

**CITY OF BOULDER
PLANNING BOARD INFORMATION ITEM**

TO: Planning Board

FROM: Susan Richstone, Deputy Director, Community Planning and Sustainability (CP&S)
Hella Pannewig, Assistant City Attorney
Lesli Ellis, Comprehensive Planning Manager
Edward Stafford, Development Review Manager, Public Works
Scott Kuhna, Development Review Supervisor
Jeff Hirt, Planner II

DATE: July 16, 2015

SUBJECT: Information Item: Out of City Water Service for Single Family Property in Area III-
Planning Reserve (4400 Peach Court)

The purpose of this memo is to inform Planning Board of the proposed extension of city water service to an existing 6.5 acre single family property in Area III-Planning Reserve at 4400 Peach Court. Boulder County has approved an expansion of the existing house for a larger single family home.

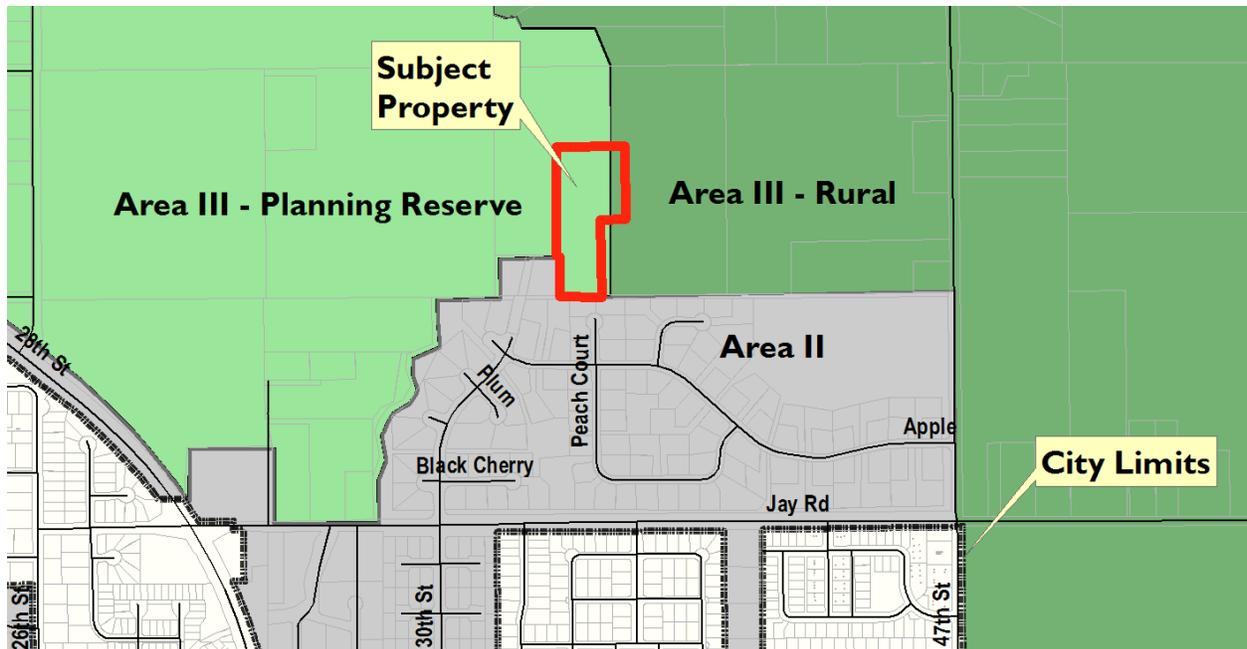
The property owner requested water service through the Left Hand Water District (District) in 2013. Pursuant to the city's Intergovernmental Agreement (IGA) with the District ([Attachment C](#)), the city received this referral as the property is in the Boulder Valley Planning Area. The city objected to granting of the tap request through the District because it was inconsistent with the Boulder Valley Comprehensive Plan (BVCP). Specifically, because the property is in Area III-Planning Reserve, there is the potential for future city service area expansion that may create overlapping service between the city and the District.

As a result, the property owner has requested city water service. The ordinance is required primarily because the property is in Area III, and the Boulder Revised Code (BRC) Sec. 11-1-15 (Out of City Water Service) regulates only out of city water service to properties in Area II.

Staff is recommending that council consider an ordinance ([Attachment A](#)) that would enable the subject property to obtain city water service through an agreement executed by the City Manager for the following reasons:

1. BVCP Sec. 1.20 states that the city and county intend to maintain the option of future service area expansion in Area III-Planning Reserve;
2. BVCP Sec. 1.36 (b) supports extending limited utility service in Area III when it furthers BVCP goals;
3. To avoid the potential of overlapping service between the city and District water supply within the City of Boulder Service Area; and
4. The request is limited to one approved single family dwelling unit and accessory structures directly related to the single family use. The request will not result in additional development potential.

Please submit any comments or questions to Jeff Hirt (hirtj@bouldercolorado.gov) by Friday, July 24.



