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VIA EMAIL AND REGULAR U.S. MAIL

Jo Timmins
Timmins LLC
450 East 17th Avenue, Suite 210
Denver, CO 80203
jt@timminslaw.com

***Re: Green Mountain Water and Sanitation District ("Green Mountain")'s
Termination of IGA with Big Sky Metropolitan District No. 1 ("Big Sky")***

Dear Ms. Timmins:

This firm represents Fossil Ridge Metropolitan District No. 1 ("Fossil Ridge"). Please consider this letter Fossil Ridge's notice of claim against Green Mountain pursuant to C.R.S. § 24-10-109.

Fossil Ridge has learned of Green Mountain's April 9, 2019 Resolution ("Resolution") terminating its Intergovernmental Agreement for Extra-Territorial Sewer Service with Big Sky ("Big Sky IGA"). By terminating the Big Sky IGA, Green Mountain has rendered it impossible for Fossil Ridge to recover the significant costs it incurred to oversize the Fossil Ridge sewer system used to deliver wastewater to Green Mountain. If you recall, it was Green Mountain which required the oversizing in the first place, so that Green Mountain could provide sewer service to the Rooney Valley. Indeed, Green Mountain went so far as to sue Fossil Ridge, representing to the Court that Fossil Ridge was preventing Green Mountain from entering into the Big Sky IGA. If Green Mountain does not reconsider its position, which invariably affects Fossil Ridge's ability to recover money it expended to oversize the Fossil Ridge sewer system, Fossil Ridge may have no choice but to sue to protect its rights.

Background

The IGAs Between Green Mountain and Fossil Ridge

The following facts regarding Green Mountain's relationship with Fossil Ridge and the oversizing of the Fossil Ridge sewer system were stipulated to by Green Mountain and entered as a Declaratory Judgment and Decree ("Stipulated Judgment") in *Green Mountain Water and Sanitation District, et al. v. Fossil Ridge Metropolitan District No. 1*, No. 2017CV31368, Jefferson

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County, Colorado (the "Action"). On January 15, 2008, Green Mountain and Fossil Ridge entered into an Intergovernmental Agreement for Extra-Territorial Service (the "Original IGA"). Stipulated Judgment ¶ 7 (enclosed herewith as **Exhibit A**). The Original IGA contemplated that Green Mountain would provide service to both Fossil Ridge and to an area upstream from Fossil Ridge called the "Future Development Area". As a condition to providing service to Fossil Ridge, Green Mountain required Fossil Ridge to expend significant funds to oversize its sanitary sewer system (the "Fossil Ridge Sewer System") so the system would have sufficient capacity to allow Green Mountain to provide sanitary sewer service to both Fossil Ridge and the Future Development Area, which is part of the area Big Sky proposes to serve through the Big Sky IGA. *Id.*

Because the Original IGA did not contain a mechanism through which Fossil Ridge could recover the costs associated with oversizing the Fossil Ridge Sewer System, Green Mountain and Fossil Ridge later entered into an Amended and Restated Intergovernmental Agreement for Extra-Territorial Sewer Service dated November 11, 2014 ("Amended IGA" enclosed herewith as **Exhibit B**), together with the Original IGA, the "Green Mountain/Fossil Ridge IGAs"). *Id.* The Amended IGA added a mechanism for Fossil Ridge to recover the costs incurred in oversizing the Fossil Ridge Sewer System for service to the Future Development Area. *Id.* ¶ 8; *see also* Amended IGA, §§ 2.6 and 3.2.C. Specifically, Section 2.6 of the Original IGA was amended to add the following provision:

To the extent that sufficient oversize capacity is available in the Fossil Ridge Sewer System to accommodate the anticipated additional flows from any one of [*sic*] more properties in the Future Development Area, as a condition precedent to Green Mountain accepting Wastewater from any such properties, the property owner(s) must enter into an agreement with Fossil Ridge providing for, among other things, equitable and proportionate cost recovery for Fossil Ridge's expenses in oversizing the Fossil Ridge Sewer System and the manner in which water will be provided to such area.

Green Mountain Sues Fossil Ridge Based on the Representation that It Wants to Serve Big Sky

On September 1, 2017, Green Mountain and Big Sky sued Fossil Ridge seeking a declaratory judgment as to the proper amount of the oversizing reimbursement required by Section 2.6 of the Amended IGA. The entire premise of the lawsuit was that Green Mountain desired to provide service to Big Sky and that reimbursement for oversizing was a condition precedent to do so under Section 2.6. Ex. A, ¶ 9. In fact, Green Mountain represented to the Jefferson County District Court (the "Court") that Big Sky and Green Mountain had negotiated and were prepared to enter into an IGA to provide service to Big Sky. Complaint (enclosed herewith as **Exhibit C**) ¶ 19. Green Mountain further represented to the Court that Fossil Ridge was precluding Green Mountain from providing service to Big Sky and thereby "preventing Green Mountain from

collecting significant sewer system development fees and increasing its customer base." Ex. B. ¶ 1.

At that time, Fossil Ridge had not entered into a reimbursement agreement with Big Sky because Fossil Ridge asserted that it should also be reimbursed for oversizing of the water system and because the proposed reimbursement for the Fossil Ridge Sewer System was not proportionate and equitable. Ex. B, ¶¶ 21-22. Fossil Ridge was nevertheless forced to spend tens of thousands of dollars litigating the Action based on Green Mountain's representations that it wanted to move forward with providing service to Big Sky.

