# AMENDED AND RESTATED
# SERVICE PLAN
# FOR
# EAST RIVER REGIONAL SANITATION DISTRICT
# GUNNISON COUNTY, COLORADO

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_____ ___, 2017

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# I. INTRODUCTION

## A. Purpose and Intent

The District is an independent unit of local government, separate and distinct from the County, and, except as may otherwise be provided for by State or local law or this Amended and Restated Service Plan, its activities are subject to review by the County only insofar as they may deviate in a material matter from the requirements of this Amended and Restated Service Plan. The District's Original Service Plan was approved by the County in June, 1983. The circumstances under which the Original Service Plan was approved have changed over the years and Colorado law has evolved with respect to special districts. For those reasons, this Amended and Restated Service Plan has been approved to update the Original Service Plan and provide a service plan that is consistent with the current status of the District and Colorado law as it stands today. All Public Improvements have previously been constructed for the use and benefit of all inhabitants and taxpayers of the District. This Amended and Restated Service Plan shall provide for the ongoing administration, operation, maintenance and construction of the Public Improvements.

## B. Need for the District

At the time of the District's organization, there were no other governmental entities, including the County, located in the immediate vicinity of the District that considered it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation, relocation, redevelopment, or financing of the Public Improvements. Formation of the District was therefore necessary in order for the Public Improvements required for the Project. The Original Service Plan was approved to govern the provision of wastewater services and facilities to communities within the District and thereby promote public health, safety and the general welfare of the community. To carry out this mission, the District was empowered by the Original Service Plan to finance, construct, own, operate and maintain certain wastewater facilities, including interceptor lines, outfall lines, pump stations, force mains and a treatment plant. Skyland was to be responsible for the ownership, operation and maintenance of the collector lines within Skyland. As such, the boundaries of the District and the Skyland overlap substantially but there has never been a duplication of services. At the time of the District's organization, development plans within the boundaries of the District included 1,287 dwelling units with a projected population of 3,876 people, all to be served by the District.

As the Community has grown, the projected development plans have been modified. As of the date of this Amended and Restated Service Plan, the Service Area currently consists of the communities of Skyland, Buckhorn, Silversage, Rivergreen, Larkspur, Whetstone Vista, Brush Creek Estates and Riverbend, covering an area of approximately one thousand, one hundred and five (1,105) acres and is expected to have a population of approximately 4,000 at full build-out. The Community is currently served by the Public Improvements described in **Exhibit D-1** of this Amended and Restated Service Plan. There is a continuing need for the District to provide ongoing administration, construction, operations and maintenance services with respect to the Public Improvements.

## C. Objective of the County Regarding this Amended and Restated Service Plan

The County's objective in approving this Amended and Restated Service Plan is to provide the District with the continued authority to implement the necessary planning, design, acquisition, construction, installation, relocation and redevelopment actions with respect to the Public Improvements. This Amended and Restated Service Plan also allows the District to continue to administer, operate and maintain the Public Improvements in a manner that is consistent with the current status of the Community and the Special District Act. The District shall continue to be permitted to rely on the proceeds of Debt it issues to finance the Public Improvements. All Debt issued by the District is expected to be repaid from revenue generated by *ad valorem* taxes, charges, fees and other revenue sources legally permissible under the Special District Act. The ongoing administrative, operations and maintenance responsibilities of the District shall also be supported by *ad valorem* taxes, charges, fees and other revenue sources legally permissible under the Special District Act. The District shall determine, in its sole discretion, how to utilize such revenue sources with respect to its Debt and any of its ongoing administrative, operational or maintenance responsibilities.

## II. DEFINITIONS

In this Amended and Restated Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Amended and Restated Service Plan: means this service plan as approved by the Board of County Commissioners.

Board: means the East River Regional Sanitation District Board of Directors.

Board of County Commissioners: means the Gunnison County Board of County Commissioners.

Bond, Bonds or Debt: means bonds or other obligations for the payment of which the District has promised to impose an *ad valorem* property tax mill levy and/or collect Fee revenue.

County: means Gunnison County, Colorado.

Community: means the developed areas receiving services from the District.

District: means the East River Regional Sanitation District.

District Boundaries: means the boundaries of the area described in the District Boundary Map.

