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Gunnison, CO  
Appreciation No. 430607 Joanne M. Reisinger, RECORDER

BOOK 698 PAGE 27

SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this 1st day of SEPTEMBER, 1990, by and between the EAST RIVER REGIONAL SANITATION DISTRICT, a Special District organized and operating pursuant to Colorado law (hereafter "District"), the RIVERBEND SUBDIVISION HOMEOWNER'S ASSOCIATION, INC., a Colorado non-profit corporation (hereafter "Riverbend"), and SLATE RIVER ESTATES HOMEOWNERS ASSOCIATION, a Colorado non-profit corporation, (hereafter "Slate River") is upon the following terms and conditions.

WITNESSETH,

WHEREAS, the District operates a sewage collection, treatment, and disposal system within its boundaries, which system currently has excess capacity, and

WHEREAS, Riverbend currently operates a sewage collection, treatment, and disposal system within the boundaries of the Riverbend Subdivision, as that subdivision exists according to the official plat thereof, and

WHEREAS, the District and the Riverbend Subdivision share a common boundary and lie adjacent to one another, and

WHEREAS, Slate River Estates Subdivision shares a common boundary with the Riverbend Subdivision, and

WHEREAS, Riverbend and Slate River entered into an Agreement dated March 15, 1980 whereby Riverbend provides sewage treatment and disposal services for Slate River in return for payment of service fees by owners of lots within Slate River, and

WHEREAS, Riverbend and Slate River will receive benefits and efficiencies by hooking onto the Districts' sewage collection treatment and disposal system thereby ceasing the operation and maintenance of Riverbend's sewage treatment and disposal system, and

WHEREAS, the District will receive certain benefits and efficiencies by using its excess treatment capacity to take, treat, and dispose of the raw sewage collected within the Slate River Estates and Riverbend Subdivisions in return for certain service and development fees, and

WHEREAS, Slate River wishes to delegate certain powers of administration and assessment collection to Riverbend to facilitate the efficient operation of this Service Agreement,

NOW, THEREFORE, for and in consideration of the mutual preambles, promises, covenants, and conditions set forth herein, the parties agree as follows:

1. Provisions of Sewage Treatment Services. The District will accept and properly treat such raw sewage as is delivered into the District's sewage collection system by Riverbend and Slate River under the terms and conditions set forth hereafter. In consideration for such treatment service, Riverbend and Slate River will pay certain charges and fees to the District as provided hereafter.
2. Quality of Service. The District represents and warrants to Riverbend and Slate River that its collection and treatment facilities are adequate to properly handle and treat raw sewage delivered into its system by Riverbend and Slate River, and that the collection and treatment service it will provide will meet all applicable federal, state, and local laws and regulations with respect to sewage handling, treatment, and disposal. Accordingly, the District shall indemnify and hold harmless Riverbend, Slate River, and the individual property owners within said Subdivisions against any expenses, claims, damages, or fines, including reasonable attorney's fees, resulting from any breach of law or regulation, negligence, or intentional wrongful act by the District in the operation of the District's sewage collection, treatment, and disposal system.
3. Quantity of Service. The District shall accept from Riverbend and Slate River, together, and properly treat up to 30,000 gallons per day of raw sewage. Riverbend and Slate River shall install, at their sole cost, such gauge as will properly and accurately measure the quantity of raw sewage being introduced by Riverbend and Slate River into the District's collection system. In the event that the amount of raw sewage introduced into the District's system exceeds 30,000 gallons per day, Riverbend and Slate River shall pay those penalty fees and charges which are set forth hereafter. All parties agree that such penalty fees are reasonable and appropriate given the difficulties in computing the actual costs and damages to the District resulting from the introduction of raw sewage in excess of the 30,000 gallon per day limit. The quantity of service provided for in this paragraph 3 is based upon the representations and the efforts of the owners of Lots M1, M2, M6, M7 and M8 to have such lots resubdivided into single family lots. In the event that said lots are not resubdivided and designated as single family lots, then the acceptable quantity of service under this paragraph shall be 40,000 gallons per day.
4. Connection with District System. Riverbend and Slate River will undertake and contract for the engineering and construction of a main service line to connect the present collection system for Riverbend and Slate River with the collection