BACKGROUND

The Left Hand Water District is a special district that provides treated water to about 6,500 homes in Boulder and Weld Counties. The City of Boulder and the District entered into the 1995 Amended and Restated Agreement (IGA, see [Attachment C](#)) that provides a process for the city to comment on requests for new service or changes in service to existing District water customers in the Boulder Valley Comprehensive Plan (BVCP) area. The city's review of the requests focuses on whether the District has the capacity to serve the new customers and whether the request is consistent with the BVCP.

The city and the district have a long history of coordinating utility services within the BVCP area. Special districts like Left Hand are quasi-municipal corporations and political subdivisions under state law. While there are a number of special districts that provide various services within the Boulder Valley, the city and Boulder County have discouraged expansion of such districts, to discourage urban development outside of the urban municipalities. Since the early 1970s, the city and the District have worked to prevent conflicts and overlaps between the city and District water service and to ensure that any utility service within the Boulder Valley is done in a manner consistent with the BVCP.

Within the past few years, the District has replaced a 2-inch water line with an 8-inch water line to service an area generally located north of Independence Road, east of North 55th Street, south of Jay Road, and west of 63rd Street. The District has also replaced an undersized 2 ½ inch waterline with a 6-inch water line between the intersection of 47th Street and Apple Way, extending 2,685 feet north along 47th Street to the intersection with Pleasant Ridge Road.

Application History

The chronology below summarizes the city's involvement in this application since 2013:

- March 2013 – City received referral from Left Hand Water District for single family water service at 4400 Peach Court.
- June 2013 – City informed District of objection to District's referral due to inconsistency with BVCP policies.
- May 2014 – City received request for out of city utility permit from 4400 Peach Court property owner for water service.

- June 2014 – City provided comments on application that include the need to join the Northern Colorado Water Conservancy District and the requirement for a special ordinance and agreement due to the property’s Area III-Planning Reserve status.
- July 2014 to present – City and applicant discussions and finalization of components of special ordinance and agreement.

Existing Conditions and Boulder County Approvals

The subject property contains a single family house and accessory buildings (see [Attachment B](#)). The property is also known as the Poor Homestead, a historic farming complex first settled in the 1880s. Boulder County Land Use reviewed and approved expansion of the existing house in 2013 (Case No. SPR-13-0013). This approval was for expansion of the existing house for a 2,693 sq. ft. residence. The approved house stays under the maximum permissible size of a residence on the property of 2,706 sq. ft. per Boulder County regulations. The property has several existing accessory buildings totaling 4,715 sq. ft.

Select Components of Ordinance and Agreement

The proposed ordinance and agreement contain the following provisions that would allow city water service to the property, as BRC Sec. 11-1-15 currently does not allow city water to the property:

- City Manager authorization to execute an Out of City Utility Agreement and Revocable Permit for 4400 Peach Court.
- City Manager authorization to approve changes to the Agreement provided those changes meet the standards of BRC Sec. 11-1-15 “Out of City Water Service”.
- Clarification in both the ordinance and agreement that city water service is limited to one dwelling unit and accessory structures only directly related to the single family use and a 1-inch water meter.
- A statement that the property owner must connect to city water service within six months of City Manager approval.
- That the owner is fully responsible for the costs of the connection and obtaining required approvals for easements and any affected ditch companies for city water service.

ANALYSIS

This section provides further analysis of the application relative to the out of city utility permit provisions in BRC Sec. 11-1-15 (b).

(1) The property is located within Area II of the Boulder Valley Comprehensive Plan, unless the facility to be served is a publicly owned facility that because of its nature is most appropriately located outside Area II and because of the general public interest should be served by water service

The property is in Area III – Planning Reserve and contains an existing single family residential structure and several accessory buildings. BRC Sec. 11-1-15 does not regulate water service to Area III properties. In order for the property to receive city water service, the city must approve the ordinance set forth in [Attachment A](#). Staff supports extension of city water to the property because it is consistent with BVCP Policies 1.20 & 2.07(b) – “the city and county intend to maintain the option of limited future Service Area expansion” and 1.36 – “the city and county agree that it is appropriate for the city to extend limited utility service in Area III and Area II in circumstances that further Boulder Valley Comprehensive Plan goals”. In this case, the goal is to maintain the option of future Service Area expansion and avoid potentially overlapping service boundaries with the Left Hand Water District in that area. IGA Recital #2 also states that the city and District seek to “insure development consistent with good planning and the Boulder Valley Comprehensive Plan”.

(2) There is no main extension involved for such service beyond one hundred feet or in violation of the main extension limit, whichever is less

There is no main extension involved with this request.

(3) The city planning department has determined that the proposal does not constitute new urban development and is consistent with the comprehensive plan

The water service requested is for an approved single family residential home and accessory buildings subordinate to the single family use and will not result in any new urban development.

