

**BUCKHORN VALLEY METROPOLITAN DISTRICT NO 2
ANNUAL REPORT
TO THE TOWN OF GYPSUM
FOR THE YEAR ENDED DECEMBER 31, 2022**

I. ANNUAL REPORT REQUIREMENT

Pursuant to a resolution adopted by Town Council on September 27, 2022, the District is required to provide an annual report to the Town of Gypsum by October 1st of the following year beginning with the 2021 annual report. Such annual report shall include information concerning the following matters:

- 1) Boundary changes made.
- 2) Intergovernmental agreements entered into or terminated with other governmental entities.
- 3) Access information to obtain a copy of rules and regulations adopted by the board.
- 4) A summary of litigation involving public improvements owned by the Buckhorn Districts.
- 5) The status of the construction of public improvements by the Buckhorn Districts.
- 6) A list of facilities or improvements constructed by the Buckhorn Districts that were conveyed or dedicated to the Town.
- 7) The final assessed valuation of the Buckhorn Districts as of December 31 of the reporting year.
- 8) A copy of the current year's budget.
- 9) A copy of the audited financial statements.
- 10) Notice of any uncured defaults existing for more than ninety days under any debt instrument of the Buckhorn Districts; and
- 11) Any inability of the Buckhorn Districts to pay their obligations as they come due under any obligation which continues beyond a ninety-day period.

II. FOR THE YEAR ENDED DECEMBER 31, 2022 THE DISTRICT REPORTS THE FOLLOWING:

- 1) Boundary changes made.

[No boundary changes were made or proposed to/by the District in 2022.](#)

- 2) Intergovernmental agreements entered into or terminated with other governmental entities.

[No new Intergovernmental Agreements were entered into between the District and any other governmental agencies in 2022.](#)

[On October 14, 2021, the District's board voted unanimously to terminate the District Facilities Construction and Service Agreement \(DFCSA\) with Buckhorn Valley Metro District No 1 \(BHVMD1\) effective January 01, 2022. The District Board also noted the District has a credit with BHVMD1 of approximately \\$225,000 for overpayments to BHVMD1.](#)

- 3) Access information to obtain a copy of rules and regulations adopted by the board.

The Board adopted no new rules, regulations or resolutions in 2022.

All current Board policies are publicly accessible from the document library on the District's website at www.buckhornvalleymetro2.org.

- 4) A summary of litigation involving public improvements owned by the Buckhorn Districts.

On November 01, 2022, the District filed a complaint in Eagle County District Court against Buckhorn Valley Metro District No 1 (BHVMD1) and 13 individuals who previously served on the District's board and/or on the BHVMD1 board. A copy of the complaint is attached at **Exhibit B**.

- 5) The status of the construction of public improvements by the Buckhorn Districts.

No public improvements were constructed by the District in 2022.

- 6) A list of facilities or improvements constructed by the Buckhorn Districts that were conveyed or dedicated to the Town.

No public improvements were constructed by the District in 2022.

Note: The District is not a party to any agreements between the Town and any developers of land located within the District.

- 7) The final assessed valuation of the Buckhorn Districts as of December 31 of the reporting year.

For 2023, the District's assessed valuation increased \$320,470 (or 2.3%) to \$14,171,560 from the prior year. Of that change, \$691,060 is related to valuation increases due to new construction.

- 8) A copy of the current year's budget.

See **Exhibit A** attached to this report.

- 9) A copy of the audited financial statements.

The District will file its 2022 annual audited financial statements with the Colorado State Auditor's Office on or before July 31, 2023.

- 10) Notice of any uncured defaults existing for more than ninety days under any debt instrument of the Buckhorn Districts.

N/A – The District has received no notice of default in 2022 from the Bond Trustee or the bondholders.

- 11) Any inability of the Buckhorn Districts to pay their obligations as they come due under any obligation which continues beyond a ninety-day period.

The District’s ratio of debt to total assessed property valuation is as follows:

Total outstanding debt as of 12/31/22	\$ 22,535,000	A
Net taxable assessed valuation of all property within the District for 2023	\$ 14,171,560	B
Ratio of Debt to Assessed Valuation	159.0%	A / B

Series 2003 / 2008 / 2010 Bonds – Repayment Status

Each year since the District first issued debt in 2003, the District has failed to generate sufficient property tax revenue to meet the annual principal and interest payments due on all Bonds. Consequently, accrued, unpaid interest on all Bonds is approximately \$7.8 million as of December 31, 2022. The District’s total outstanding debt as of December 31, 2022 is projected to be approximately \$22.5 million – 34.6% of which is accrued, unpaid interest.

For collection year 2023, the District will levy the maximum required mill levy of 56.057 mills which will not be sufficient to cover the 2023 debt service payments. Net proceeds from the debt mill levy will cover approximately 54% of the accrued interest for 2023 causing the District’s overall debt burden to increase by approximately \$635,000. Failure to pay interest and principal is not an Event of Default so long as the District levies the maximum required mill levy.

The District estimates that assessed valuation of real property within the District would need to increase approximately 112% (“Minimum Assessed Valuation Requirement”) in 2023 to produce sufficient tax revenue to generate sufficient revenue to begin paying its debt obligations in full. Each year the District generates insufficient revenue to fund principal and interest payments on the Bonds, the Minimum Assessed Valuation Requirement will increase.

Approximately 50% of the planned 835 home lots within the District are developed. Considering (1) the Minimum Assessed Valuation Requirement is approximately 112%, (i.e. land valuation needs to more than double in value) and (2) approximately only 50% of the planned 835 home lots within the District are developed, the development of all land within the District appears to be insufficient to allow the District to generate sufficient revenue under the maximum debt mill levy to pay down the District’s debts.

EXHIBIT A
2023 BUDGET

CERTIFICATION OF BUDGET FOR
BUCKHORN VALLEY METROPOLITAN DISTRICT NO 2

TO: THE DIVISION OF LOCAL GOVERNMENT

This is to certify that the budget, attached hereto, is a true and accurate copy of the budget for Buckhorn Valley Metropolitan District No. 2, for the budget year ending December 31, 2023, as adopted on November 28, 2022.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of Buckhorn Valley Metropolitan District No 2 in Eagle County, Colorado, this 28th day of November 2022.

DocuSigned by:
Nick Viau
68444158BB1948E...

Nickolas Viau, President

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2

GYPSUM
EAGLE COUNTY, COLORADO



2023 Budget

(Adopted on November 28, 2022)



8354 Northfield Blvd
Building G, Suite 3700
Denver, Colorado 80238
Telephone (720) 541-7725

Accountant's Report

Board of Directors
Buckhorn Valley Metropolitan District No. 2
Gypsum, Colorado

The accompanying forecasted budget of revenues, expenditures and fund balances of the Buckhorn Valley Metropolitan District No. 2 for the General Fund, Debt Service Fund and Capital Project Fund for the year ending December 31, 2023 and the forecasted estimate of comparative information for the year ending December 31, 2022 were not subjected to an audit, review, or compilation engagement by me and, accordingly, I do not express an opinion, a conclusion, nor provide any assurance on them.