system for the District at the presently existing pump station. The plans and specifications shall be reviewed and approved by a certified and licensed engineer of the District's choice, at the expense of Riverbend and Slate River. Any such plans shall comply with all applicable rules and regulations including, but not limited to those of the Colorado Department of Health and Gunnison County. The cost of construction of this connecting line shall be borne proportionately by Riverbend and Slate River as provided hereafter. Any easements necessary for the installation of this connecting line shall be obtained by Riverbend and Slate River. Slate River shall own and maintain those sewage collection lines which lie within the boundaries of the Slate River Estates Subdivisions, which lines shall be properly maintained by Slate River Estates. Riverbend shall own and maintain those sewage collection lines which lie within the boundaries of the Riverbend Subdivision, which lines shall be properly maintained by Riverbend. Any collection line passing through lands not owned by Riverbend or Slate River, and that new line constructed from the last present Riverbend collection line to the boundary of the Riverbend Subdivision, shall be the joint property of Riverbend and Slate River, and the cost of maintaining said lines shall be borne proportionately by Riverbend and Slate River as provided hereafter. Any reasonable specifications necessary for the physical connection to the District's collection system and pump station shall be provided by the District to Riverbend and Slate River in a timely fashion prior to construction of the connecting line.

5. Tap in Fees. At the outset of service under this Agreement, Riverbend and Slate River shall pay to the District a onetime joint tap-in fee of Twenty-five Thousand Dollars (\$25,000.00). Said tap-in fee shall grant to any and all users of the Riverbend and Slate River systems at the time of such payment the right to continue such use of the system without payment of any further tap-in fees. Any new user within the Riverbend or Slate River Subdivisions after the date of such payment shall pay a tap-in fee equal to the tap-in fee in place within the District at the time of such tap-in. Riverbend and Slate River will impose, collect, and pay to the District such tap-in fees at the time of the tap-in. Such tap-in fees may be increased by the District during the term of this Agreement so long as such increase is not necessitated by a decrease in property tax mill levies within the District.

6. Monthly Service Charges. Riverbend and Slate River will pay to the District, quarterly, a sum equal to \$90.00 for each equivalent user on the sewage collection system, as equivalent user is defined elsewhere within the boundaries of the District, which amount represents a \$30.00 monthly charge. Riverbend and Slate River will pay to the District, quarterly, a sum equal to \$45.00 for each non-user lot designated as single family residential within their respective subdivisions as an availability of

service charge, which amount represents a \$15.00 monthly charge. Any vacant multi-family lots will pay such availability of service charge as would be charged within the boundaries of the District given a current base charge of \$15.00 for availability of service to each equivalent residential user, as may be adjusted from time to time by changes in the allowable service charge. Riverbend and Slate River will pay any amounts due hereunder to the District within 15 days of receiving a quarterly statement for charges from the District. It is expressly understood and agreed to between the parties that Lots 6 and 7 within the Riverbend Subdivision do not and cannot presently use the Riverbend collection system, and shall therefore not be required to pay any monthly service charge. In the event that such lots connect to the Riverbend collection system in the future, tap-in fees and monthly service charges shall also be due from those lots, and the quantity limitation in paragraph three shall remain the same. Riverbend and Slate River hereby warrant their ability to collect such payments from users and non-users within their respective Subdivisions, and guarantee such payments to the District. Riverbend and Slate River will themselves seek collection upon delinquent accounts without passing any such delinquencies on to the District.

7. Riverbend the Administrative Agent. As between Riverbend and Slate River, Riverbend shall be deemed the agent for collection of fees, and service charges, enforcement of remedies for non-payment of fees and service charges, billing, and accounting for amounts due to the District. As such, Slate River delegates to Riverbend all its powers for sewage service assessment, assessment or fee collection, and exercise of remedies for non-payment within the Slate River Estates Subdivision as it may legally delegate. In the event that any such delegation is not legally allowable, Slate River agrees to make such assessments, collect same, and exercise remedies for non-payment within the same time periods and under the same conditions as are imposed by Riverbend within the Riverbend Subdivision, to the extent permitted by law. Slate River shall pay to Riverbend its proportional share of any costs of administration necessitated by this paragraph 7.

