

<b>DISTRICT COURT, JEFFERSON COUNTY, COLORADO</b> Court Address: 100 Jefferson County Parkway Golden, CO 80401 Telephone: (303) 271-6154	DATE FILED: July 23, 2019 1:26 PM FILING ID: 5C292EB374E0F CASE NUMBER: 2019CV30887
<b>Plaintiffs:</b> BIG SKY METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado  <b>Defendant:</b> GREEN MOUNTAIN WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado	<b>▲ COURT USE ONLY ▲</b>
<b>Attorneys For Plaintiffs:</b> Charles E. Norton, #10633 NORTON & SMITH, P.C. 1331 17 <sup>th</sup> Street, Suite 500 Denver, CO 80202 <b>Telephone:</b> (303) 292-6400 <b>Facsimile:</b> (303) 292-6401 <b>E-mail:</b> <a href="mailto:CNorton@NortonSmithLaw.com">CNorton@NortonSmithLaw.com</a>  <b>Attorneys For Defendant:</b> Mary Joanne Deziel Timmins, #13859 DEZIEL TIMMINS LLC 450 East 17 <sup>th</sup> Avenue, Suite 210 Denver, Colorado 80203 <b>Telephone:</b> (303) 592-4500 <b>Facsimile:</b> (303) 592-4515 <b>E-mail:</b> <a href="mailto:jt@timminslaw.com">jt@timminslaw.com</a>	<b>Case Number:</b> 2019-CV-030887  <b>Div./Courtroom:</b> 2
<b>ANSWER</b>	

Defendant Green Mountain Water and Sanitation District (“Defendant” or “Green Mountain”) answers Plaintiff Big Sky Metropolitan District No. 1’s (“Plaintiff” or “Big Sky”) Complaint as follows:

1. The allegations in Paragraph 1 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them. Upon information and belief, Big Sky only has two directors, and has never had more than four, in violation of C.R.S. §32-1-305(5) and 305.5(2). Green Mountain admits that, to the extent Plaintiff is properly and validly organized and existing as a metropolitan district under the Special District Act, C.R.S. §32-1-101 *et seq.*, (“Special District Act”) Plaintiff is a quasi-municipal corporation and a political subdivision of the State of Colorado. Green

Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 1 and on that basis denies them.

2. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 and on that basis denies them. To the extent a further response is required, Green Mountain states that the Big Sky Service Plan speaks for itself, and denies any allegations inconsistent therewith.

3. The allegations in Paragraph 3 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them. Green Mountain states that the Big Sky Service Plan speaks for itself, and denies any allegations in Paragraph 3 inconsistent therewith. Green Mountain further states that the provisions of the Special District Act speak for themselves and denies any allegations in Paragraph 3 inconsistent therewith. Green Mountain further states that the special powers of a sanitation district are defined in C.R.S. §32-1-1006 of the Special District Act, which section is nowhere cited in the Big Sky Service Plan.

4. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and on that basis denies them. To the extent the allegations in Paragraph 4 rely on information provided in publicly available documents and court filings, such documents and court filings speak for themselves and Green Mountain denies any allegations in Paragraph 4 inconsistent therewith. Green Mountain states that there has been, at times, abuse of the special district mechanism since the 1970's, generating unearned profits by developers with little or no accountability to the public.

5. Green Mountain admits it was organized as a park, water, and sanitation district pursuant to an Order and Decree of the Jefferson County District Court entered on February 11, 1952, under the then-existing laws of the State of Colorado, and that it continues to exist as a validly organized sanitation district. The remaining allegations in Paragraph 5 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them.

6. The allegations in Paragraph 6 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them. The Special District Act, Big Sky Service Plan and Green Mountain Service Plan are documents which all speak for themselves and Green Mountain denies any allegations in Paragraph 6 inconsistent therewith. Green Mountain admits it is a sanitation district and that it collects wastewater generated by properties within its service area. Green Mountain states that the Big Sky Service Plan does not authorize Big Sky to collect wastewater from properties located outside its boundaries. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 6 and on that basis denies them.