(4) The City has referred the application to the Boulder County Planning Department under the referral provisions of the comprehensive plan

The city referred the application to the Boulder County Planning Department. The county indicated they had approved expansion of the single family home and has no conflicts with this out of city water service request.

(5) The service is to be extended to a structure, which contains a legal use, that existed on the effective date of this chapter or to a platted single-family lot existing on the effective date of this chapter

The service is to be extended to a Boulder County-recognized single family residential structure and outbuildings built in 1880 and 1960, respectively. The ordinance also allows future water service to accessory buildings directly related to the single family use within 1-inch water tap limitations.

(6) The property is located below the "Blue Line"

The property is located below the Blue Line.

(7) The property owner agrees in an agreement running with the land to annex to the City as soon as the property is eligible for annexation

The property has signed an Out of City Utility Agreement ([Attachment A](#)) that indicates this in Sec. 4.h.

(8) The property has an existing permitted out of city sewer connection or has applied for such permit in accordance with the requirements of section 11-2-10, "Out of City Sewer Service," B.R.C. 1981, and agreed to connect to sanitary sewer when eligible.

The property has a county-approved septic system and it not eligible to connect to city sewer service at this time.

NEXT STEPS

This item is scheduled for first reading before council on July 28, 2015 and second reading on Tuesday, August 18. Once the ordinance is final, the City Manager will be asked to sign the Out of City Utility Agreement and Revocable Permit in [Attachment A](#). The applicant will then be required to obtain all necessary approvals to connect to city water that may include an easement and right of way permit. The agreement stipulates that the applicant must connect to city water within 6 months of City Manager approval.

ATTACHMENTS/LINKS:

- A. [Ordinance and Agreement for Out of City Utility Service](#)
- B. [4400 Peach Site Plan](#)
- C. [1995 City and Left Hand Water District IGA](#)

PROPOSED ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 11-1, "WATER UTILITY," B.R.C. 1981, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT RELATING TO THE PROVISION OF OUT-OF-CITY WATER SERVICES WITH THE OWNER OF 4400 PEACH COURT AND SETTING FORTH RELATED DETAILS.

THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO FINDS AND RECITES THE FOLLOWING:

A. The property generally described as 4400 Peach Court (the "Property") and more particularly described as Lot 1, POOR NUPUD, County of Boulder, State of Colorado, is located in Area III-Planning Reserve Area of the Boulder Valley Comprehensive Plan.

B. It is in the interest of the public's health, safety, and welfare to extend limited water utility service to the Property.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BOULDER, COLORADO:

Section 1. The city council authorizes the city manager to execute on behalf of the City of Boulder, Colorado, an Out-of-City Utility Agreement and Revocable Permit for the Property, generally in the form attached to this ordinance as Exhibit A. The city manager is authorized to sign an Out-of-City Utility Agreement and Revocable Permit after the property owner has completed the appropriate technical reviews and satisfied the conditions contained herein that are required pursuant to Chapter 11-1, "Water Utility," B.R.C. 1981, for outside of the City utility services except as those may be modified herein. The city manager is authorized to approve changes to the Out-of-City Utility Agreement and Revocable Permit provided those changes meet the standards of this ordinance and of Section 11-1-15, "Out-of-City Water Service," B.R.C. 1981, except as modified by this ordinance.

Section 2. The city council of the City of Boulder finds that: 1) making water available to the Property is fair and equitable; 2) it is in the interest of the public's health, safety, and welfare to extend limited water utility service to the Property; 3) providing water service to the Property is consistent with the Boulder Valley Comprehensive Plan's policy 1.20 that states that the City and County intend to maintain the option of future Service Area expansion in Area III-Planning Reserve Area; and 4) making water available to the Property is consistent with Boulder Valley Comprehensive Plan Policy 1.36 "Out-of-City Utility Service," which supports extending utility service to Area III in circumstances that further Boulder Valley Comprehensive Plan goals. Extension of the City water service to the Property would be limited to one existing dwelling unit and accessory structures that are located on the same lot as the single family dwelling unit, are subordinate to and customarily found with the single family dwelling unit, and are operated and maintained for the benefit or convenience of the occupants of or visitors to the single family dwelling unit. There is no additional development potential beyond one dwelling unit.

Section 3. To the extent that this ordinance conflicts with any previously adopted ordinance of the City, including Subsections 11-1-15(b)(1), 11-1-15(b)(5), and 11-1-15(b)(8), B.R.C. 1981, such ordinances are suspended for the limited purpose of implementing this ordinance. This ordinance shall be considered an amendment to Chapter 11-1, "Water Utility," B.R.C. 1981.

Section 4. The owner of the Property has applied for out-of-city water service to the dwelling unit and its accessory structures on the Property and shall actively seek approval of such application in a manner that is consistent with Subsection 9-2-6(e), B.R.C. 1981. If the applicant fails to keep the application active, then it shall be considered withdrawn and this

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ordinance shall be of no further force or effect. If the owner of the Property does not connect to the out-of-city water service within six months after the Out-of-City Utility Agreement and Revocable Permit is approved by the City Manager, then the permit shall expire and this ordinance shall be of no further force or effect.