A significant portion of these fees were spent negotiating the settlement of the Action, which involved Fossil Ridge entering into the Reimbursement Agreement with Big Sky, pursuant to which Fossil Ridge agreed to a release its claims against Green Mountain upon receipt of the reimbursement amount of \$1,300,000.00. Throughout these negotiations, Green Mountain reiterated to Fossil Ridge and to the Court its desire to provide service to Big Sky as a basis for the existence of a controversy and for Green Mountain's alleged right to a declaratory judgment. This was one of the primary representations that induced Fossil Ridge into entering into the Reimbursement Agreement. Indeed, the Reimbursement Agreement, which was attached to and made part of the Stipulated Judgment signed by Green Mountain, contains the following recital:

WHEREAS, subject to all necessary approvals by Metro Wastewater, wastewater flows generated by properties within the Big Sky Territory will be accepted by Green Mountain under the Metro IGA and pursuant to an intergovernmental agreement to be entered into by and between Green Mountain and Big Sky;

Exhibit D, Reimbursement IGA, p. 2.

After the Action was settled in April 2018, Green Mountain subsequently entered into the Big Sky IGA effective as of May 8, 2018. As part of the Big Sky IGA, Green Mountain recognized that Fossil Ridge's agreement to enter into the Reimbursement Agreement satisfied Green Mountain's condition precedent to provide service to Big Sky and that the "terms and conditions of [the Big Sky IGA] are reasonable and in the best interest of their respective residents, customers, and taxpayers."

Green Mountain Terminates the Big Sky IGA

It is concerning that the Resolution entirely ignores the existence of the Green Mountain/Fossil Ridge IGAs and the fact that Green Mountain was the party that demanded the oversizing so that it could serve the Rooney Valley. Nowhere does the Resolution mention that Green Mountain's termination of the Big Sky IGA renders it impossible for Fossil Ridge to recover the oversizing costs that Green Mountain caused Fossil Ridge to incur. The Resolution also entirely ignores the dozens of representations Green Mountain made to Fossil Ridge and the Court in order to secure the settlement and Stipulated Judgment which induced Fossil Ridge to enter into those agreements. We believe the actions taken by Green Mountain rise to the level of willful and wanton conduct.

Fossil Ridge's Claims Against Green Mountain

We are concerned and have reason to believe that Green Mountain has elected to pursue a new political agenda rather than follow through on its promises and legal obligations. It is Fossil Ridge's understanding that Green Mountain and its board members may be subject to several claims from other parties, but this letter only addresses the claims Fossil Ridge may pursue if Green Mountain fails to reconsider its termination of the Big Sky IGA. These claims include, without limitation, a claim for promissory estoppel based on the years of promises Green Mountain made about its desire to serve the Rooney Valley, in reliance upon which, Fossil Ridge oversized the Fossil Ridge Sewer System and then entered into the Stipulated Judgment with Green Mountain.

Green Mountain has also intentionally interfered with the Reimbursement Agreement between Big Sky and Fossil Ridge by making it impossible for Big Sky to perform under that Agreement. Green Mountain's actions in doing so rise to the level of willful and wanton conduct such that Fossil Ridge will seek punitive damages against Green Mountain for, among other things, forcing Fossil Ridge through litigation to secure the Big Sky IGA, only to turnaround and terminate it.

CGIA Notice

While the preceding portion of this letter satisfies Fossil Ridge's notice obligations, if any, pursuant to C.R.S. § 24-10-109, for the avoidance of doubt, notice is hereby provided as follows:

- 1. Claimants:** Fossil Ridge Metropolitan District No. 1, 15250 W Evans Ave, Lakewood, CO 80228; any entity affiliated with Fossil Ridge that suffered harm as a result of Green Mountain's actions, including without limitation, Fossil Ridge Metropolitan District Nos. 2 and 3, 15250 W Evans Ave, Lakewood, CO 80228. Fossil Ridge Metropolitan District Nos. 1-3 are represented by undersigned counsel.

JO TIMMINS
TIMMINS LLC
MAY 7, 2019
PAGE 5

2. **Claims:** Claims stemming from Green Mountain's termination of the Big Sky IGA and, in turn, Fossil Ridge's inability to recover oversizing costs as detailed above, including, without limitation, claims for promissory estoppel and intentional interference with contract.
3. **Public Employees:** To the extent applicable, the board members of Green Mountain who voted in favor of the Resolution.
4. **Injury:** Loss of ability to recover for costs incurred to oversize the Fossil Ridge Sewer System and attorneys' fees incurred in connection with the Action.
5. **Monetary Damages:** \$1,300,000.00 for oversizing costs and \$55,342.00 in attorneys' fees incurred in connection with the Action, including pre-judgment interest on such amounts.

In sum, Fossil Ridge is hopeful that Green Mountain will reconsider its termination of the Big Sky IGA. If it does not, Fossil Ridge demands that Green Mountain pay it the sum of \$1,355,342.00. If Green Mountain does not reinstate the Big Sky IGA or pay such amount by June 1, 2019, Fossil Ridge may have no choice but to proceed accordingly against Green Mountain. We look forward to hearing from you on these matters.

Sincerely,



Kelley B. Duke

Enclosures