

**A RESOLUTION OF THE GREEN MOUNTAIN WATER AND SANITATION DISTRICT
TERMINATING THE INTERGOVERNMENTAL AGREEMENT FOR EXTRA-TERRITORIAL SEWER SERVICE
WITH BIG SKY METROPOLITAN DISTRICT NO.1**

WHEREAS, the Green Mountain Water and Sanitation District (“Green Mountain”) is a special district organized in 1952 and consolidated in 1983 with the Northside Water and Sanitation District for the purpose of providing "a complete waterworks distribution system for the district and the inhabitants thereof" - within its district boundary pursuant to Title 32 of the Colorado Revised Statutes (“C.R.S.”); and,

WHEREAS, Big Sky Metropolitan District (“Big Sky”) is a special district organized in 2014 pursuant to a Service Plan approved by the Lakewood City Council in 2014 with a limited purpose and boundary pursuant to C.R.S. Title 32; and,

WHEREAS, Green Mountain is limited to providing services to inhabitants within the boundaries of its district pursuant to the approved petition dated 1952; and,

WHEREAS, Green Mountain is authorized to provide services outside the district boundaries subject to the limitations of its Service Plan and C.R.S. Title 32; and,

WHEREAS, the Green Mountain Water & Sanitation District Rules and Regulations adopted by Green Mountain in 1986 permit Green Mountain to provide services outside the district boundaries at the sole discretion of Green Mountain and within the limits of applicable law; and,

WHEREAS, there remains a question as to whether or not Green Mountain can authorize itself to provide services outside the district boundaries without authorization from the Lakewood City Council and the Jefferson County Board of County Commissioners; and,

WHEREAS, Big Sky drafted an agreement signed by Big Sky and Green Mountain on May 8, 2018, the "Intergovernmental Agreement for Extra-Territorial Sewer Service" (“Big Sky IGA”), to provide sanitation services to Big Sky, with Big Sky providing services to future customers outside both the Green Mountain district boundaries and outside the Big Sky district boundaries, and operating as a new "master meter" sanitation district serving all of Rooney Valley; and,

WHEREAS, there was no public hearing or public vote on the proposed Big Sky IGA, no prior notice to the Lakewood City Council of the Big Sky IGA, no prior notice to the Jefferson County Board of County Commissioners of the Big Sky IGA, and no publicly vetted feasibility study; and,

WHEREAS, a genuine question has arisen about the risks associated with operating and maintaining a new sewer system in this geological environment; and,

WHEREAS, a majority of the Green Mountain Board of Directors who voted to enter into and approve the Big Sky IGA on May 8, 2018, were being voted out of office as the votes were being counted that same evening, May 8, 2018; and,

WHEREAS, intergovernmental agreements are governed by Title 29 of the Colorado Revised Statutes, which expressly provides that two special districts may only enter into intergovernmental agreements to perform a specific service if and only if each special district is "lawfully authorized" to perform that specific service, and if and only if they receive "approval of its legislative body or other authority having the power to so approve" (C.R.S. 29-1-203(1)); and,

WHEREAS, there is a question as to whether or not the two directors of Big Sky who voted to approve the IGA constitute a legislative body since that number is less than the required number of directors for a special district under C.R.S. 32-1-305.5; and,

WHEREAS, Big Sky has not received express permission from the Lakewood City Council, or Jefferson County Board of County Commissioners, to amend its 2014 Service Plan to expand its boundaries and to expand its purpose to selling sanitation services and providing sanitation services as a new "master meter" to customers outside the Big Sky district pursuant to C.R.S. 32-1-207; and,

WHEREAS, the Big Sky IGA constitutes a material modification to the Big Sky Service Plan in that it expands, without permission from Lakewood City Council, the limited purpose and, without permission from Lakewood City Council and Jefferson County Board of Commissioners, the limited territory approved by the Lakewood City Council in 2014. *Barrett v. Lembke*, ___ P. 3d ___ 2018 Colo. Ct. App. 134 (September 6, 2018) and *Barrett v. Sand Hills*, 41 P. 3d 1086 (Colo. Ct. App. 2016) ; and,

WHEREAS, Green Mountain, as an expression of good faith, on two specific occasions, advised Big Sky to make application to obtain permission to expand its boundaries and purpose, and Big Sky failed to do so; and,

WHEREAS, Big Sky worked with the Lakewood City Attorney and the Mayor of Lakewood to prevent an objective evaluation of Big Sky's compliance with the limited Big Sky Service Plan as it relates to the Big Sky IGA approved by the Lakewood City Council in 2014; and,