Section 5. This ordinance is necessary to protect the public health, safety, and welfare of the residents of the City, and covers matters of local concern.

Section 6. The council deems it appropriate that this ordinance be published by title only and orders that copies of this ordinance be made available in the office of the city clerk for public inspection and acquisition.

INTRODUCED, READ ON FIRST READING, AND ORDERED PUBLISHED BY
TITLE ONLY THIS ___ DAY OF _____, 201_.

Mayor

Attest:

City Clerk

READ ON SECOND READING, ADOPTED AND ORDERED PUBLISHED BY
TITLE ONLY THIS ___ DAY OF _____, 201_.

Mayor

Attest:

City Clerk

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EXHIBIT A TO ORDINANCE

For Administrative Purposes Only

Address: 4400 Peach Court

Owner: Idle Acre Land Company LLC

Case No. LUR2014-00039

OUT-OF-CITY UTILITY AGREEMENT AND REVOCABLE PERMIT

This Agreement and Permit ("Agreement"), issued this ____ day of _____, 201_, by and between Idle Acre Land Company LLC, a Colorado limited liability company ("Owner"), the owner of certain property, generally located at 4400 Peach Court and more particularly described as Lot 1, POOR NUPUD, County of Boulder, State of Colorado ("Property") and the City of Boulder, a Colorado municipal corporation ("City").

RECITALS

- A. The Owner has applied to the City for water service for a proposed residential use on the Property.
- B. The Property is located in Area III-Planning Reserve Area of the Boulder Valley Comprehensive Plan.
- C. The Property is already located within the Northern Colorado Water Conservancy District.
- D. The Property has been included in the Municipal Subdistrict of the Northern Colorado Water Conservancy District by the Weld County District Court's order dated October 6, 2014 in Case No. 1937CV9454-S1.
- E. The City Council of the City of Boulder (the "City Council") concludes the following: 1) making water available to the Property is fair and equitable; 2) it is in the interest of the public's health, safety, and welfare to extend limited water utility service to the Property; and 3) making water available to the Property is consistent with Boulder Valley Comprehensive Plan policies that support extending city utility service to Area III in circumstances that further Comprehensive Plan goals, including policy 1.20 that states that the city and county intend to maintain the option of future Service Area expansion in Area III-Planning Reserve.
- F. The City Council passed Ordinance No. _____ which authorizes the City of Boulder to provide municipal water utility service to the Property which is located outside the City limits of the City of Boulder for such uses under such terms and conditions as set forth by the said ordinance and the B.R.C. 1981.
- G. The City Council has determined that said service should be granted subject to the terms and conditions set forth herein.

Agreement

NOW, THEREFORE, in consideration of the recitals, promises, covenants herein set forth, and other good and valuable consideration herein receipted for the parties agree as follows:

1. That the City will make available to the Owner, City of Boulder water service conditioned upon the Owner meeting and keeping the terms and conditions hereinafter contained. Such service is to be made available for use on that portion of the Property, outside the City limits of the City of

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Boulder, which is not now eligible for annexation to the City of Boulder under the laws of the State of Colorado.

2. The water service herein authorized is to be restricted exclusively to the Property and to a 1-inch water meter for a single family dwelling unit and accessory structures that are located on the same lot as said single family dwelling unit , are subordinate to and customarily found with the single family dwelling use, and are operated and maintained for the benefit or convenience of the occupants of or visitors to said single family dwelling unit. No enlargement, increase, or modification of said service shall be made without prior written approval of the City through the appropriate official. The Owner agrees that it shall be a violation of this Agreement if the Owner uses any City water service for any use that is not the single family use of the Property or that is not subordinate to and customarily found with the single family dwelling use and operated and maintained for the benefit or convenience of the occupants of or visitors to the single family use of this Property.
3. Both parties agree that the water service is provided under an Out-of-City Utility and Revocable Permit, that rates for the said service may be increased and if they are, the Owner will pay them, and that the service may be discontinued if the Owner fails to perform as required or if the needs of the City residents require.
4. Owner agrees to fulfill all of the following conditions:
 - a. To use the service only for the qualifying use as a single family dwelling unit. Water service shall be limited to a 1-inch water meter for a single family dwelling unit and accessory structures that are located on the same lot as said single family dwelling unit, are subordinate to and customarily found with the single family dwelling use, and are operated and maintained for the benefit or convenience of the occupants of or visitors to said single family dwelling unit;
 - b. At Owner's sole cost, to make the connection at such point or points and obtain any necessary easements or ditch company approvals as the City Manager prescribes;
 - c. Prior to connection to the City water service, the Owner shall pay all fees prescribed in Section 11-1-15, "Out-of-City Water Service," B.R.C. 1981;
 - d. To pay the outside City rates until such time as the Property is annexed;
 - e. At Owner's sole cost, to install and maintain the devices necessary to measure the use of the services for the purposes of assessing the charges therefor, if the City Manager finds it is necessary;
 - f. To apply to the City for a new Out-of-City Utility Agreement and Revocable Permit and any other necessary approvals before enlarging the service authorized herein or before altering, changing, enlarging or extending in any manner whatsoever the type of use for which water service is authorized herein;
 - g. To furnish a current title memorandum showing that title to the Property is vested in the Owner's name or to reimburse the City for obtaining such title memorandum and to pay any recording costs incurred;