Substantially all of the disclosures required by accounting principles generally accepted in the United States of America have been omitted. If the omitted disclosures were included in the forecast, they might influence the user's conclusions about the District's results of operations for the forecasted periods. Accordingly, this forecast is not designed for those who are not informed about such matters.

A handwritten signature in black ink that reads "Charles Wolfersberger". The signature is written in a cursive style with a long, sweeping underline.

Charles Wolfersberger, CPA
Henderson, CO
October 12, 2022

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
SUMMARY
FORECASTED 2023 BUDGET AS PROPOSED
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,

	ACTUAL 2021	ESTIMATED 2022	ADOPTED 2023
BEGINNING FUND BALANCE	\$ 231,948	\$ 269,759	\$ 344,400
REVENUES			
Property taxes	765,263	849,000	893,600
Specific ownership taxes	34,553	46,700	44,700
Water service fees	-	-	370,300
Storage lot rental fees	16,286	20,000	24,000
Interest income	349	4,241	3,100
Total Revenues	816,461	919,941	1,335,700
OTHER FINANCING SOURCES			
Interfund transfers	12,930	-	144,300
Total Funds Available	1,061,339	1,189,700	1,824,400
EXPENDITURES			
General and administration	-	25,000	26,900
Water services	-	-	226,000
Storage lot expenses	10,000	20,000	24,000
Legal / contingency costs	-	-	77,400
Debt service			
a) Direct and indirect collection costs	30,134	73,200	80,500
b) Bond principal payments	-	-	-
c) Bond interest payments	703,355	727,100	756,600
Capital project expenses	-	-	30,000
Total Expenditures	778,650	845,300	1,221,400
OTHER FINANCING USES			
Transfer to Buckhorn Valley Metro District No 1	35,161	-	-
Interfund transfers	12,930	-	144,300
Total expenditures and transfers out requiring appropriation	826,741	845,300	1,365,700
ENDING FUND BALANCE	\$ 269,759	\$ 344,400	\$ 458,700
EMERGENCY EXPENSE RESERVE	\$ 2,600	\$ 8,400	\$ 8,600
TOTAL DEBT RESERVES	-	-	-
CASH HELD BY BUCKHORN VALLEY METRO DISTRICT 1	262,598	262,598	262,598
TOTAL RESTRICTED FUNDS	\$ 265,198	\$ 270,998	\$ 211,198

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
PROPERTY TAX SUMMARY INFORMATION
 For the Years Ended and Ending December 31,

	ADOPTED 2021	ADOPTED 2022	ADOPTED 2023
ASSESSED VALUATION – EAGLE COUNTY			
Residential	\$ 11,379,120	\$ 12,257,990	\$ 12,727,650
Vacant Land	1,005,580	1,488,280	1,336,030
State Assessed	97,990	104,820	107,880
Commercial	3,300	-	-
Certified Taxable Value	\$ 12,485,990	\$ 13,851,090	\$ 14,171,560
MILL LEVY			
General Fund	6.811	6.810	7.000
Debt Service Fund	54.488	54.489	56.057
Total Mill Levy	61.299	61.299	63.057
PROPERTY TAXES			
General Fund	\$ 85,000	\$ 94,300	\$ 99,200
Debt Service Fund	680,300	754,700	794,400
	\$ 765,300	\$ 849,000	\$ 893,600

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
GENERAL FUND EXPENDITURE DETAILS
FORECASTED 2023 BUDGET AS PROPOSED
WITH 2021 ACTUAL AND 2022 ESTIMATED

For the Years Ended and Ending December 31,

	ACTUAL 2021	ESTIMATED 2022	ADOPTED 2023
BEGINNING FUND BALANCE	\$ 225,210	\$ 269,759	\$ 344,400
REVENUES			
Property taxes	85,030	94,300	99,200
Specific ownership taxes	3,839	5,200	5,000
Water service fees	-	-	370,300
Storage lot rental fees	16,286	20,000	24,000
Interest income	36	141	100
Total Revenues	105,191	119,641	498,600
Total Funds Available			
	330,401	389,400	843,000
EXPENDITURES			
General & administrative expenses	2,551	25,000	26,900
Water services	-	-	226,000
Storage lot expenses	10,000	20,000	24,000
Litigation costs	-	-	77,400
Total Expenditures	12,551	45,000	354,300
OTHER FINANCING USES AND TRANSFERS OUT			
Transfer to Buckhorn Valley Metro District No 1	35,161	-	-
Transfers to debt fund	12,930	-	-
Transfers to capital project fund	-	-	144,300
Total expenditures and financing (sources) uses requiring appropriation	60,642	45,000	498,600
ENDING FUND BALANCE	\$ 269,759	\$ 344,400	\$ 344,400
EMERGENCY EXPENSE RESERVE	\$ 2,600	\$ 8,400	\$ 8,600
CASH HELD BY BUCKHORN VALLEY METRO DISTRICT 1	\$ 262,598	\$ 262,598	\$ 262,598

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
GENERAL FUND EXPENDITURE DETAILS
FORECASTED 2023 BUDGET AS PROPOSED
WITH 2021 ACTUAL AND 2022 ESTIMATED

For the Years Ended and Ending December 31,

	ACTUAL 2021	ESTIMATED 2022	ADOPTED 2023
General & Administrative Expenses			
District management fees	\$ -	\$ 40,000	\$ 40,000
Administrative costs	-	2,500	3,000
Collection fees – County Treasurer (3% of PropTax)	2,551	2,900	3,000
Audit fees	-	7,200	7,200
Insurance	-	2,400	3,500
Legal fees – general	-	20,000	10,000
Election services	-	-	10,000
Contingency	-	-	4,000
Indirect collection cost allocation to debt fund (67%)	-	(50,000)	(53,800)
Total General & Administrative Expenses	\$ 2,551	\$ 25,000	\$ 26,900
Water Services			
Employee payroll costs	\$ -	\$ -	\$ 85,000
Billing/collection costs	-	-	15,000
Utilities	-	-	12,000
Repairs and maintenance	-	-	50,000
Water rights fees	-	-	10,000
Property insurance	-	-	7,000
Water engineering/validation study	-	-	30,000
Water system reserve study	-	-	20,000
Contingency	-	-	7,000
Total Water Service Costs	\$ -	\$ -	\$ 226,000

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
DEBT SERVICE FUND
FORECASTED 2023 BUDGET AS PROPOSED
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,