7. Green Mountain admits it collects wastewater from property located within its service area and from property outside its service area. Green Mountain states

that the Special Connector's Sewage Treatment and Disposal Agreement dated December 20, 1983, speaks for itself, and denies any allegations in Paragraph 7 inconsistent therewith. To the extent a further response is required, Green Mountain denies the remaining allegations in Paragraph 7.

8. Green Mountain admits it collects wastewater generated by property within the Solterra subdivision. Green Mountain states that the publicly available maps and demographic statistical data of the City of Lakewood speak for themselves and denies any allegations in Paragraph 8 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 8 and on that basis denies them.

9. Green Mountain admits it collects wastewater generated by property within the Solterra subdivision. Green Mountain further states that the Fossil Ridge/Green Mountain IGA, the Fossil Ridge No. 1 Service Plan, and the Special District Act speak for themselves and denies any allegations in Paragraph 9 inconsistent therewith. The remaining allegations in Paragraph 9 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them.

10. Green Mountain states that the Complaint in this case speaks for itself, and denies any allegations in Paragraph 10 inconsistent therewith. Green Mountain admits this dispute raises questions as to whether the Big Sky IGA was void from its inception, whether Green Mountain had authority, acting in its legislative capacity, to terminate the Big Sky IGA, whether the Big Sky IGA constituted a material modification of the Big Sky Service Plan, among other questions to be raised at trial in this matter. Green Mountain denies that it breached a contract with Big Sky, that it anticipatorily repudiated a contract with Big Sky, that it breached a covenant of good faith and fair dealing, that it should be promissory estopped from any action with respect to Big Sky, or that it violated Article II, section 11 of the Colorado Constitution. Green Mountain denies the remaining allegations in Paragraph 10.

11. Green Mountain admits that it is located entirely within the County of Jefferson, State of Colorado, and that this Court is the proper venue for this action.

12. The answers set forth in Paragraphs 1 through 11 of this Answer are incorporated by this reference as though fully set forth herein.

13. Green Mountain states that the boundaries of the City of Lakewood are a matter of public record, which record speaks for itself and denies any allegations in Paragraph 13 inconsistent therewith. Green Mountain further states that the Special Connector's Agreement, City of Lakewood City Council Resolution No. 2008-5, the Metro Service Plan and the Green Mountain Service Plan are documents which all speak for themselves and denies any allegations in Paragraph 13 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13, or such allegations contain legal conclusions not subject to denial or admission, and on that basis denies them.

14. Green Mountain admits that, at the request of Brookfield Residential Properties, a study was prepared in 2006 to examine the feasibility of providing sanitation services to Brookfield's proposed development later known as Solterra. Upon information and belief, the City of Lakewood, not Green Mountain, required that the study also examine the provision of sanitation services to geographic areas beyond Solterra. To the extent a response is required to the remaining allegations in Paragraph 14, Green Mountain denies those allegations.

15. Green Mountain states that the feasibility study delivered by the engineering firm of McLaughlin Rincon, Ltd. on January 31, 2006, speaks for itself, and denies any allegations in Paragraph 15 inconsistent therewith. .

16. Green Mountain states that Exhibit 1 to the Complaint speaks for itself and denies any allegations in Paragraph 16 inconsistent therewith. To the extent a response is required to the remaining allegations in Paragraph 16 Green Mountain denies those allegations.

17. Green Mountain states that the content of the Green Mountain/Fossil Ridge IGA, and the map attached to the Complaint as Exhibit 2, speak for themselves, and denies any allegations in Paragraph 17 inconsistent therewith. The remaining allegations in Paragraph 17 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them.

18. Green Mountain states that the content of the Green Mountain/Fossil Ridge IGA, and the map attached to the Complaint as Exhibit 2, speak for themselves, and denies any allegations in Paragraph 18 inconsistent therewith. Green Mountain denies that it ever made a commitment to Big Sky, or to anybody, that it would provide sanitation service to a "Future Development Area," to "all of Rooney Valley", or to any other area identified by Big Sky in Paragraph 18. The remaining allegations in Paragraph 18 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them.

19. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and on that basis denies them.

20. Green Mountain states that the identity of the members of the Board of Directors of Fossil Ridge No. 1 is, and always has been, a matter of public record, which record speaks for itself, and denies any allegations in Paragraph 20 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 20 and on that basis denies them.