h. At any time after the Property becomes eligible for annexation to the City and upon request by the City, the Owner shall file with the City a valid annexation petition for the Property or, if requested, shall do all things necessary to further the annexation of said Property to the City, and shall agree to annex subject to the terms and conditions normally imposed upon annexations under the same or similar circumstances to include at least the following:

- (1) payment of the applicable development fees and taxes;
- (2) participation in a public improvement assessment program; and
- (3) dedicate to the City public improvement and right-of-way easements normally required of properties under same or similar circumstances.

5. Under no circumstances may existing wells be used for domestic water purposes for the single family use. No person shall make any cross connections to the City's municipal water supply system.
6. Owner agrees to comply with all laws and regulations applicable to the Property and its development.
7. This Agreement will become effective thirty days after the date of its issuance unless the city council schedules a hearing thereon.
8. The City is of the opinion that it has the legal authority to enter into the within contract and the powers and authority to perform all obligations herein imposed upon it. However, the City cannot anticipate what challenges, if any, might be made by any persons. Therefore, in the event this Agreement, or any step or steps taken by the City to perform any of its obligations hereunder, is challenged in a lawsuit or lawsuits, the City shall have no obligation to perform further, and the City shall have the option to rescind the within.
9. The covenants contained herein shall run with the land and be binding upon Owner, its successors and assigns, and all owners now or hereafter of the land hereby served by the City Water Utility.
10. Owner has read the above and understands its terms and conditions, and now by its representative's signature below does evidence its desire and intent to accept said service subject to the terms and conditions set forth herein.
11. If this Agreement creates an interest in land, that interest shall vest, if at all, within the lives of the undersigned, plus twenty years and three hundred sixty-four days. However, if Owner does not connect to water utility system within six months of the date of this permit, this permit shall expire and this Agreement will be null and void.

Executed on the day and year first above written.

IDLE ACRE LAND COMPANY LLC,
a Colorado limited liability company

By: _____

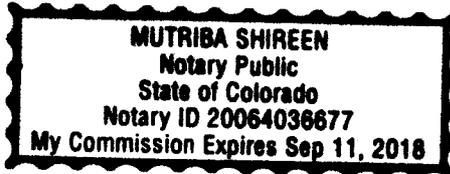
Finnius Ingalls, Managing Member

STATE OF COLORADO)
) ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this 23 day of JUNE, 2015 by Finnius Ingalls as Managing Member of Idle Acre Land Company LLC, a Colorado limited liability company.

Witness my hand and official seal.
My commission expires: SEPT. 11, 2018

(seal)