8. Proportional Proration of Costs and Expenses Between Riverbend and Slate River. Any cost or expense which, by the terms of this Agreement, are to be borne on a proportional prorated basis by Riverbend and Slate River shall be paid as follows. Riverbend shall pay 82.44% of any such cost or expense and Slate River shall pay 17.56% of any such cost or expense. Riverbend, as administrative agent, shall properly account for and notify Slate River of any amounts due from Slate River pursuant to this Section 8, and Slate River shall pay any such amounts due to Riverbend within 30 days of such notice. The above stated proration percentage is based upon the presumption set forth in paragraph 3 regarding the resubdivision of the multi-family lots

therein designated to 13 single family lots. If said multi-family lots are not resubdivided or are resubdivided to other than 13 residential lots, then the proration percentages shall be computed upon the potential units constructed in each subdivision at full build out, based upon the density allowable on each vacant lot.

9. Limitations on Increases in Monthly Service Charges. The amount of monthly service charges provided for in this Agreement shall not be increased during the term of this Agreement unless such increase complies with the following restrictions. Such fees and charges may be increased by the same dollar amount of any increase imposed on customers within the District. For example, an increase by \$5.00 per month on service charges within the District may result in a \$5.00 per month increase to Riverbend and Slate River, subject to limitation as follows. Fee or charge increases to Riverbend and Slate River shall not include amounts necessary to obtain revenues to offset property tax reductions within the District or to offset costs not directly related to the cost of operating the District's sewage treatment plant. Such costs of operating the sewage treatment plant shall include day to day operating expenses, equipment repair and replacement, a reasonable capital reserve fund for the replacement of equipment, additional equipment mandated by law or regulation, insurance, and accounting and legal fees. Such costs of operating the sewage treatment plant shall not include the maintenance or replacement of collection lines within the District except that used for transmission of raw sewage from Riverbend and Slate River, shall not include fines or penalties imposed for violations of laws or regulations, shall not include revenue reductions resulting from property tax mill levy reductions, and shall not include capital expansions for new collection lines within the District or increases in plant capacity necessitated by expansion of the District or the servicing of new customers outside of the District. In the event that the parties cannot agree upon the amount of fee or charge increase allowable pursuant to this section, the matter shall be submitted to an independent certified public accountant agreeable to the parties for determination, which determination shall be binding upon the parties.

10. Penalty Service Charges. Notwithstanding the provisions of Sections 3 and 9, above, the parties expressly agree that a penalty monthly service charge may be imposed for any calendar month during which the average daily limit of 30,000 gallons provided for in Section 3 is exceeded, or during which the daily limit is exceeded for seven consecutive days. Such penalty, which shall be added to the regular monthly service charge shall be as follows:

- a) 50% of the regular monthly charge for the first month in which the average daily limit is exceeded during any calendar year,

- b) 75% of the regular monthly charge for the second month in which the average daily limit is exceeded during any calendar year, and
- c) 100% of the regular monthly charge for the third or additional month in which the average daily limit is exceeded, during any calendar year.

In the event that the allowable quantity under paragraph 3, above, is 40,000 gallons per day, then penalty service charges shall be applied to excesses over 40,000 gallons in the above fashion.

11. Dismantling and Decommissioning of Present Riverbend Treatment Plant. Riverbend and Slate River shall proportionately bear the cost of dismantling, decommissioning, and reclaiming the ground upon which the present Riverbend treatment plant is located, according to the formula set forth in Section 8, above.

12. Term. This Agreement shall commence upon the date of execution hereof, however, any obligation for payment of charges or fees to the District shall not occur until such time as the actual connection and delivery of service to the District's system is completed. This Agreement shall run for a term of thirty years or until the sewage treatment plant capacity of the District is not longer able to handle and treat that volume of raw sewage delivered by Riverbend, Slate River, and the users within the present District boundaries, whichever occurs first.