21. Green Mountain states that the content of the Green Mountain/Fossil Ridge IGA speaks for itself, and denies any allegations in Paragraph 21 inconsistent therewith.

22. Green Mountain states that the content of the Green Mountain/Fossil Ridge IGA speaks for itself, and denies any allegations in Paragraph 22 inconsistent therewith. Green Mountain further states that, to the extent Fossil Ridge No. 1, or Brookfield Residential Properties, enlarged certain sewer pipes, they did so at their own initiative, for their own benefit and for their own private gain. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and on that basis denies them.

23. The answers set forth in Paragraphs 1-22 of this Answer are incorporated herein.

24. Green Mountain states that, upon information and belief, in the fall of 2014, and at any time since then, Big Sky has not had a validly acting Board of Directors as defined and required under the Special District Act, and on that basis denies the allegations in Paragraph 24.

25. Green Mountain states that the September 8, 2015 letter attached as Exhibit 3 to the Complaint speaks for itself, and denies any allegations in Paragraph 25 inconsistent therewith. Green Mountain denies the remaining allegations in Paragraph 25.

26. Green Mountain admits that Big Sky deposited sums to pay certain of Green Mountain's costs pursuant to the content of Exhibit 4 to the Complaint. Green Mountain further states that the content of Exhibit 4 to the Complaint speaks for itself, and denies any allegations in Paragraph 26 inconsistent therewith.

27. Green Mountain states that the content of Exhibit 4 to the Complaint speaks for itself, and denies any allegations in Paragraph 27 inconsistent therewith. The remaining allegations in Paragraph 27 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them.

28. Green Mountain states that Fossil Ridge No. 1 had no contractual standing to make demands on Green Mountain. To the extent positions of Fossil Ridge No. 1 were articulated at public hearings, those positions are a matter of public record, which record speaks for itself, and Green Mountain denies any allegations in Paragraph 28 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 28 and on that basis denies them.

29. Green Mountain states that Fossil Ridge No. 1 had no contractual standing to make demands on Green Mountain. Green Mountain states that the content of the Green Mountain/Fossil Ridge IGA speaks for itself and denies any allegations in Paragraph 29 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 29 and on that basis denies them.

30. Green Mountain states that Fossil Ridge No. 1 and Brookfield Residential Properties had no contractual standing to make demands on Green Mountain. Green Mountain

states that the content of the Green Mountain/Fossil Ridge IGA speaks for itself and denies any allegations in Paragraph 30 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 29 and on that basis denies them.

31. Green Mountain admits that Big Sky decided to file suit against Fossil Ridge No. 1 for a declaratory judgment, further admits that Big Sky requested that Green Mountain participate in the lawsuit, and further admits that in order to facilitate Green Mountain's participation, Big Sky agreed to, and did, pay all of Green Mountain's legal fees. Green Mountain denies the remaining allegations in Paragraph 31 of the Complaint.

32. Green Mountain states that the documents filed in Jefferson County District Court, Case No. 2017CV031368 speak for themselves and lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 32 and on that basis denies them.

33. Admit.

34. Green Mountain states that in response to a recall petition and campaign which was initiated by the Solterra residents citing the special district abuses by Brookfield Residential Properties, the Brookfield employees resigned from the Board of Directors of Fossil Ridge No. 1. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 34 and on that basis denies them.

35. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35 and on that basis denies them.

36. Green Mountain states that following the recall campaign and resignation of the Board of Directors of Fossil Ridge No. 1, the actions filed in Jefferson County District Court by the Board of Directors of Fossil Ridge No. 3, and by Brookfield Residential Properties, are a matter of public record, which record speaks for itself and denies any allegations in Paragraph 36 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36 and on that basis denies them.

37. Upon information and belief, Green Mountain states that the Board of Directors of Fossil Ridge Nos. 1 and 3 were composed of members controlled by Brookfield Residential Properties. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 37 and on that basis denies them.

38. Green Mountain states that the Order, dated November 13, 2017, entered by District Court Judge Oefler speaks for itself and denies any allegations in Paragraph 38 inconsistent therewith. Green Mountain denies the remaining allegations in Paragraph 38.

39. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39 and on that basis denies them.

40. Green Mountain states that the Declaratory Judgment and Decree attached as Exhibit 5 to the Complaint, and the Big Sky/Fossil Ridge IGA, speak for themselves and denies any allegations in Paragraph 40 inconsistent therewith. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 40 and on that basis denies them.

41. Green Mountain states that the Big Sky/Fossil Ridge IGA speaks for itself and denies any allegations in Paragraph 41 that are inconsistent therewith.

42. Green Mountain denies that Brookfield presented a legal obstacle for Green Mountain. Green Mountain further denies that it promised to provide future sanitary sewer service to Big Sky as set forth in the Big Sky IGA, for many reasons including the fact that such promise is not legally enforceable against future legislative bodies of Green Mountain, and the contemplated service went beyond the Big Sky Service Area. Moreover, Green Mountain denies that it promised to provide sanitary sewer service to the Future Development Area. Green Mountain further states that, upon information and belief, Big Sky did not have a lawfully acting Board of Directors as of May 8, 2018, or May 14, 2018, and therefore, any formal actions taken by Big Sky were void. Green Mountain further states that the Big Sky/Green Mountain IGA, and the public record of the formal actions of the Green Mountain Board of Directors, speak for themselves and denies any allegations in Paragraph 42 inconsistent therewith. Green Mountain denies the remaining allegations contained in Paragraph 42.

43. Green Mountain states that the Big Sky/Green Mountain IGA speaks for itself, and denies any allegations in Paragraph 43 that are inconsistent therewith. Green Mountain further states that the Big Sky IGA was void from its inception, and was not legally enforceable because, among many other reasons, it was a material modification of the Big Sky Service Plan both because it contemplated a material change in purpose and in geographic area. The remaining allegations in Paragraph 43 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them.

44. Green Mountain denies that the map attached as Exhibit A to the Big Sky IGA depicts the Big Sky Service Area. Green Mountain states that the Big Sky/Green Mountain IGA, attached to the Complaint as Exhibit 6, speaks for itself, and denies any allegations in Paragraph 44 that are inconsistent therewith.

45. Green Mountain states that Big Sky was aware that the Board of Directors of Green Mountain who voted to approve the Big Sky IGA had not sufficiently reviewed the agreement, or even understood the contents of the agreement, and that the members of the Green Mountain Board of Directors who voted to approve the Big Sky IGA did so on election night, only minutes before they were voted out of office, putting Big Sky on notice that the new members of the Board of Directors might, and indeed did, question the validity and prudence of the Big Sky IGA, thereby making any reliance by Big Sky on the validity or approval of the Big Sky IGA unreasonable. Green Mountain denies that Big Sky reasonably relied on any actions of Green Mountain. Moreover, attorneys for Big Sky drafted the Big Sky IGA, thereby requiring any decision as to the validity or interpretation of the Big Sky IGA to be rendered against Big

Sky, further making any reliance by Big Sky on the enforceability of the Big Sky IGA unreasonable. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 45 and on that basis denies them.

46. The answers set forth in Paragraphs 1-45 are incorporated as if fully set forth herein.

47. Green Mountain denies that the New Directors worked diligently with Big Sky to implement the Big Sky IGA. Green Mountain further states that any reliance by Big Sky on the intentions of the New Directors with respect to the enforceability of the Big Sky IGA is unreasonable in light of statements made by counsel for Big Sky including that “an anti-development group has gained control over the Board of Directors at Green Mountain.” Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 and on that basis denies them. Green Mountain denies the remaining allegations in Paragraph 47.

48. Green Mountain admits that three new directors were elected to the Green Mountain Board of Directors at the election held on May 8, 2018. Green Mountain denies the remaining allegations in Paragraph 48.

49. Green Mountain admits that the New Directors took office on June 12, 2018. Green Mountain denies the remaining allegations in Paragraph 49.

50. Green Mountain denies the allegations of Paragraph 50.

51. Green Mountain states that the letter dated September 4, 2018 from Director Hanagan speaks for itself and denies any allegations in Paragraph 51 inconsistent therewith. Green Mountain denies the remaining allegations in Paragraph 51.