M. Shireen
Notary Public

CITY OF BOULDER, COLORADO

By: _____
Planning Director

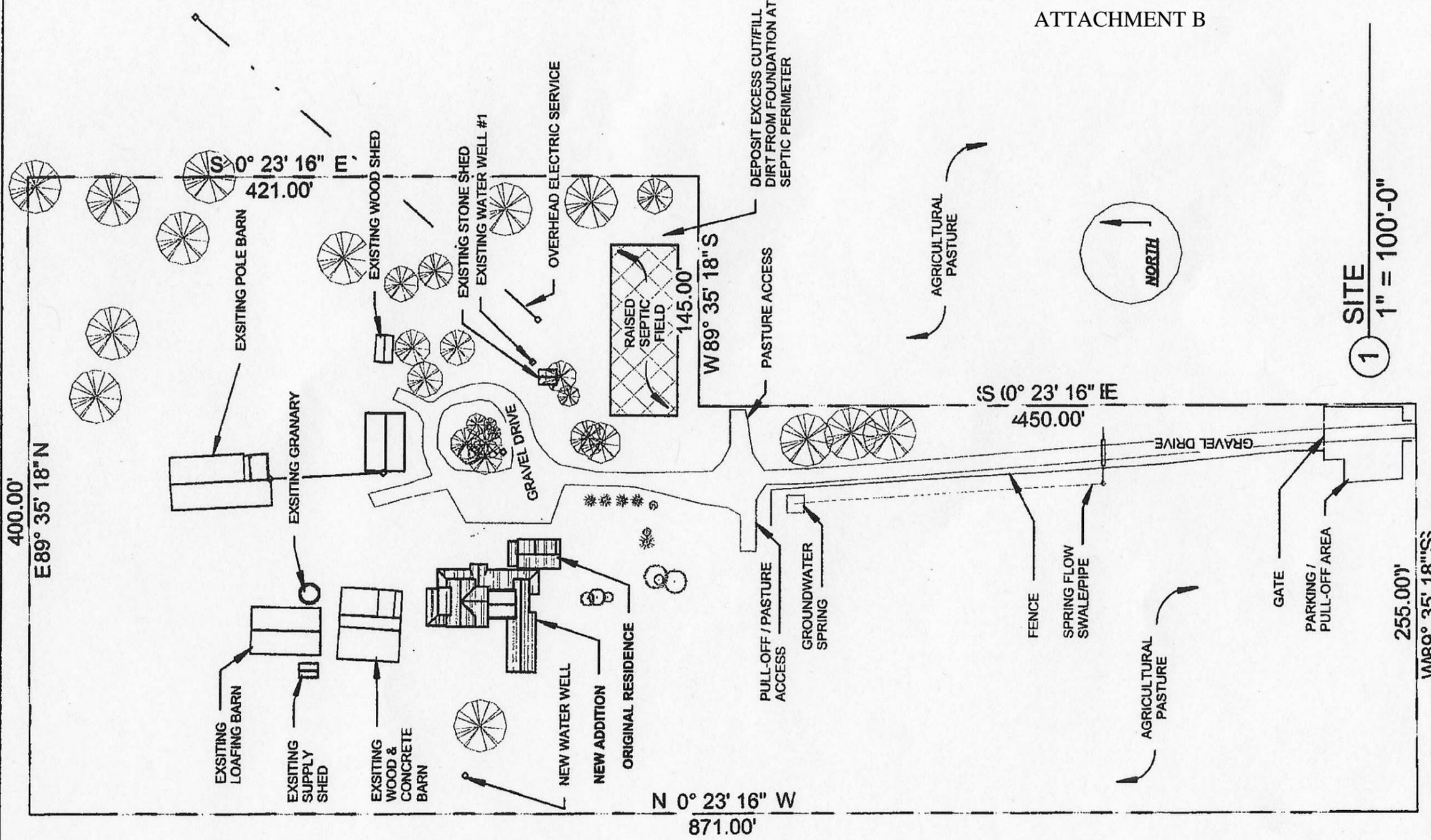
ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office

Date



**IDLE ACRE
LAND CO**

**4400 Peach Ct,
Boulder, CO**

SITE PLAN

Project number	0001
Date	2/26/13
Drawn by	FFI
Checked by	

AA1

Scale 1" = 100'-0"

#01513796 05/02/95 01:18 PM REAL ESTATE RECORDS
F2049 CHARLOTTE HOUSTON BOULDER CNTY CO RECORDER

AMENDED AND RESTATED AGREEMENT

THIS AGREEMENT, made this 11th day of April, 1995, by and between the City of Boulder, Colorado ("City"), and Left Hand Water District ("District"),

RECITALS:

WHEREAS, the Boulder Valley as defined in the Boulder Valley Comprehensive Plan jointly adopted by the City and the County, as amended to the date of this agreement ("Boulder Valley"), overlaps with areas now served by the District; and

WHEREAS, the City and the Left Hand Water Supply Company ("Company"), predecessor to the district, entered into an agreement, as of May 24, 1972, which sought (1) to eliminate overlapping service between the City's and the Company's water supply utilities and thereby eliminate potential conflicts generated by such overlapping, and (2) to insure development consistent with good planning and the Boulder Valley Comprehensive Plan; and

WHEREAS, the Company had filed a service plan with the County preliminary to the filing of a petition for the formation of a proposed special water district, pursuant to Section 32-1-201, et seq., C.R.S. 1973, as amended; and

WHEREAS, on March 24, 1980, the County conducted a public hearing, at which time the County recessed the hearing for a period of time in order to provide the Company with an opportunity to enter into negotiations with any municipalities which would be affected by the service plan; and

WHEREAS, the Boulder Valley Comprehensive Plan, as revised and updated, had been approved by the County Planning Commission and Board of County Commissioners and by the City Planning Board and the City Council; and

WHEREAS, the provision of water service as described in the proposed service plan submitted by the Company impacted upon the concerns addressed in the Boulder Valley Comprehensive Plan and the parties agreed that such provisions should be coordinated in accordance with that Plan; and

8.2

WHEREAS, the City and the Company entered into an agreement on July 18, 1984 to restate the general principles of the May 24, 1972 agreement and to amend it to recognize the effect of the proposed formation of the District; and

WHEREAS, that July 18, 1984 agreement was ratified by the City and the Company shortly after the formation of the District; and

WHEREAS, the City and the Company had previously entered into a water supply agreement on December 4, 1979, in order to provide for a cross connection between the parties water systems in order to provide peak use service to the Company's customers located within a small portion of the Boulder Valley along N. 51st Street; and