	ACTUAL 2021	ESTIMATED 2022	ADOPTED 2023
BEGINNING FUND BALANCE	\$ 6,738	\$ -	\$ -
REVENUES			
Property taxes	680,243	754,700	794,400
Specific ownership taxes	30,714	41,500	39,700
Interest income	313	4,100	3,000
Total Revenues	711,270	800,300	837,100
FUND TRANSFERS IN			
Transfers from the General Fund	12,930	-	-
Total Funds Available	730,938	800,300	837,100
EXPENDITURES			
Direct and indirect collection costs	27,583	73,200	80,500
Bond principal – 2003 Series Bonds	-	-	-
Bond principal – 2008 Series Bonds	-	-	-
Bond principal – 2010 Series Bonds	-	-	-
Bond interest – 2003 Series Bonds	182,314	181,800	189,200
Bond interest – 2008 Series Bonds	-	-	-
Bond interest – 2010 Series Bonds	581,041	545,300	567,400
Total Expenditures	730,938	800,300	837,100
OTHER FINANCING USES AND TRANSFERS OUT			
Fund transfers out	-	-	-
Total expenditures and financing uses requiring appropriation	730,938	800,300	837,100
ENDING FUND BALANCE	\$ -	\$ -	\$ -
BOND FUND	\$ -	\$ -	\$ -
RESERVE FUND	-	-	-
SURPLUS FUND	-	-	-
TOTAL DEBT RESERVE	\$ -	\$ -	\$ -

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
**DEBT SERVICE FUND - DIRECT AND INDIRECT
 COLLECTION COST DETAILS**
**FORECASTED 2023 BUDGET AS PROPOSED
 WITH 2021 ACTUAL AND 2022 ESTIMATED**
 For the Years Ended and Ending December 31,

	ACTUAL 2021	ESTIMATED 2022	ADOPTED 2023
Direct and Indirect Collection Costs			
Indirect collection cost allocation	\$ 6,667	\$ 50,000	\$ 53,800
Collection fees – County Treasurer (3% of PropTax)	20,416	22,700	23,900
Trustee fees	500	500	500
Contingency	-	-	2,300
Total Direct and Indirect Collection Costs	\$ 27,583	\$ 73,200	\$ 80,500

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
CAPITAL PROJECT FUND
FORECASTED 2023 BUDGET AS PROPOSED
WITH 2021 ACTUAL AND 2022 ESTIMATED
For the Years Ended and Ending December 31,

	ACTUAL 2021	ESTIMATED 2022	ADOPTED 2023
BEGINNING FUND BALANCES	\$ -	\$ -	\$ -
REVENUES			
Net investment income	-	-	-
Total Revenues	-	-	-
OTHER FINANCING SOURCES			
Transfers in from operating fund	-	-	144,300
Total Funds Available	-	-	144,300
EXPENDITURES			
Capital improvement expenditures	-	-	30,000
Total Expenditures	-	-	30,000
Total expenditures requiring appropriation	-	-	30,000
ENDING FUND BALANCES	\$ -	\$ -	\$ 114,300

This financial information should be read only in connection with the summary of significant assumptions.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

Services Provided

Buckhorn Valley Metropolitan District No. 2 (District), a quasi-municipal corporation and political subdivision of the State of Colorado, was organized on May 15, 2000, and is governed pursuant to provisions of the Colorado Special District Act (Title 32). The District operates under a consolidated service plan (which also governs Buckhorn Valley Metropolitan District No. 1) approved by the Town of Gypsum (Town) on January 11, 2000 and amended and restated with Town approval on July 14, 2009. The District's service area is located in Eagle County, Colorado entirely within the boundaries of the Town and is comprised of approximately 368 acres of land zoned for residential development. The District was established to provide financing for the design, acquisition, construction and installation of water, sanitation, street improvements, parks and recreational facilities, television relay and translation, mosquito control and other improvements (Public Improvements) within and without the District boundaries that benefit the taxpayers and inhabitants of the District. The District was created to provide certain essential public-purpose facilities for the use and benefit of all its anticipated residents and taxpayers of real property located within the boundaries of the District.

The District follows the Governmental Accounting Standards Board (GASB) accounting pronouncements, which provide guidance for determining which governmental activities, organizations and functions should be included within the financial reporting entity. GASB pronouncements set forth the financial accountability of a governmental organizations elected governing body as the basic criterion for including a possible component governmental organization in a primary government's legal entity. Financial accountability includes, but is not limited to, appointment of a voting majority of the organizations governing body, ability to impose its will on the organization, a potential for the organization to provide specific financial benefits or burdens and fiscal dependency.

The District has no employees and all operations and administrative functions are contracted.

The District is not financially accountable for any other organization, nor is the District a component unit of any other primary governmental entity.

Accounting Basis

The District prepares its budget on the modified accrual basis of accounting.

Litigation

On November 01, 2022, the District filed a lawsuit against Buckhorn Valley Metropolitan District No 1 (BVMD1) and individual defendants. A primary objective of this lawsuit is to obtain control and ownership of the public irrigation water system servicing all property owners of the District and associated water rights from BVMD1 to pull water from the Eagle River and Abrams Creek. Generally, the District is seeking to remedy prior acts of mismanagement, breach of fiduciary duty and misappropriation of public funds. The case is docketed in the Eagle County District Court as case #22CV30208.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

Revenues

Property Taxes

Property taxes are levied by the District's Board of Directors. The levy is based on assessed valuations determined by the County Assessor generally as of January 1 of each year. The levy is normally set by December 15 by certification to the County Commissioners to put the tax lien on the individual properties as of January 1 of the following year. The County Treasurer collects the determined taxes during the ensuing calendar year. The taxes are payable by April or, if in equal installments, at the taxpayer's election, in February and June. Delinquent taxpayers are notified in August and generally sales of the tax liens on delinquent properties are held in November or December. The County Treasurer remits the taxes collected monthly to the District.

On November 07, 2000, District voters authorized the District to assess property taxes at no more than \$500,000 annually, without limitation to rate, to pay the District's operations, maintenance and other expenses. Additionally, the District voters approved a revenue change to allow the District to retain and spend all revenue, other than ad valorem taxes, in excess of TABOR spending, revenue raising or other limitations.

The District's Service Plan establishes a Maximum Operating Mill levy the District is permitted to impose on taxable property within the District for funding the District's operations. The Maximum Operating Mill Levy is 5.375 mills, as adjusted by the State of Colorado for changes in the ratio of taxable valuation to assessed valuation of real property since January 1, 2000. As of January 11, 2000, the ratio was 9.74%. The ratio for 2023 is 6.95%, which caused the District's Maximum Operating Mill Levy for 2023 to be 7.533.

The District's Service Plan establishes a Maximum Debt Mill levy the District is permitted to impose on taxable property within the District for the payment of debt. As long as the District's total outstanding debt exceeds 50% of the assessed valuation of all taxable property within the District, the Maximum Debt Mill Levy is 40 mills, as adjusted by the State of Colorado for changes in the ratio of taxable valuation to assessed valuation of real property since January 1, 2000. As of January 11, 2000, the ratio was 9.74%. The ratio for 2023 is 6.95%, which caused the District's Maximum Debt Mill Levy for debt service for 2023 to be 56.057.

For the collection year 2023, the District adopted a mill levy of 7.000 for operations and 56.057 for debt service. The calculation is reflected on page 2 of the budget. The District's 2023 adopted mill levy for general operations is expected to generate \$99,200 in property tax revenue, which is \$400,800 below the annual property tax assessment limit established by the voters to fund District operations.