52. Green Mountain states that each of the letters referenced in Paragraph 52 speak for themselves and denies any allegations in Paragraph 52 inconsistent therewith. Green Mountain denies the remaining allegations in Paragraph 52.

53. Green Mountain denies that it had, or has, contractual obligations to Big Sky. Green Mountain admits that it terminated its relationship with Icenogle Seaver Pogue, that it hired Brian Matise of Burg Simpson Eldredge Hersh & Jardine, P.C., and that Mr. Matise agreed to serve as interim general counsel to Green Mountain. To the extent a response is required to the remaining allegations in Paragraph 53, Green Mountain denies those allegations.

54. Green Mountain admits that a Request for Proposal was published seeking inquiries for the general counsel position and that such Request for Proposal speaks for itself, and denies any allegations in Paragraph 54 inconsistent therewith.

55. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 and on that basis denies them.



56. Green Mountain denies that the current Green Mountain Board of Directors has ever taken any actions that were without substantial legal justification. The actions described in Paragraph 56 were taken at publicly held meetings which are a matter of public record, which record speaks for itself, and Green Mountain denies any allegations in Paragraph 56 inconsistent therewith.

57. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57 and on that basis denies them.

58. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58 and on that basis denies them.

59. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59 and on that basis denies them.

60. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60 and on that basis denies them.

61. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61 and on that basis denies them.

62. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62 and on that basis denies them.

63. Green Mountain states that the letter attached as Exhibit 7 to the Complaint speaks for itself and denies any allegations in Paragraph 63 inconsistent therewith.

64. The formal actions taken by Green Mountain at its publicly held meetings are a matter of public record, which record speaks for itself and Green Mountain denies any allegations in Paragraph 64 inconsistent therewith. Green Mountain denies the remaining allegations in Paragraph 64.

65. Green Mountain states that the Notice published by Big Sky is a matter of public record and the Notice speaks for itself, and denies any allegations in Paragraph 65 inconsistent therewith.

66. The allegations in Paragraph 66 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them. Green Mountain further states that the language of Section 32-1-207(3)(b), C.R.S. speaks for itself and denies any allegations in Paragraph 66 inconsistent therewith.

67. Green Mountain lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67 and on that basis denies them.

68. Green Mountain denies that it has a contract with Big Sky and states that the Big Sky IGA was void from its inception, and for that reason, among other reasons, was formally

declared terminated by Green Mountain by Resolution attached to the Complaint at Exhibit 8. Green Mountain admits that it filed a motion in Case No. 2014CV031904, and that the parties have filed briefs stating their respective positions. Green Mountain denies the remaining allegations in Paragraph 68.

69. Green Mountain admits that it adopted the Resolution and that the Resolution attached as Exhibit 8 to the Complaint speaks for itself and denies any allegations in Paragraph 69 inconsistent therewith.

**FIRST CLAIM FOR RELIEF  
(Breach of Contract)**

70. The answers in Paragraphs 1-69 are incorporated by reference as though fully set forth herein.

71. Green Mountain states that the Big Sky IGA speaks for itself and denies any allegations in Paragraph 71 inconsistent therewith. Green Mountain denies that the Big Sky IGA governs the termination of the IGA.

72. Green Mountain denies the allegations in Paragraph 72.

73. Green Mountain denies the allegations in Paragraph 73.

74. Green Mountain states that the Big Sky IGA speaks for itself and denies any allegations in Paragraph 74 inconsistent therewith. Green Mountain denies that Big Sky is entitled to monetary damages, specific performance, or declaratory or injunctive relief.

**SECOND CLAIM FOR RELIEF  
(Breach of Covenant of Good Faith and Fair Dealing)**

75. The answers set forth in Paragraphs 1-74 are incorporated by reference as if fully set forth herein.

76. The allegations in Paragraph 76 contain legal conclusions not subject to denial or admission, and on that basis Green Mountain denies them. Green Mountain denies the remaining allegations in Paragraph 76 including the fact that it is in a contract with Big Sky.

