



GAPTER ROAD INTERGOVERNMENTAL AGREEMENT BETWEEN CITY OF BOULDER AND COUNTY OF BOULDER

This is an Intergovernmental Agreement ("IGA") by, between, and among the City of Boulder (the "City"), a Colorado home rule municipal corporation, and the County of Boulder, a body politic and corporate of the State of Colorado ("Boulder County"), collectively "the Parties."

WHEREAS, the Colorado Constitution Article XIV, Section 18(2)(a), provides that political subdivisions may contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units, including the sharing of costs, the imposition of taxes, or the incurring of debt; and

WHEREAS, there are currently thirty-six (36) properties (the "Properties") along Gapter Road that are served by On-site Wastewater Systems and domestic water wells and these Properties are located in the floodplain and/or floodway for South Boulder Creek, and the negative impact of these On-site Wastewater Systems to the environment and to adjacent domestic water wells is a public health concern; and

WHEREAS, the City and Boulder County have agreed that, due to state and local regulations with respect to On-site Wastewater Systems, the most effective way to address this public health concern is the connection of these Properties to the City's water and sewer system; and

WHEREAS, to facilitate the annexation and connection of these Properties to the City's water and sewer services, the City and Boulder County have each agreed to loan public funds to the construction of necessary utilities and have agreed upon a repayment plan to be implemented when properties on Gapter Road annex to the City and connect to sewer and water lines of the City; and

WHEREAS, there are thirty (30) Properties on Gapter Road that desire to annex to the City in order to resolve failing or outdated septic systems; and

WHEREAS, there are six (6) Properties that are not willing to annex to the City at this time; and

WHEREAS, Boulder County will carry the utility construction costs of a maximum of six (6) Properties not annexing at this time as shown on **Exhibit A** attached hereto and incorporated herein by this reference; and

WHEREAS, Boulder County will front the cost of the Properties not annexing at this time and will be repaid as those Properties annex to the City, as set forth in this IGA in more detail.

NOW THEREFORE,

1. The repayment of construction costs to be paid to Boulder County upon annexation by the Properties, shall be any assessment placed on the Property after the actual cost of construction is tabulated, plus any interest on the assessment as paid by the Property owner at time of annexation and connection to municipal utility services. The City shall notify Boulder County's Finance Manager when one of the properties listed on Exhibit A commences the annexation process. The current estimate for utility construction is Twenty-Four Thousand, Two Hundred Fifty (\$24,250.00) Dollars per property. It is the intent of the City that every Property that does not annex will accrue interest on the assessment at five and a half (5.5%) percent per year commencing on the date the warranty starts for the installed utilities and that every annexing Property will pay the full assessment plus interest. The City will issue Boulder County a check for any applicable repayment amount within two (2) weeks of the utility connection permit issuance date.

2. Boulder County's contribution shall not exceed One Hundred and Forty-Five Thousand, Five Hundred (\$145,500.00) Dollars but the amount may be lowered if the actual per property construction costs are lower than Twenty-Four Thousand, Two Hundred Fifty (\$24,250.00) Dollars.

3. Boulder County will provide the City with a check by October 4, 2010. The amount will be One Hundred Forty-Five Thousand, Five Hundred and (\$145,500.00) Dollars, minus the \$6444.44 contribution already provided to the City by Boulder County to pay a portion of the final design costs for the utility construction.

4. In the event the actual per property construction costs exceed Twenty-Four Thousand, Two Hundred Fifty (\$24,250.00) Dollars, the City will retain any assessment amounts above that amount, plus the accrued interest on that portion for each of the Properties required to repay Boulder County under Paragraph 1 above.

5. In the event the per property construction costs are lower than Twenty-Four Thousand, Two Hundred Fifty (\$24,250.00) Dollars, the City shall refund the difference for the six (6) Properties by check to Boulder County within two (2) weeks of the final payment for the construction.

6. There are six (6) Properties, listed on **Exhibit B**, attached hereto and incorporated herein by reference, that will annex but not connect to City utilities. The City will be reimbursed by the Property owners as these Properties annex to the City.

7. The Boulder County Public Health Department, through the SepticSmart Program, will notify the City whenever the Department is notified of transfer of a property listed on **Exhibit A** or **B** and the inspection of the OWS associated with that property is made.

8. This IGA may be altered, amended, or repealed only on the mutual agreement of the City and Boulder County by a duly executed written instrument.

9. This IGA shall not be assigned or subcontracted by either Party without the prior written consent of the other Party.

10. This IGA shall be binding upon the successors and assigns of the Parties.

1. The laws of the State of Colorado shall govern the interpretation and enforcement of this IGA. Any litigation that may arise between the Parties involving the interpretation or enforcement of the terms of this IGA shall be initiated and pursued by the Parties in the Boulder Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

12. Any waiver of a breach of this IGA shall not be held to be a waiver of any other or subsequent breach of this IGA. All remedies afforded in this IGA shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

13. This IGA cancels and terminates, as of its effective date, all prior agreements between the Parties relating to the services covered by this IGA, whether written or oral or partly written and partly oral.

14. If any provision of this IGA is found to be invalid, illegal, or unenforceable, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

15. The enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement shall be strictly reserved to Boulder County and the City, and nothing contained in this IGA shall give or allow any claim or right of action whatsoever by any other or third person. It is the express intent of the Parties to this IGA that any person receiving services or benefits under this IGA shall be deemed an incidental beneficiary only.

IN WITNESS WHEREOF, the Parties hereto have set their hands and seals this

1st day of October, 2010.

[SIGNATURES PAGES FOLLOW]

CITY OF BOULDER,
a Colorado home rule city

By: Jane S. Brautigam
Jane S. Brautigam, City Manager

ATTEST:
Susan Kehl for
City Clerk on behalf of the
Director of Finance and Record

APPROVED AS TO FORM:

[Signature]
City Attorney's Office

Date: 10-1-2010

Unofficial Copy

COUNTY OF BOULDER,
a body corporate and politic

By: Cindy Domenico
Cindy Domenico, Chair

By: Ben Pearlman
Ben Pearlman, Vice-Chair

By: Will Toor
Will Toor, Commissioner

Approved as to Form:

for Matt T. Doty
H. Lawrence Hoyt
County Attorney

Date: 9/30/10

COUNTY OF BOULDER)
) ss.
STATE OF COLORADO)

The foregoing instrument was acknowledged before me, a notary public, this 30th day of September, 2010, by Cindy Domenico, Chair, Ben Pearlman, Vice-Chair, and Will Toor, Commissioner, of the Board of County Commissioners of Boulder County, Colorado.

Witness my hand and official seal.

My commission expires:
6/8/2011

Will Toor
Notary Public

(SEAL)



My Commission Expires 06/08/2011

Exhibit A

Properties Not Annexing As of August 17, 2010:

- 1021 Gapter Road
- 1085 Gapter Road
- 1125 Gapter Road
- 1193 Gapter Road
- 752 Gapter Road
- 832 Gapter Road

Unofficial Copy

EXHIBIT A

Exhibit B

Properties Annexing But Not Connecting to Utilities As of August 17, 2010

- 1040 Gapter Road
- 723 Gapter Road
- 751 Gapter Road
- 841 Gapter Road
- 880 Gapter Road
- 954 Gapter Road

Unofficial Copy