Specific Ownership Taxes

Beginning in 1937, the State of Colorado began assessing a tax annually on motor vehicles (aka Specific Ownership Tax). The Specific Ownership Tax is graduated based on a vehicle's age and original value. Specific Ownership Tax revenue collected by the State is apportioned among the 64 counties based on the number of state highway miles within each county. Each county allocates its respective share of specific ownership tax revenue proportionally among the various property-taxing governmental entities on the basis of total property taxes assessed by each entity in relation to total property taxes assessed by all entities within the county. The 2023 budget projects the District's share of specific ownership taxes received from the State will be equal to approximately 5.0% of total property taxes collected.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

The District allocates specific ownership tax revenue proportionally between each fund based on the ratio of property tax revenue collected for each fund compared to total property revenue collected by the District.

Water Service Fees

The District is currently in litigation with BVMD1 in which the District seeks control and ownership of the public irrigation water system and associated water rights from BVMD1 to pull water from the Eagle River and Abrams Creek. For budgetary purposes, the District anticipates assuming ownership of the water rights and ownership and maintenance responsibilities of the public irrigation system designed to service the landscaping on and around (1) all 835 residential lots within the District, (2) approximately 12.3 acres of parks and open spaces within the District and (3) the Holy Cross distribution station. The primary assets comprising the District's irrigation system are (1) two pump stations, (2) approximately 26,000 feet of JPO ditches and headgates, (3) approximately 20,000 feet of water main lines and (4) nine control valves. This infrastructure was installed in 2006.

The District anticipates incurring certain fixed costs each year related to the public irrigation system regardless of the number of residential lots connected to the irrigation system. Such costs include (1) routine maintenance of the irrigation system, (2) unscheduled major repairs to the system not funded from the capital project fund, (3) contributions to the capital project fund for the purpose of funding long-term, planned replacements and upgrades to the public irrigation system, (4) legal costs to defend the District's water rights, (5) property insurance premiums and (6) utility, maintenance and other costs (including winterization of the system) related to providing irrigation water to the public parks and open spaces across the District. Variable costs incurred by the District directly related to providing irrigation services to residential lots connected to the irrigation system include (1) a portion of the utility costs related to running the pump stations and (2) scheduled and unscheduled repairs and maintenance of irrigation systems located on residential lots.

Pursuant to CRS 32-1-1001(1)(j) and (k), the District is authorized to impose and, from time to time, to increase or decrease fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the District. If the water irrigation system is transferred to the District, the District will consider (1) establishing a policy of proportionally allocating the fixed costs of maintaining the District's irrigation system among the 835 residential lots (both developed and undeveloped Lots) based on the average lot size of each subdivision within the District and (2) assessing monthly service fees on each of the 835 residential lots within the District to fund the fixed costs of maintaining the District's irrigation system.

Storage Lot Rental Fees

The District owns certain land within the District totaling 2.4 acres and has converted this land into a recreational vehicle (RV) storage lot. The RV storage lot contains 50 separate storage spaces. For 2023, the rental rate for storage spaces is \$40/month per storage space and renters may enter into contracts to lock in the rental rate for up to 12 months.

Net Investment Income

Interest earned on the District's available funds has been estimated based on an average interest rate of less than 0.50%.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

Expenditures

Administrative and Operating Expenditures

Administrative and operating expenditures include the estimated services necessary to maintain the District's administrative viability such as legal, management, accounting, insurance, banking, and board meeting expenses.

County Treasurer's Fees

Eagle County Treasurer's collection fees are fixed by Colorado statute at 3.0% of property taxes collected.

Direct and Indirect Collection Costs

Collection costs incurred by the District related to the collection of property taxes includes all costs incurred by the District that enable and support the District's ability to collect property taxes revenue. Generally, such costs include (a) operating and reporting compliance costs that protect the District's right to collect property taxes (e.g. financial statement audit fees, fees paid to professionals to prepare mandatory periodic financial and operational reports to the City and State, etc), (b) professional fees related to applying and monitoring accounting controls over the collection of District revenues, (c) costs related to managing the District's annual property tax assessment process and (d) insurance protecting the District from liability exposure that potentially could arise from performing these activities.

For the 2023 year, the District will allocate indirect collection costs between its general fund (33% cost allocation) and its debt fund (67% cost allocation). Direct collection costs such as county treasurer collection fees are proportionally allocated to each fund on the basis of each property tax revenue allocable to each fund proportion to total property tax revenue assessed by the District.

Agreements

District Facilities Construction and Service Agreement

On March 3, 2003, the District entered into the First Amended and Restated District Facilities Construction and Service Agreement (DFCS Agreement) with Buckhorn Valley Metropolitan District No. 1 (BVMD1). Per the DFCS Agreement, the District agreed to fund public infrastructure constructed by BVMD1 and BVMD1 agreed to provide all management and accounting services for the District.

As of December 31, 2021, cumulative payments by the District to BVMD1 under the DFCS Agreement for management and accounting services exceeded BVMD1 service charges by \$211,964, and BVMD1 reported public infrastructure costs incurred by BVMD1 but not yet reimbursed by the District under the DFCS Agreement totaled \$3,889,366.

As of November 8, 2020, all unused debt authority granted to the District by its voters expired and, per Colorado constitutional and statutory restrictions, the District may not incur additional debt without first obtaining voter approval to incur additional debt.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

Debt and Leases

Series 2003 Bond

On March 01, 2003, the District issued \$2,500,000 General Obligation Limited Tax Bonds, Series 2003 (the 2003 Bond). The 2003 Bond bears interest at 7.000% and is payable semi-annually on June 1 and December 1, beginning on June 1, 2003. Annual mandatory sinking fund principal payments are due on December 1, beginning on December 1, 2020. The 2003 Bond matures on December 1, 2023.

The 2003 Bond is secured by and payable solely from Pledged Revenue, net of any costs of collection, which is comprised of the following:

- a) all Property Tax Revenues generated by the imposition of the Required Mill Levy;
- b) all Specific Ownership Taxes attributable to the Required Mill Levy;
- c) all amounts on deposit in the 2010 Reserve Fund;
- d) all amounts on deposit in the 2010 Surplus Fund; and
- e) any other legally available amounts that the District determines, in its absolute discretion, to credit to the Bond Fund.

Amounts on deposit in the 2010 Reserve Fund and amounts on deposit in the 2010 Surplus Fund also secure payment of the 2003 Bond.

The District's debt service schedule for its Senior Bonds is provided on page 14.

Series 2008 Subordinate Bond

On February 13, 2008, the District issued a \$8,500,000 General Obligation Bond, Series 2008 (the 2008 Subordinate Bond) to Roark Partners LLLP ("Developer") to reimburse the Developer for amounts advanced by the Developer to Buckhorn Valley Metropolitan District No. 1. The 2008 Subordinate Bond accrues simple interest at the rate of 6.000% per annum and is payable annually on December 15, beginning December 15, 2008, from, and to the extent of, Subordinate Pledged Revenue available, if any, and matures on December 15, 2038. The Subordinate Bonds are structured as cash flow bonds meaning that there are no scheduled payments of principal or interest prior to the final maturity date.

