteration of the Districts’ legal boundaries is governed by the legal process set forth in the Special District Act and would require petition of the property owner, approval of such petition at a public meeting, and an order from the District Court. No alterations have been made to the legal boundaries of the Districts under the IGA nor is this contemplated as part of the IGA.

The Districts have the statutory authority to furnish service and facilities outside their boundaries without expanding the physical boundary. The IGA does nothing more than allow District No. 1 to provide services and facilities outside its physical boundaries to the geographic areas from which Green Mountain agreed to receive wastewater, subject to the conditions of the IGA. The legal boundaries of the Districts remain unchanged from their original configuration at organization.

**b. IGA and Purpose of the Districts**

The Service Plan allows for financing, operation, and maintenance of Public Improvements within and without the boundaries of the Districts as provided in the Special District Act, and other laws. Such powers and authority include “solid waste disposal facilities or waste services” and “solid waste disposal facilities or collection and transportation of solid waste”. There are no limitations on the Districts under the Service Plan with respect to sanitation powers and the full authorization of the Special District Act is applicable. Nevertheless, District No. 1 does not intend to provide sewer services to the extent of the full authorization provided under the Special District Act. Rather, it only intends to transmit wastewater through its facilities to Green Mountain and collect related fees from the users of the sewer transmission system.

The Districts are authorized by statute to “furnish service and facilities without the boundaries of the special district and to establish fees, rates, tolls, penalties, or charges for such services and facilities.” By entering into the IGA, Green Mountain authorized District No. 1 to provide sewer transmission services within the Districts and to properties outside the Districts’ boundaries. District No. 1 will essentially act as a master meter for the properties it serves both within the Districts’ boundaries and without which it is authorized by the Special District Act to provide. These services are not inconsistent with the stated purposes for which the Districts were organized.

The Districts are authorized to enter into contracts affecting the affairs of the Districts, and the IGA provides necessary service to the Districts and affects the affairs of the Districts. Without such service, development of the Project could not take place. The affairs of the Districts include the facilities, operations and services they provide and are not limited only to those within the boundaries of the Districts.

Providing facilities and services to property outside the Districts’ boundaries also does not increase the burden placed on property owners and taxpayers of the Districts. The property owners and taxpayers of the Districts pay property tax and applicable fees to support the facilities and services provided to them, and, in order to ensure that the residents taxes are not used to support services without the boundaries, the Districts are authorize to impose fees for such services, so everyone pays for the facilities and services they receive. Under the IGA, facilities within and without the Districts will be required to be oversized, and the cost of such oversizing will be borne by the areas receiving service. Enabling development within the Rooney Valley has the potential to increase property values of the future residents of the Districts. It also has the potential attract new public amenities which may be enjoyed by the future residents of the Districts.

The IGA provides the services necessary for the Districts and provides the means for additional properties to receive sewer service from Green Mountain without the need of separate service agreements with Green Mountain. The IGA provides a streamlined approach to sewer service in the Rooney Valley which has the added benefit of avoiding duplication of facilities and services, and makes sewer facility construction and transmission of wastewater to Green Mountain the most efficient and economical solution, which is all intended to benefit the Districts, the properties served, and Green Mountain.

#### **IV. Compliance with Service Plan**

The Service Plan specifically provides that it was designed with “sufficient flexibility to enable the Districts to provide the required services and facilities under evolving circumstances without the need for numerous amendments”. This provision is to be read in context with the whole language of the Service Plan, which does not limit the Districts authority to enter into the IGA or provide the sewer transmission services. By entering into the IGA, District No. 1 has not violated any provision of the Service Plan or any applicable statutory provision. Should the Districts take action that does violate specific provisions of the Service Plan, such actions would be deemed material modifications to the Service Plan and would as a result require a service plan amendment. Furthermore, the legal boundaries of the Districts have not changed from the time at

which the Districts were originally organized, and the essential services of the Districts are as authorized by the Service Plan. The Service Plan does not limit the Districts authority to provide sewer facilities or services within or without the legal boundaries of the Districts, nor does it limit the types of agreements the Districts may enter into.

The Districts are committed to continual compliance with the requirements of the Service Plan, the Special District Act, and other applicable statutes. The Districts recognize that the City has continued jurisdiction over the Service Plan and the Districts intend to comply with its provisions in accordance with the law, including providing required notices, disclosures and reports.