District Boundary Map: means the map attached hereto as **Exhibit C**, describing the boundaries of the District.

External Financial Advisor: means a consultant that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such

securities; (ii) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the District and has not been otherwise engaged to provide services in connection with the transaction related to the applicable Debt.

Fees: means any fee imposed by the District for services, programs or facilities provided by the District, as described in Section V. below.

Financial Plan: means, for purposes of this Amended and Restated Service Plan, the District's 2015 audited financials, attached hereto as **Exhibit E-1**, the District's adopted 2017 budget, attached hereto as **Exhibit E-2**, and the projected future public improvement costs, attached hereto as **Exhibit E-3**.

General Obligation Bonds: means any general obligation Bonds and any general obligation refunding Bonds issued by the District as Debt.

Maximum Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt or operations and maintenance costs, if any, as set forth in Section VI.C. below.

Original Service Plan: means that certain Service Plan for the District approved by the Board of County Commissioners in June, 1983.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, relocated, redeveloped, operated and maintained and financed as generally described in the Special District Act, except as specifically limited in Section V. below, to serve the current and future taxpayers and inhabitants of the Service Area as determined by the Board.

Revenue Bonds: means any revenue Bonds and any revenue refunding Bonds issued by the District as Debt.

Sanitation: means the design, financing, acquisition, installation, construction, operation and maintenance of storm and sanitary sewer systems, including, without limitation, collection lines, lift stations, pump stations, lagoons, wastewater treatment facilities, maintenance buildings, flood and surface drainage, related disposal works and facilities, and solid waste disposal facilities or waste services, and all necessary equipment and improvements, together with all necessary, incidental and appurtenant facilities, land, wells, water rights and easements, and all necessary extensions of and improvements to such facilities and systems within and without the boundaries of the District.

Service Area: means the property depicted on the District Boundary Map and any property subsequently included into the District after the approval of this Amended and Restated Service Plan.

Service Plan Amendment: means an amendment to this Amended and Restated Service Plan, as approved by the Board of County Commissioners.

Skyland: means the Skyland Metropolitan District, a quasi-municipal corporation and political subdivision of the State.

Special District Act: means Section 32-1-101, *et seq.*, of the Colorado Revised Statutes, as amended from time-to-time.

State: means the State of Colorado.

Taxable Property: means real or personal property within the Service Area subject to *ad valorem* taxes imposed by the District.

Water: means the design, financing, acquisition, installation, construction, operation and maintenance of water systems, including, without limitation, water distribution and transmission lines, hydrants, storage tanks, lakes and reservoirs, dams, water treatment, transmission and distribution facilities, wells, irrigation systems and pumping facilities, and all necessary equipment and improvements, together with all necessary, incidental and appurtenant facilities, land, water rights and easements, and all necessary extensions of and improvements to such facilities and systems within and without the boundaries of the District.

## III. BOUNDARIES

The area of the District Boundaries includes approximately eight hundred and sixty-four (864) acres. A legal description of the District Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the District Boundaries is attached hereto as **Exhibit C**. It is anticipated that the District's boundaries may change from time-to-time as they undergo inclusions and exclusions pursuant to Section 32-1-401, *et seq.*, C.R.S., and Section 32-1-501, *et seq.*, C.R.S.

## IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The Service Area currently consists of approximately eight hundred and sixty-four (864) acres of residential and recreational land. The 2016 assessed valuation of the Service Area is $31,324,290 for purposes of this Amended and Restated Service Plan and, at build out, is expected to be sufficient to reasonably discharge the District's Debt. The current population of the District is approximately 1,000 and could eventually reach approximately 4,000.

## V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

### A. Powers of the District and Service Plan Amendment.

The District shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein. More specifically, the County authorizes the District to provide the following services and/or facilities: Sanitation and Water.

The District may also provide, finance and pay for other services and facilities authorized under the Special District Act or by law if needed to serve the Project and not otherwise provided or planned to be provided by the County or other governmental entity.

1. Operations and Maintenance of Public Improvements. The purpose of the District is to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate and maintain the Public Improvements. The District shall be authorized to operate and maintain any part or all of the Public Improvements unless the provision of such operation and maintenance is allocated to another public entity pursuant to an intergovernmental agreement.

2. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the County and of other governmental entities having proper jurisdiction.

3. Privately Placed Debt Limitation. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

> We are [I am] an External Financial Advisor within the meaning of the District's Service Plan.
>
> We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

4. Total Debt Issuance Limitation. The District shall not issue Debt in excess of twelve million dollars ($12,000,000) or an amount equal to thirty percent (30%) of the District's assessed valuation at the time of issuance, whichever is greater, except as specifically permitted under Section VI (A) hereof.

5. Imposition of Fees. The District may impose and collect Fees as a source of revenue for repayment of Debt, capital costs, and/or for operations and maintenance.

6. Bankruptcy Limitation. All of the limitations contained in this Amended and Restated Service Plan, including, but not limited to, those pertaining to the Maximum Mill Levy, Maximum Mill Levy Imposition Term and the Fees have been established under the authority of the County to approve the Amended and Restated Service Plan with conditions pursuant to Section 32-1-203, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the "political or governmental powers" reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the "regulatory or electoral approval necessary under applicable nonbankruptcy law" as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the Maximum Mill Levy and the Maximum Mill Levy Imposition Term, shall be deemed a material modification of this Amended and Restated Service Plan pursuant to Section 32-1-207, C.R.S. and shall not be an authorized issuance of Debt unless and until such material modification has been approved by the County as part of a Service Plan Amendment.

7. Eminent Domain. The District shall have the powers of eminent domain and dominant eminent domain and shall be permitted to exercise such powers in accordance with Section 32-1-1006(1)(f), C.R.S.

8. Service Plan Amendment Requirement. This Amended and Restated Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the District which violate the limitations set forth in Section V. or Section VI. shall be deemed to be material modifications to this Amended and Restated Service Plan and the County shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

B. Current and Future Public Improvements.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, operation, maintenance and financing of the Public Improvements within and without the boundaries of the District. A summary of the existing Public Improvements as well as possible future Public Improvements, which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, operated, maintained or financed can be found in **Exhibits D-1** and **D-2**.

All of the Public Improvements have been or will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the County. All construction cost estimates are based on the assumption that construction conforms to applicable local, State or Federal requirements.

## VI. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment of the Public Improvements from its revenues, grant funding and donations, and by and through the proceeds of Debt to be issued by the District. The Financial Plan for the District provides an overview of the District's current finances and illustrates the Debt that has previously been issued by the District and is currently

outstanding. Any Debt issued in the future must, at the time of issuance, be able to be reasonably paid by the District imposing the Maximum Mill Levy within the Maximum Mill Levy Imposition Term and by use of other revenues derived by the imposition of Fees, rates, tolls or charges and other legally available revenues. The Financial Plan is an overview of existing Debt and future Debt may need to be issued to finance future Public Improvements. The total Debt that the District shall be permitted to issue shall not exceed twelve million dollars ($12,000,000) or an amount equal to thirty percent (30%) of the District's assessed valuation at the time of issuance, whichever is greater, and shall be permitted to be issued on a schedule and in such year or years as the District determines in its sole discretion. All Bonds and other Debt issued by the District may be payable from any and all legally available revenues of the District, including general *ad valorem* taxes and Fees to be imposed upon all Taxable Property. The District may also rely upon various other revenue sources authorized by law, including grants and donations. These will include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(1), C.R.S., as amended from time-to-time. The District shall be permitted to request an increase in the Debt limitations contemplated herein by way of an administrative approval process with the County. Under no circumstances shall an administratively approved change in the Debt limitation be considered a material modification of this Service Plan.

B. Maximum Voted Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not expected to exceed fourteen percent (14%). The proposed maximum underwriting discount will be five percent (5%). Debt, when issued, will comply with all relevant requirements of this Amended and Restated Service Plan, State law and Federal law as then applicable to the issuance of public securities.

C. Maximum Mill Levy.

The "Maximum Mill Levy" shall be the maximum mill levy a District is permitted to impose upon the Taxable Property for payment of Debt and any operations and maintenance costs, regardless of statutory changes to Section 32-1-1101, *et seq.*, C.R.S., shall be fifty (50.000) mills; provided, however, that if the ratio of actual valuation to assessed valuation for residential real property (as of 2003) is changed pursuant to Article X, section 3(1)(b) of the Colorado Constitution and legislation implementing such constitutional provision, the Maximum Mill Levy will be increased or decreased (as to all Taxable Property) to reflect such changes so that, to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes (Gallagher adjustment).