The 2008 Subordinate Bond is secured by and payable from Subordinate Pledged Revenue, net of any costs of collection, which includes:

- a) all Subordinate Property Taxes generated by the imposition of the Subordinate Required Mill Levy;
- b) all Subordinate Specific Ownership Taxes attributable to the Subordinate Required Mill Levy; and
- c) any other legally available moneys which the District determines, in its absolute discretion, to credit to the Subordinate Bond Fund.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

Series 2010 Bonds

On May 25, 2010, the District issued \$7,370,000 General Obligation Limited Tax Refunding and Improvement Bonds, Series 2010 (the 2010 Bonds). The proceeds from the sale of the Senior Bonds were used as follows: (a) paying or reimbursing a portion of the costs of acquiring, constructing, relocating, and installing certain public improvements and facilities; (b) refunding a portion of the District’s outstanding Series 2008 subordinate bonds and refunding the Original Developer Note; (c) funding the 2010 Reserve Fund and; (d) paying the costs of issuance of the Series 2010 bonds.

The Senior Bonds were issued as two term bonds that bear interest at 7.250% and 8.500%, and are payable semi-annually on June 1 and December 1, beginning on December 1, 2010. Annual mandatory sinking fund principal payments are due on December 1, beginning on December 1, 2012. The 2010 Bonds mature on December 1, 2039.

The 2010 Bonds are secured by and payable solely from Pledged Revenue, net of any costs of collection, which is comprised of the following:

- a) all Property Tax Revenues generated by the imposition of the Required Mill Levy;
- b) all Specific Ownership Taxes attributable to the Required Mill Levy;
- c) all amounts on deposit in the 2010 Reserve Fund;
- d) all amounts on deposit in the 2010 Surplus Fund; and
- e) any other legally available amounts that the District determines, in its absolute discretion, to credit to the Bond Fund.

Amounts on deposit in the 2010 Reserve Fund and amounts on deposit in the 2010 Surplus Fund also secure payment of the 2010 Bonds.

Leases

The District has no operating or capital leases.

Reserve Funds

Emergency Reserve

The District has provided for an emergency reserve equal to at least 3% of the fiscal year spending, excluding spending appropriations for bonded debt service for 2023 as defined under TABOR.

Series 2010 Bonds – Reserve Fund

The 2010 Reserve Fund was established as additional security for the Series 2003 and 2010 Bonds and is used to fund any deficiencies in the amounts required to pay bond principal and interest when due. The District is required to maintain this reserve at a balance of \$300,000. Any withdrawals from this fund will be repaid in the following year from any remaining Pledged Revenue net of annual payments due that year on the 2003 and 2010 Bonds.

The District estimates the 2010 Reserve Fund balance will be \$0 as of December 31, 2023.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
2023 BUDGET
SUMMARY OF SIGNIFICANT ASSUMPTIONS

Series 2010 Bonds – Surplus Fund

The 2010 Surplus Fund was established as additional security for the bonds and will be used to fund any deficiencies in the amounts required to pay bond principal and interest when due. The 2010 Surplus Fund will be funded solely from any Pledged Revenue remaining after annual payments on the 2003 and 2010 Bonds are fully satisfied and the 2010 Reserve Fund is fully funded. In accordance with the 2010 Bond Indenture, the 2010 Surplus Fund will be funded up to the Maximum Surplus Amount of \$500,000. Any amount remaining in the 2010 Surplus Fund upon termination of such fund is pledged to the payment of the 2008 Bond.

The District anticipates the 2010 Surplus Fund will remain fully depleted in 2023.

BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2
SCHEDULE OF DEBT SERVICE REQUIREMENTS TO MATURITY

The District's repayment schedule for its general obligation bonds is as follows:

Year Ended Dec. 31,	General Obligation Bonds Series 2003			General Obligation Bonds Series 2010			General Obligation Bonds Series 2008			Total		
	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total	Principal	Interest	Total
2023	\$2,055,000	\$1,033,632	\$ 3,088,632	\$1,203,000	\$ 3,978,815	\$ 5,181,815	\$ -	\$ 3,516,855	\$ 3,516,855	\$ 3,258,000	\$ 8,529,302	\$ 11,787,302
2024	-	-	-	170,000	511,275	681,275	-	326,930	326,930	170,000	838,205	1,008,205
2025	-	-	-	170,000	498,950	668,950	-	326,930	326,930	170,000	825,880	995,880
2026	-	-	-	185,000	484,500	669,500	-	326,930	326,930	185,000	811,430	996,430
2027	-	-	-	200,000	468,775	668,775	-	326,930	326,930	200,000	795,705	995,705
2028	-	-	-	215,000	451,775	666,775	-	326,930	326,930	215,000	778,705	993,705
2029	-	-	-	235,000	433,500	668,500	-	326,930	326,930	235,000	760,430	995,430
2030	-	-	-	315,000	413,525	728,525	-	326,930	326,930	315,000	740,455	1,055,455
2031	-	-	-	350,000	386,750	736,750	-	326,930	326,930	350,000	713,680	1,063,680
2032	-	-	-	380,000	357,000	737,000	-	326,930	326,930	380,000	683,930	1,063,930
2033	-	-	-	425,000	324,700	749,700	-	326,930	326,930	425,000	651,630	1,076,630
2034	-	-	-	460,000	288,575	748,575	-	326,930	326,930	460,000	615,505	1,075,505
2035	-	-	-	500,000	249,475	749,475	-	326,930	326,930	500,000	576,405	1,076,405
2036	-	-	-	535,000	206,975	741,975	-	326,930	326,930	535,000	533,905	1,068,905
2037	-	-	-	585,000	161,500	746,500	-	326,930	326,930	585,000	488,430	1,073,430
2038	-	-	-	630,000	111,775	741,775	-	326,930	326,930	630,000	438,705	1,068,705
2039	-	-	-	685,000	58,225	743,225	5,488,836	326,930	5,815,766	6,173,836	385,155	6,558,991
	\$2,055,000	\$1,033,632	\$3,088,632	\$7,243,000	\$ 9,386,090	\$16,629,090	\$5,448,836	\$ 8,747,735	\$ 14,236,571	\$ 14,786,836	\$19,167,457	\$ 33,954,293

EXHIBIT B

**NOVEMBER 01, 2022 COMPLAINT FILED IN EAGLE COUNTY DISTRICT COURT AGAINST
BUCKHORN VALLEY METRO DISTRICT NO 1 AND 13 INDIVIDUALS**

<p>DISTRICT COURT, EAGLE COUNTY, COLORADO P.O. BOX 597 885 CHAMBERS AVENUE EAGLE, COLORADO 81631</p>	
<p>Plaintiffs:</p> <p>BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the state of Colorado,</p> <p>v.</p> <p>Defendants:</p> <p>BUCKHORN VALLEY METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the state of Colorado; DAVID GARTON, JR, SANDE GARTON, ROBERT KINGSTON, MALLIE KINGSTON, SAMANTHA GALE, HERB EATON, STEPHEN KELLEY, SCOTT GREEN, JOHN HILL, GAYL HILL, ANNA MARIE RAY, MAXINE HEPFER, NICHOLAS RICHARDS, in their capacity as individuals.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case No: 2022CV</p> <p>Division:</p>
<p>Attorneys for Plaintiff:</p> <p>Paul C. Rufien, #19948 Paul C. Rufien, P.C. 3900 East Mexico Avenue, Suite 300 Denver, Colorado 80210 Telephone: 720-506-9230 E-mail: paul@rufienlaw.com</p>	
<p>COMPLAINT AND JURY DEMAND; COMPLAINT UNDER C.R.C.P. 106</p>	

Buckhorn Valley Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (“District 2”), through counsel of Paul C. Rufien, P.C., submits this Complaint and Jury Demand; Complaint under C.R.C.P. 106 (“Complaint”) against the above-named Defendants.