WHEREAS, in their 1984 agreement, the parties provided for the provisions of the 1979 agreement remaining in effect; and

WHEREAS, the City and the District now desire to change the provisions of their 1979 agreement; and

WHEREAS, the cross connection provided for in the 1979 agreement is no longer necessary as adequate pressure now exists in the looped mains in 51st Street and the parties deem it desirable to create a cross connection on 47th Street north of Jay Road in order to provide adequate pressure to existing District customers and developed properties within the District; and

WHEREAS, the City and the District as political subdivisions of the state, are encouraged and authorized to cooperate and contract with each other and other units of government pursuant to Part 2 of Article 1 of Title 29, C.R.S. 1973, for the purpose of making the most efficient and effective use of their respective powers including but not limited to the provision of any function, service, or facility lawfully authorized to each;

COVENANTS

NOW THEREFORE, in consideration of the recitals above and for other good and valuable consideration, the City and the District hereby agree as follows:

1. The District and the City shall exert their best efforts to eliminate all water supply utility service being provided by the Company within that portion of the Boulder Valley (as that term is defined in the Boulder Valley Comprehensive Plan as amended to the date of this Agreement) designated as Area I under the Boulder Valley Comprehensive Plan, as amended (with the exception of those subdivisions known as Valhalla and Gunbarrel Estates), as soon as practicable.
2. Water service may be provided by the District until an area is designated as Area I. Upon such designation, the City shall have the sole and absolute discretion to incorporate the area within the City's domestic water system.
3. The District shall not expand its water supply utility and in particular shall not grant any water supply tap, enlarge or extend any water main, or exercise the power of eminent domain within the Boulder Valley (as depicted on the attached "Exhibit A" incorporated herein by reference) , without first requesting, receiving, and giving due consideration to the City's comments, including a full hearing before the District's Board of Directors upon request by the City. any replacement, enlargement, or extension of the company's water supply utility within the Boulder Valley shall be designed and constructed to meet or exceed the then applicable requirements of the City. This paragraph specifically includes and is applicable to properties currently serviced by the District as well as those which may be included in the District. In the event the District decides to provide a water tap to an existing use or parcel, the District agrees to provide such tap solely by means of a service contract with the District, not by an expansion of the District. Also, the District will require such owners to covenant that additional requests for service for new taps or units will not be made during the term of the service contract.
 - a. The District and the City will follow the process described in Exhibit B hereto, when requesting and reviewing service expansions under Paragraph 3, above.
4. The parties shall exert their best efforts to insure that all areas served by the District shall be developed in a manner consistent with good planning and the Boulder County Comprehensive Plan, as amended, and the Boulder Valley Comprehensive Plan, as amended.
5. In the event of a transfer of water services from the District to the City, the

District shall approve a petition for exclusion of the property from the District's service area in accordance with the then applicable laws concerning such exclusions, and the District shall pay to the City the plant investment fee assessed by the City at that time on the customer, up to the value of one unit of Northern Colorado Water Conservancy District ("Big Thompson") water per dwelling unit (as defined as of the date of this Agreement) at that time. Upon conversion, exclusion from the District's service area, and payment of the plant investment fee to the city, the District shall retain all raw water equipment, and funds theretofore conveyed by the customer to the District or the Company.

6. Upon conversion, the District may retain whatever easements it may reasonably require, if any, for the continued operation of its remaining water supply system.

7. Upon conversion, each customer converting to service by the City: (a) shall also pay the additional fees required by the City, including, without limitation, applicable front foot assessments; (b) shall petition for inclusion in the Northern Colorado Water Conservancy District, and/or the Municipal Subdistrict, if required by the City; (c) shall sell any and all water and ditch rights used on or appurtenant to the customer's land to the City at the fair market value thereof, as provided in the Boulder Revised Code, as amended; and (d) shall provide and dedicate to the City a meter and meter pit conforming to then current City specifications.

8. The District and the City shall exercise their best efforts to develop and maintain a standard meter installation acceptable to both parties.

9. The District shall refer any proposals for inclusion or exclusion in its service plan for any lands within the Boulder Valley as shown on "Exhibit A" hereto to the County for review and approval pursuant to the service plan and this agreement incorporated therein. In conjunction with such review, the County shall refer any such proposal to the City for review. Proposals for inclusion of land shall not be granted by the District in the absence of permission from the County, provided that neither the City nor the County shall be able to obligate the District to provide water service outside of the areas expressly included in its service plan.

10. The District shall include the provisions of this agreement as a replacement for the July 18, 1984 and the April 7, 1990 agreements as a part of the district formation and amendment documents and shall file such documents of record in the office of the Clerk of the County of Boulder.