WHEREAS, intergovernmental agreements are legislative acts "subject to the control of the citizenry" and "since each respective group of citizenry in the City and County can effect change through the electoral process, it follows that if they are dissatisfied with an intergovernmental contract entered into by their responsible governing boards, they can also exercise their rights by recalling the elected officers who approved the contracts." *Durango Transp., Inc. v. City of Durango*, 824 P.2d 48, 52 (Colo. Ct. App. 1991); and,

WHEREAS, Big Sky represented to Green Mountain that Big Sky would pay all of Green Mountain's costs; and,

WHEREAS, the Big Sky IGA in fact expressly provides that Green Mountain will repay Big Sky's advances by rebating to Big Sky 50% of the fees paid to Green Mountain; and,

WHEREAS, numerous fees contemplated in the Big Sky IGA may be properly considered a tax under Colorado law and create violations of TABOR, Colorado Constitution Article 10 Section 20; and,

WHEREAS, under the Big Sky IGA, future customers of the "Big Sky Sewer System" will not be residents of the Green Mountain or Big Sky districts, and will have no right to vote for the Green Mountain or Big Sky Boards of Directors, or on matters related to providing sanitation services to those same residents; and,

WHEREAS, Green Mountain is charged with protecting the public interest and owes a fiduciary duty to the residents of the Green Mountain district and to Green Mountain customers; and,

WHEREAS, over the past 8 months Big Sky has engaged in a pattern of behavior demonstrating a difficulty in, and compromising, the working relationship between Big Sky and Green Mountain; and,

WHEREAS, the Big Sky district will be making decisions which will affect a large population of future residents while the Big Sky Director(s) have a conflict of interest with the future residents,

The Board of Directors of the Green Mountain Water and Sanitation District finds that:

- a. Big Sky is not "lawfully authorized" under C.R.S. 29-1-203(1) to enter into an IGA to be the "master meter" for Rooney Valley and provide the services enumerated in the Big Sky IGA; and,
- b. No "legislative body or other authority having the power to so approve", has approved the Big Sky IGA on behalf of Big Sky under C.R.S. 29-1-203(1) and 32-1-305.5; and,
- c. The Big Sky IGA is a material modification of the limitations in the Big Sky Service Plan pursuant to C.R.S. 32-1-102 (1), 32-1001 (1)(d)(I), 32-1-202(2), and 32-1-207(2), and Big Sky does not have authority from the City of Lakewood and Jefferson County to comply with the IGA; and,
- d. There are material omissions in the Big Sky IGA, specifically that Big Sky was legally authorized to provide these sanitation services, or that Big Sky had authority from the Lakewood City Council or Jefferson County Board of County Commissioners to provide these services; and,
- e. Big Sky acted in bad faith for the reasons set forth above; and,

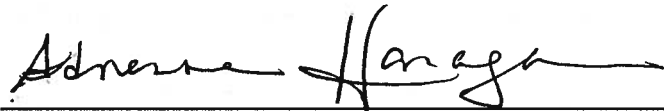
f. The Big Sky IGA will expose Green Mountain to the risk of litigation from future customers of the "Big Sky Sewer System", and residents of the Green Mountain Water and Sanitation District; and,

g. It is in the best interests of the public, including Big Sky, the Green Tree Metropolitan District and all related developers who seek sanitation services from the Green Mountain district to bring certainty and stability to the distribution of sanitation services outside the Green Mountain district,

h. As a matter of public policy, the Big Sky IGA is not in the public interest.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Green Mountain Water and Sanitation District, that in the exercise of its legislative authority guided by the best interests of the public, including residents of the district, customers of the district, potential future customers of the district and property owners inside and outside the district boundaries, the Green Mountain Water and Sanitation District hereby finds the Big Sky IGA to be invalid, and void since its inception, against public policy, and therefore terminates the Big Sky IGA effective immediately this 9th day of April, 2019.

Whereupon, a motion was made and seconded, and upon a majority vote, this Resolution was **ADOPTED AND APPROVED** at a special meeting of the Board of Directors of the Green Mountain Water and Sanitation District on April 9th, 2019, at 13919 West Utah Ave. Lakewood, CO 80228.



Adrienne Hanagan, President, Green Mountain Water and Sanitation District

CERTIFICATION

I, Alex Plotkin, Secretary to the Green Mountain Water and Sanitation District, do hereby certify that the foregoing is a true copy of a resolution duly adopted and approved by the Green Mountain Water and Sanitation District at a special meeting held at the Green Mountain Water and Sanitation District Office, Jefferson County, Colorado, on the 9th day of April, 2019, as the same appears in the minutes of said meeting.



Alex Plotkin, Secretary, Green Mountain Water and Sanitation District