I. PARTIES, JURISDICTION, AND VENUE

1. District 2 is a Colorado special district, organized and operating under Title 32 of the Colorado Revised Statutes.
2. Buckhorn Valley Metropolitan District No. 1 is a Colorado special district, organized and operating under Title 32 of the Colorado Revised Statutes (“District 1”).
3. David Garton, Jr. served on the boards of directors of District 1 and District 2 from approximately May 2000 to June 2021. Subsequent to June 2021, David Garton, Jr. no longer served on the board of directors of District 2, but continues to serve on the board of directors of District 1 as of the date of the filing of this Complaint.
4. David Garton, Jr. was the general partner of Roark Partners LLLP, a Colorado limited liability limited partnership that was voluntarily dissolved in 2018.
5. Sande Garton served on the boards of directors of District 1 and District 2 from approximately May 2000 to August 2008.
6. During her service on the respective boards of directors of District 1 and District 2, Sande Garton was the wife of David Garton, Jr., and was an employee of Roark Partners LLLP.
7. Samantha G. Gale served on the boards of directors of District 1 and District 2 from approximately May 2000 to October 2020.
8. Samantha Gale is the daughter of David Garton, Jr., and during her service on the respective boards of directors of District 1 and District 2 was an employee of Roark Partners LLLP and Colorado Land Management LLC.
9. Robert J. Kingston served on the boards of directors of District 1 and District 2 from approximately May 2000 to December 2007.
10. During his service on the respective boards of directors of District 1 and District 2, Robert Kingston was an employee of Roark Partners LLLP.
11. Mallie J. Kingston served on the boards of directors of District 1 and District 2 from approximately May 2000 to September 2006.
12. During her service on the respective boards of directors of District 1 and District 2, Mallie Kingston was the wife of Robert Kingston.
13. Herb Eaton served on the boards of directors of District 1 and District 2 in 2008.

14. During his service on the respective boards of directors of District and District 2, Herb Eaton was an employee of Roark Partners LLLP.

15. John Hill served on the boards of directors of District 1 and District 2 from approximately December 2008 to June 2021. Subsequent to June 2021, John Hill no longer served on the board of directors of District 2, but continues to serve on the board of directors of District 1 as of the date of the filing of this Complaint.

16. John Hill is the vice-president of BV DevCo, LLC, which acquired approximately 50 lots from Roark Partners LLLP within the boundaries of District 2 and developed those lots into home lots later sold for profit.

17. Gayl Hill served on the boards of directors of District 1 and District 2 from approximately December 2008 to February 2011.

18. During her service on the respective boards of directors of District 1 and District 2, Gayl Hill was the wife of John Hill.

19. Stephen Kelley served on the boards of directors of District 1 and District 2 from approximately April 2009 to April 2010.

20. Stephen Kelly is the owner of Kelley Mountain Development, LLC, which contracted with the developer of the property constituting the boundaries of District 2 to perform engineering services on behalf of District 2.

21. Scott Green served on the boards of directors of District 1 and District 2 from approximately August 2010 to February 2021.

22. Scott Green is the owner of Scott Green Excavating, Inc., which contracted with District 2 to perform excavating and related services on behalf of District 2.

23. Anna Maria Ray served on the boards of directors of District 1 and District 2 from approximately February 2011 to April 2021. Subsequent to April 2021, Anna Marie Ray no longer served on the board of directors of District 2, but continues to serve on the board of directors of District 1 as of the date of the filing of this Complaint.

24. Maxine Hepfer serves on the board of directors of District 1 from approximately June 2021 through the date of the filing of this Complaint.

25. Maxine Hepfer is the daughter of Christiana Hepfer, who is a principal of International Capital, LLC, which is the firm that manages the assets for BV Firewheel, LLC, the current owner of undeveloped land within the boundaries of District 2 that is to be developed for profit.

26. Nicholas Richards serves on the board of directors of District 1 from approximately June 2021 through the date of the filing of this Complaint.

27. Collectively, David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston, Mallie J. Kingston, John V. Hill, Gayl Hill, Stephen Kelley, Scott Green, Anna Maria Ray, Maxine Hepfer and Nicholas Richards may be referred to as the “Individual Defendants”.

28. Upon information and belief, no party is a member of the military.

29. The Individual Defendants are subject to the personal jurisdiction of this Court pursuant to C.R.S. § 13-1-124 because, inter alia, each Individual Defendant is located in, transacts in, and has committed an actionable claim in Eagle County, Colorado.

30. Venue is proper in Eagle County, Colorado, and with the District Court of Eagle County, Colorado, because District 1 and District 2 and their service areas are located in Eagle County, the activities at issue occurred in Eagle County, and the bonds at issue in this action were issued in Eagle County.

II. GENERAL ALLEGATIONS

A. DISTRICT 1 AND DISTRICT 2 SERVICE PLANS

31. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

32. District 1 and District 2 are located in the Town of Gypsum, Eagle County, Colorado.

33. Metropolitan districts may be formed under the Colorado Special Districts Act, C.R.S. §§ 32-1-201, et seq. to provide certain designated public improvements and services to residents and taxpayers of the district.

34. Pursuant to the Colorado Special Districts Act, the petitioners of a proposed metropolitan district must submit for approval a service plan to the municipality in which the metropolitan district is to be formed.

35. The adopted service plan together with Title 32 and other applicable laws govern how a metropolitan district must conduct its affairs.

36. Roark Partners LLLP, as the original developer of the property within the boundaries of District 2, submitted a service plan to the Town of Gypsum (“Gypsum”) to approve the creation of both District 1 and District 2. Gypsum approved the Service Plan in 2000 (“2000 Service Plan”). The 2000 Service Plan is attached to this Complaint as **Exhibit A** and incorporated by this reference.

37. The Eagle County District Court declared District 1 and District 2 organized in 2000.

38. The 2000 Service Plan contemplated the District financing a number of public improvements, including a potable water system, irrigation (raw) water system, sanitary sewer system, storm sewer system, streets – minor collector, streets – local residential, and park and recreation facilities.

39. Under the 2000 Service Plan, the long-term plan for District 1 and District 2 is to consolidate the districts into a single entity, with the electorate of the districts to control the decision-making.