To the extent that the District is composed of one or more subdistricts, as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

D. Debt Repayment Sources.

The District may impose a mill levy on Taxable Property as a primary source of revenue for repayment of debt service and for operations and maintenance. The District may also rely upon various other revenue sources authorized by law. At the District's discretion, these may include the power to assess Fees, rates, tolls, penalties, or charges as provided in Section 32-1-1001(l), C.R.S., as amended from time-to-time. In no event shall the debt service mill levy in the District exceed the Maximum Mill Levy.

E. Security for Debt.

The District shall not pledge any revenue or property of the County as security for the indebtedness set forth in this Amended and Restated Service Plan. Approval of this Amended and Restated Service Plan shall not be construed as a guarantee by the County of payment of any of the District's obligations; nor shall anything in this Amended and Restated Service Plan be construed so as to create any responsibility or liability on the part of the County in the event of default by the District in the payment of any such obligation.

F. TABOR Compliance.

The District will comply with the provisions of TABOR and may operate an enterprise fund in accordance with TABOR. In the discretion of the Board, the District may set up other qualifying entities to manage, fund, construct and operate facilities, services, and programs. To the extent allowed by law, any entity created by the District will remain under the control of the District's Board.

G. District Operating Costs.

Section 32-1-202(2)(f), C.R.S. requires a general description of estimated costs of acquiring land, engineering services, legal services and administrative services, together with the estimated costs of the District's organization and initial operations. In this case, the District was organized in 1983 and these cost estimates required by Section 32-1-202(2)(f), C.R.S. are no longer applicable to the District. However, the District's budgeted expenses for administration, operations and maintenance in 2017 are detailed in **Exhibit E-2** of this Amended and Restated Service Plan.

## VII. ANNUAL REPORT

The District shall be responsible for submitting an annual report in accordance with Section 32-1-207(3)(c), C.R.S. and Resolution Nos. 07-21 and 07-15, as adopted by the Board of County Commissioners, by no later than January 15th of each year reporting on events that occurred during the previous calendar year.

## VIII. DISSOLUTION

Upon an independent determination of the Board of County Commissioners that the purposes for which the District was created have been accomplished, the District agrees to file a petition in the appropriate District Court for dissolution, pursuant to the applicable State statutes. In no event shall dissolution occur until the District has provided for the payment or discharge of

all of its outstanding indebtedness and other financial obligations as required pursuant to State statutes.

## IX. DISCLOSURE TO PURCHASERS

The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers of property in the District in accordance with the provisions of Section 38-35.7-101, C.R.S. The issuance of this notice by the developers does not obligate the County in any way to investigate the contents of the notice to determine its completeness or accuracy. The County in no way warrants the accuracy of the information contained in the notice.

## X. CONCLUSION

It is submitted that this Amended and Restated Service Plan for the District, as required by Section 32-1-203(2), C.R.S., establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District.

2. The existing service in the area to be served by the District is inadequate for present and projected needs.

3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries.

4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

5. Adequate service is not, and will not be, available to the area through the County or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis.

6. The facility and service standards of the District are compatible with the facility and service standards of the County within which the special district is located.

7. The continued existence of the District is in the best interests of the area proposed to be served.

Respectfully submitted this _____ day of _____, 2017.

By:_____
General Counsel to the District

# EXHIBIT A

# LEGAL DESCRIPTION

# EXHIBIT B

# VICINITY MAP

# EXHIBIT C

# DISTRICT BOUNDARY MAP

# EXHIBIT D-1

# EXISTING PUBLIC IMPROVEMENTS

# EXHIBIT D-2

# FUTURE PUBLIC IMPROVEMENTS

# EXHIBIT E-1

# 2015 AUDITED FINANCIALS

# EXHIBIT E-2

# ADOPTED 2017 BUDGET

# EXHIBIT E-3

# FUTURE PUBLIC IMPROVEMENT COSTS