11. The City and the District specifically revoke the provisions of the water supply agreement dated December 4, 1979, except as such provisions are restated herein and replace said agreement with the following provisions:

- a. The parties shall disconnect the existing crosstie at 51st and Jay by closing valves and/or removing the meter and install a new crosstie at 47th and Apple Way.
- b. Upon notice to the City, Lefthand may provide new taps, up to the maximum line capacity of 26 taps¹, in the following order of priority:
 - i. Existing houses within district
 - ii. Existing vacant lots and parcels within the district (at the rate of one tap per existing parcel or per existing lot)
 - iii. Existing houses built prior to May 1972 not in the district
 - iv. Existing houses built between May 1972 and March 1978 not in the district
 - v. Existing houses built between March 1978 and June 1982 not in district
 - vi. Existing houses built between June 1982 and the date of district formation, not in the district
 - vii. Existing houses not in the district built after the date of district formation
 - viii. Existing vacant lots and parcels not in the district (at the rate of one tap per parcel or lot)

In the case of categories iii through vii (all existing houses not in the district), the date of tap request will take precedence over the date of house construction in determining the order of priority.

In the case of categories iii through viii, if insufficient taps exist to serve all requests in any individual category, priority would be given to those existing houses with a demonstrated health risk from a contaminated water supply.

- c. Over some period of time to be agreed upon by the parties, the City would take over the Left Hand/Pleasant Ridge line and provide service directly to customers on that line consistent with the terms of paragraphs 5, 6 and 7, above.

¹ The maximum number of taps is based upon the line capacity with the crosstie to provide 30 psi pressure at ground elevation (which is 10 psi lower than City service standards) at the end of the line on the western edge of the Pleasant Ridge subdivision. The agreement would reflect that if after two years of testing during peak usage periods it is demonstrated that there is additional line capacity for several additional taps, the number would be increased from 26. It is anticipated that maintaining a water pressure of thirty pounds per square inch will increase reliability and service for the existing twelve taps as well as the additional taps.

12. This agreement integrates all understandings between the City and the DISTRICT as of its date, and no prior, contemporaneous or subsequent agreement, amendment, or novation shall have any effect unless embodied in an express written agreement executed by the parties to be bound thereby.

13. This agreement shall be binding upon the successors and assigns of the parties hereto, and shall be subject to amendment only upon the written mutual agreement of all parties authorized by the governing body of each.

14. The parties agree that the objectives of this agreement can be obtained only if all parties substantially perform their obligations and that damages are an inadequate remedy for breach. The parties therefore agree that if there is a substantial failure of performance by any party, any other party may seek specific performance.

15. If a court of competent jurisdiction at any time holds that a portion of this agreement is invalid or unenforceable, the remainder shall not be affected thereby and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this agreement this 11th day of April, 1995.

ATTEST:

Alisa D. Lewis
Director of Finance and Record
Ex-Officio City Clerk

CITY OF BOULDER

Wesley Jay
Mayor

ATTEST:

Earl Juhl
Secretary

LEFT HAND WATER DISTRICT

[Signature]
President

pwwaaee
a-lfthn3

EXHIBIT B

REFERRAL PROCESS/LEFTHAND WATER DISTRICT

Under the Lefthand Agreement with the City of Boulder, the District agrees not to expand its water supply utility into the Boulder Valley without first requesting, receiving, and giving due consideration to the City's comments, including a full hearing before the District's board upon request by the City. The following referral process was agreed upon in the fall of 1991 by the Lefthand District representatives, the City staff, and the City Manager's Office.

1. The District General Manager should submit a letter request to the City Manager requesting the City's comments. The District's letter should specifically describe the property to be served either by inclusion of a map or a legal description of the area. The proposed service extension should also indicate the number of new taps to be provided, as well as whether or not the taps will be provided to existing or proposed development. The District's letter should be copied to the City's Planning Director and Public Works Director, who will then refer it to the appropriate persons in their departments for processing. A copy should also be provided to the City Attorney's Office.

2. The City Manager will provide a copy of the letter requesting service to City Council members in their non-agenda material to assure that they are aware of the request in the event they wish to raise any questions or voice any concerns about the proposal, which would trigger a request by the City for a formal hearing before the District board.

3. The Planning Director will appoint a project manager for these Lefthand requests, which project manager will take the request through the DRC review process. Planning Department will schedule these requests on a two-week rather than a three-week DRC review.

4. After all DRC comments are received, and prior to a response to the Lefthand District, the item will be scheduled for a Policy Resolution Group meeting to ensure that all possible policy issues have been addressed. Policy Resolution Group will determine if the matter should be referred to the City Manager prior to responding to the Lefthand District. In evaluating Left Hand's requests, the City will not oppose Left Hand providing a water tap to a residence which was in existence prior to June 11, 1982 which has requested water service as a result of the residence's existing well having been determined to be unpotable by the Boulder County Health Department.

5. The City Attorney's Office will prepare a response to the Lefthand District for the City Manager's signature, which response shall incorporate the DRC comments as may be modified by the Policy Resolution Group, any City Manager comments, and any Council member comments.

6. The City Manager signs and sends the response to Lefthand and copies all City Council members in non-agenda material.

PW WA AEE