40. In 2005, District 1 and District 2 combined to file an Amended and Restated Consolidated Service Plan.

41. In 2009, District 1 and District 2 refiled the 2005 Service Plan as a “2009 Consolidated Service Plan”. The 2009 Consolidated Service Plan was approved by the Town of Gypsum in 2009. The 2009 Consolidated Service Plan is attached to this Complaint as **Exhibit B** and incorporated by this reference.

42. Under the 2009 Consolidate Service Plan, the long-term plan for District 1 and District 2 is to consolidate the districts into a single entity, with the electorate of the districts to control the decision-making.

43. Pursuant to the 2000 Service Plan, the 2005 Service Plan and the 2009 Consolidated Service Plan (collectively the “Service Plans”), the primary purpose of the Districts is to provide public improvements to be dedicated to the Town of Gypsum or retained by the Districts for the use and benefit of the Districts' inhabitants and taxpayers. The Districts will retain responsibility for maintenance of the raw water system and will agree with Gypsum on an acceptable standard of maintenance.

44. As established by the Service Plans, the boundaries of District 1 constitute a single residential parcel consisting of 0.301 acres (“District 1 Parcel”).

45. The District 1 Parcel since 2000 has been owned or subject to an option contract to own, by owners, representatives, employees, agents or designees of the developer of the community defined in the Service Plans as “Buckhorn Valley.”

46. Each of the Individual Defendants were granted an ownership interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley in order to qualify as members of the board of directors of District 1.

B. ILLEGAL INTERGOVERNMENTAL AGREEMENTS

47. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

48. Since its creation in 2000, District 1 has been governed by a board of directors comprised of 4-5 of the Individual Defendants, each of whom were granted an ownership

interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley in order to qualify as members of the board of directors of District 1.

49. Except for the District 1 Parcel, all other property within the Buckhorn Valley community is within the boundaries of District 2.

50. The first developed lot within Buckhorn Valley that is part of District 2's boundaries that was owned by people other than the owners, representatives, employees, agents or designees of the developer of the community was sold in December 2000.

51. Between 2000 and May 2020, representation on the District 2 board of directors was identical to that of District 1, comprised of 4-5 of the Individual Defendants, each of whom were granted an ownership interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley in order to qualify as members of the board of directors of District 1.

52. On or about July 20, 2000, District 1 and District 2 entered into a District Facilities and Construction and Service Agreement for the implementation of principles and objectives set forth in the Service Plans regarding the financing, construction, operation, and maintenance of Facilities (as defined in the Service Plans), and regarding administration of the affairs of the Districts including the collection, management and expenditure of funds of the Districts. The 2000 Agreement shall be referred to as the "Initial Agreement."

53. At the time of the execution of the Initial Agreement, District 1 and District 2 were governed and controlled by the identical board members- Individual Defendants, David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston each of whom were granted an ownership interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley, Roark Partners LLLP.

54. David Garton, Jr. was the general partner of Roark Partners LLLP at the time of execution of the Initial Agreement.

55. Sande Garton was the wife of David Garton, Jr., and was also a partner and employee of Roark Partners LLLP at the time of the execution of the Initial Agreement.

56. Samantha Gale was the daughter David Garton, Jr., and was also an employee of Roark Partners LLLP at the time of the execution of the Initial Agreement

57. Robert Kingston and Mallie Kingston were employees of Roark Partners LLLP at the time of the execution of the Initial Agreement.

58. On or about March 3, 2003, District 1 and District 2 entered into a FIRST AMENDED DISTRICT FACILITIES CONSTRUCTION AND SERVICE AGREEMENT for the implementation of principles and objectives set forth in the Service Plans regarding the financing, construction, operation, and maintenance of Facilities (as defined in the Service Plans), and regarding administration of the affairs of the Districts including the collection,

management and expenditure of funds of the Districts, which shall be referred to as the “2003 Agreement.”

59. At the time of the execution of the 2003 Agreement, District 1 and District 2 were governed and controlled by the identical board members- Individual Defendants, David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston each of whom were granted an ownership interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley, Roark Partners LLLP.

60. David Garton, Jr. was the general partner of Roark Partners LLLP at the time of execution of the 2003 Agreement.

61. Sande Garton was the wife of David Garton, Jr., and was also a partner and employee of Roark Partners LLLP at the time of the execution of the 2003 Agreement.

62. Samantha Gale was the daughter David Garton, Jr., and was also an employee of Roark Partners LLLP at the time of the execution of the 2003 Agreement

63. Robert Kingston and Mallie Kingston were employees of Roark Partners LLLP at the time of the execution of the 2003 Agreement.

64. A copy of the 2003 Agreement is attached as **Exhibit C** and incorporated by this reference.

C. BOND ISSUANCE

65. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

66. On March 1, 2003, two days prior to the execution of the 2003 Agreement, District 2 issued \$2,500,000 in General Obligations Limited Tax Bonds, Series 2003 (the "Series 2003 Bonds").

67. Pursuant to the Service Plans and the 2003 Agreement, District 2 is the entity that must issue any governmental debt, because it is the entity that will be populated by taxpaying homeowners, while District 1 is populated by only its board members with an ownership interest, or option to obtain ownership interest in the District 1 Parcel.

68. On February 13, 2008, District 2 issued \$8,500,000 in Subordinate General Obligation Limited Tax Bonds, Series 2008 (the "Subordinate Bonds") to be delivered to Roark Partners, LLLP (the "Developer") as consideration for public infrastructure construction costs Roark Partners, LLLP claimed to have incurred on behalf of District 2.

69. Authorization of the Subordinate Bonds came, in part, via a Resolution adopted by District 2 on February 7, 2008, which was signed by David Garton, Jr. as President of District 2. David Garton, Jr. was also managing partner of the Developer of Buckhorn Valley (Roark

Partners, LLLP). The February 7, 2008 Resolution was passed unanimously by the then constituted District 2 board of directors.

70. On February 7 and 13, 2008, District 1 and District 2 were governed and controlled by the identical board members- Individual Defendants, David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston each of whom were granted an ownership interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley, Roark Partners LLLP.

71. The Subordinate Bonds were structured to be purchased in a private placement by Roark Partners, LLLP, the then-developer of Buckhorn Valley. Upon dissolution of Roark Partners LLLP, ownership of the Subordinate Bonds transferred to David Garton, Jr.

72. David Garton Jr., then-President of both District 1 and District 2 and also managing partner of the Developer of the Buckhorn Valley PUD, financially benefited personally from the issuance of the Subordinate Bonds, directly as a transferee of the Subordinate Bonds and prior to the dissolution of Roark Partners LLLP by receiving compensation from Roark Partners LLLP, thereby directly benefiting financially from the benefits received by Roark Partners LLLP.

73. Sande Garton, as wife of David Garton, Jr., financially benefited personally from the issuance of the Subordinate Bonds, directly as the wife of the transferee of the Subordinate Bonds and prior to the dissolution of Roark Partners LLLP by receiving compensation from Roark Partners LLLP, thereby directly benefiting financially from the benefits received by Roark Partners LLLP.