13. Joinder with the District. Riverbend and Slate River may, during the term of this Agreement, petition the District for inclusion within the District pursuant to such procedures for joinder as are provided by Colorado law. In the event of such petition for joinder, the District agrees that such joinder, if accomplished, shall not be subject to or conditional upon the payment by Riverbend or Slate River, or the users within Riverbend and Slate River, of any one time entry or tap fees, but rather, such joinder will result in only those tap-in fees for new users, service charges, and mill levies which are applicable elsewhere within the District. Provided, however, that any administrative, legal, and election costs for joinder shall be borne by Riverbend and Slate River.

14. Default. In the event of default hereunder by any party to this Agreement, in addition to any other remedies available the parties hereto shall be entitled to the remedy of specific performance. In the event of non-payment of fees or service charges as required hereunder, or any other default hereunder, the District shall have such remedies as are available to the District within its boundaries. Provided, however, any shut-off of service to Riverbend or Slate River for non payment of fees or service charges shall not occur until the passage of sixty days after written notice of default is given to the defaulting party,



which default in payment is not cured during the sixty days. Remedies for any other default shall only be available if any such default is not cured within thirty days after written notice of same. A default not cured within such thirty days shall be deemed not a default if a cure is not reasonably possible within thirty days, but curative action is diligently undertaken as promptly as practicable within thirty days which eventually leads to a reasonably timely cure.

15. Notice. Any notice required by this Agreement, shall be deemed properly given if mailed by U.S. Mail, certified return receipt requested to a party at the following addresses:

- a) East River Regional Sanitation District  
P.O. Box 879  
Crested Butte, Colorado 81224
- b) Riverbend Subdivision Homeowner's  
Association, Inc.  
P.O. Box 431  
Crested Butte, Colorado 81224
- c) Slate River Estates Homeowners Association  
P.O. Box \_\_\_\_\_  
Crested Butte, Colorado 81224

16. Water Savings Plumbing Devices. Riverbend and Slate River hereby agree to adopt and enforce within their respective subdivisions those rules and regulations of the District pertaining to the installation of water saving plumbing devices in new construction as may be adopted by the District from time to time.

17. Non-Waiver. The failure of any party to insist upon the strict performance of any of the terms of this Agreement shall not be construed or deemed to be a waiver of any rights under this Agreement, and shall not be deemed a waiver of any subsequent breach or default in the terms of this Agreement.

18. Entire Agreement and Amendment. This Agreement contains the entire agreement between the parties, and no statements or representations not contained in this Agreement shall be of any force and effect between the parties. Notwithstanding this Section 18, the March 15, 1980 agreement between Riverbend and Slate River shall remain in full force and effect to the extent not modified by this Agreement. This Agreement shall not be modified or amended in any manner except by written instrument executed by the parties.

19. Applicable Law. This Agreement is entered into in Gunnison County, Colorado, and it is agreed that the proper jurisdiction and venue of any action pertaining to the interpretation or enforcement of this Agreement shall be in the District Court

of Gunnison County, Colorado.

20. Attorney's Fees. It is agreed that if any action is brought in a court of law by any party to this Agreement as to the enforcement, interpretation or construction of this Agreement or any document provided for herein, the prevailing party or parties in such action shall be entitled to reasonable attorney's fees as well as all costs incurred in the prosecution or defense of such action.

21. Invalidity or Inapplicability. In any term, provision or paragraph of this Agreement, or the application thereof, be invalid or unenforceable, the remainder of this Agreement or the application of such terms, provisions and paragraphs other than which is held to be invalid or unenforceable, shall not be affected thereby and each of the remaining terms, provisions and paragraphs of the Agreement shall be valid and enforceable to the extent permitted by law.

22. Binding Agreement: This Agreement and the terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties execute this Agreement the day and year first above written.

East River Regional Sanitation District

By: Greg Wiggins

Attest: [Signature]



Riverbend Subdivision Homeowner's Association, Inc.

By: John J. Matata

Attest: William J. Thompson

(SEAL)

Slate River Estates Homeowners Association

by: [Signature]  
Ellen P. Hult  
Sec. Treas.

Attest: \_\_\_\_\_