77. Green Mountain denies the allegations in Paragraph 77.

78. Green Mountain denies the allegations in Paragraph 78.

79. Green Mountain denies the allegations in Paragraph 79.

**THIRD CLAIM FOR RELIEF**  
**(Violation of Article II, Section 11 of the Colorado Constitution)**

80. The answers contained in Paragraphs 1-79 are incorporated by reference as if fully set forth herein.

81. Green Mountain denies the allegations in Paragraph 81.

82. Green Mountain denies the allegations in Paragraph 82.

83. Green Mountain denies the allegations in Paragraph 83.

84. Green Mountain denies the allegations in Paragraph 84.

**FOURTH CLAIM FOR RELIEF**  
**(Promissory Estoppel)**

85. The answers set forth in Paragraphs 1-84 are incorporated by reference as if fully set forth herein.

86. Green Mountain denies the allegations in Paragraph 86.

87. Green Mountain denies the allegations in Paragraph 87.

88. Green Mountain denies the allegations in Paragraph 88.

89. Green Mountain denies the allegations in Paragraph 89.

90. Green Mountain denies the allegations in Paragraph 90.

**AFFIRMATIVE DEFENSES**

1. Big Sky is not validly organized or existing as a special district pursuant to the provisions of the Special District Act, and therefore was not authorized to enter into the Big Sky IGA, rendering the Big Sky IGA void from its inception.

2. Big Sky is not authorized to act or exist as a sanitation district under either the Special District Act or the Big Sky Service Plan and therefore was not authorized to enter into the Big Sky IGA, rendering the Big Sky IGA void from its inception.

3. Big Sky is not authorized to collect wastewater inside or outside its service area, as defined in its Service Plan and the Special District Act, and therefore was not authorized to enter into the Big Sky IGA, rendering the Big Sky IGA void from its inception.

4. Green Mountain is not authorized to collect wastewater outside its service area as defined by its Service Plan and the Special District Act.

5. Green Mountain never made a commitment to Big Sky that Green Mountain would provide sanitation service, as defined in the Special District Act, to the geographic area defined in the Big Sky IGA.

6. Legislative acts are not binding on future legislatures and therefore the Big Sky IGA was not binding on Green Mountain.

7. The Complaint fails to state a claim against Defendant upon which relief can be granted.

8. Plaintiff's claims fail for lack of consideration.

9. Plaintiff's claims are barred, in whole or in part, because there was no contract between Plaintiff and Defendant that provides the relief Plaintiff seeks herein.

10. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to satisfy all conditions precedent required for recovery.

11. Plaintiff's claims are barred by the applicable statute of limitations.

12. Plaintiff's claims are barred by the doctrines of unclean hands and laches.

13. Plaintiff's claims are barred by the doctrine of estoppel.

14. Plaintiff's claims are barred because its alleged reliance on the actions of Defendant is unreasonable.

15. Plaintiff's claims are barred because it acted in bad faith.

16. Plaintiff's claims fail on the grounds of failure to mitigate damages.

17. Plaintiffs' damages, if any, were caused by Plaintiffs' own acts or failure to act.

18. Plaintiff's claims fail on the grounds of waiver.

19. Plaintiff's claims fail because they voluntarily assumed a known and reasonable risk herein.

20. All or some of Plaintiff's claims against Defendant are not substantially justified and thereby entitle this Defendant to an award of attorneys' fees and costs associated with the defense of this case, including expert witness fees, if any.

21. Defendant reserves the right to designate and identify additional affirmative defenses, as the factual bases for which become known to it during discovery herein or otherwise.

**WHEREFORE** Defendant requests that Plaintiff's Complaint be dismissed with prejudice and that Defendant recover its costs and attorney's fees, if applicable, incurred herein.

DATED this 23<sup>rd</sup> day of July, 2019

DEZIEL TIMMINS LLC

/s/ Mary Joanne Deziel Timmins

Mary Joanne Deziel Timmins #13859

#### **CERTIFICATE OF SERVICE**

I certify that on July 23, 2019, a true and correct copy of the foregoing was served on the following via the Colorado Courts E-Filing System and/or by email:

Charles E. Norton, #10633  
NORTON & SMITH, P.C.  
1331 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202

/s/ Mary Joanne Deziel Timmins

Mary Joanne Deziel Timmins