74. Samantha Gale, Robert Kingston and Mallie Kingston, as employees of Roark Partners LLLP, financially benefited personally from the issuance of the Subordinate Bonds by receiving compensation from Roark Partners LLLP, thereby, directly benefiting financially from the benefits received by Roark Partners, LLLP.

75. In 2010, District 2 issued \$7,370,000 in General Obligation Limited Tax Refunding and Improvement Bonds, Series 2010 (the "Series 2010 Bonds").

76. In the May 10, 2010 Limited Offering Memorandum for the Series 2010 Bonds, the Individual Defendants controlled the boards of directors of both District 1 and District 2 and misrepresented the ownership of certain water rights as being owned by District 2, when in fact all water rights were owned by District 1.

77. Proceeds from the sale of the Series 2010 Bonds were to be used for the purposes of: (a) paying or reimbursing a portion of the costs of acquiring, constructing, relocating, and installing certain public improvements and facilities; (b) refunding a portion of the District's outstanding Subordinate Bonds and refunding an Original Developer Note (collectively, the "Refunded Bonds") (c) funding a 2010 Reserve Fund; and (d) paying the costs of issuance of the Bonds and refunding the Refunded Bonds.

78. At the time of the issuance of the Series 2010 Bonds, District 1 and District 2 were governed and controlled by the identical board members- Individual Defendants, David Garton, Jr., Sande Garton, Samantha G. Gale, Herb Eaton and Robert Kingston who were each granted an ownership interest, or option to purchase interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley, Roark Partners LLLP.

D. BOARD OF DIRECTORS' DISCLOSURE FAILURES

79. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

80. Individual Defendants routinely failed to make required disclosures of conflicts of interest to their respective boards of directors and to the Colorado Secretary of State as required under C.R.S. § 18-8-308.

81. Individual Defendants disclosed the following conflicts of interest during their respective tenures on the District 1 board of directors:

a. David Garton Jr. disclosed between 2004 and 2020 that he owned property within the boundaries of District 1 and District 2; that he was the general partner of Roark Partners LLLP, the developer of Buckhorn Valley; that he was an employee of Roark Partners LLLP; that he received fifty percent of the profits of Roark Partners LLLP from property sales within Buckhorn Valley; that he was a member of the board of directors of homeowners' associations within Buckhorn Valley.

b. David Garton Jr. disclosed in 2021, after a recall election process was initiated by the voters against all board members serving on the District 2 board, that he owned \$8,500,000 in bonds issued by District 2 (the Subordinate Bonds issued in 2008).

c. Sande Garton disclosed between 2004 and 2008 that she owned property within the boundaries of District 1 and District 2; that her husband (David Garton Jr.) was the general partner of Roark Partners LLLP; that she was vice president/sales manager of the Buckhorn Valley project owned by Roark Partners LLLP; that she was an employee of Roark Partners LLLP.

d. Samantha Gale disclosed between 2004 and 2011 that she owned property within the boundaries of District 1 and District 2; that she was an employee of Roark Partners LLLP; that she was an employee of Colorado Land Management LLC, which contracted for management of District 1 and District 2; that she was a member of the board of directors of homeowners' associations within Buckhorn Valley.

e. Robert Kingston disclosed in 2005 that he owned property within the boundaries of District 1 and District 2; that he was an employee of Roark Partners LLLP working as the project manager for the Buckhorn Valley PUD.

f. Mallie Kingston disclosed in 2005 that she owned property within the boundaries of District 1 and District 2 and that her husband was the project manager for Buckhorn Valley.

g. John Hill disclosed between 2008 and 2021 that he owned property within the boundaries of District 1 and District 2; that he was a member of Buckhorn Valley Development LLC (a/k/a BVD, LLC), a major landowner and developer within District 2; that he performed consulting services for BVD, LLC; that he performed consulting services for Colorado Land Management, LLC, which had a contract for management services for District 1 and District 2; that he received in excess of \$100,000/year for his services with BVD, LLC and Colorado Land Management, LLC; that he was a beneficiary of potential profits from entities that own property within District 2; that he performed consulting services for parties investigating possible purchases of property within Buckhorn Valley; that he was a director of homeowners associations within Buckhorn Valley; and in 2021 only, that he had roles within various entities operating within the Buckhorn Valley and which would benefit from decisions of the District 1 and District 2 boards of directors, including: BV Devco LLC – Vice President, Mountain Gateway at Buckhorn Valley LLC – authorized signatory, BV Firewheel, LLC – Vice President, Green Valley Homes LLC – Vice President, BV Tomahawk, LLC – Vice President and Fresh Produce Grocery Store – Vice President.

h. Gayl Hill disclosed in 2008 that she owned property within the boundaries of District 1 and District 2; that her husband was a member of Buckhorn Valley Development LLC and he received greater than \$100,000 in compensation.

i. Herb Eaton disclosed in 2008 that he owned property within the boundaries of District 1 and District 2 and that he was an employee of Roark Partners LLLP.

j. Stephen Kelley disclosed in 2009 that he had an option contract on property within the boundaries of District 1 and District 2; that he was the sole proprietor of Kelley Mountain Development, LLC, which contracted with Buckhorn Valley Development, LLC and received approximately \$75,000 annually from such contract.

k. Scott Green disclosed in 2010 that he had an option contract on property within the boundaries of District 1 and District 2; that he was the owner of Scott Green Excavating, Inc., a land development contractor that had contracts with District 1 and District 2 for the construction of roadway and ancillary improvements and received in excess of \$600,000 from such contracts.

l. Maxine Hepfer disclosed in 2021 that she owned property within the boundaries of District 1 and District 2; that she had a familial relationship with and was an employee of International Capital, LLC, which was the asset manager of BV Firewheel, the owner of remaining developable land within Buckhorn Valley; that she was a member of the boards of directors of homeowners' associations within Buckhorn Valley.

82. Individual Defendants failed to disclose the following conflicts of interest during their respective tenures on the District 1 board of directors:

a. None of the Individual Defendants disclosed that they served both on the boards of directors of District 1 and District 2, despite the fact that the two districts were different parties to the Initial Agreement and the 2003 Agreement and the two districts had opposing interests in various matters.

b. David Garton Jr. failed to disclose known conflicts between 2000 and 2007, and between 2009 and 2020 (except for disclosing membership in homeowners' associations within Buckhorn Valley).

c. David Garton Jr. failed to disclose in 2008 that Roark Partners LLLP, of which he was general partner, acquired the Subordinate Bonds; that he ultimately became the holder of the Subordinate Bonds in 2008; that Roark Partners sold lots within Buckhorn Valley for profit (of which he received 50%).

d. David Garton Jr. failed to disclose in 2018 that he, along with Sande Garton, purchased six properties from Roark Partners LLLP at substantially lower than market value.

e. On January 12, 2018, David Garton acquired six new homes within District 2 from RHP, LLC at a combined reported sales price of \$1,243,000. David Garton did not report these six home purchase transactions on any conflict of interest disclosures filed in 2018.

f. Sande Garton failed to disclose known conflicts between 2000 and 2003.

g. Sande Garton failed to disclose that she purchased a lot from Roark Partners, LLLP; that she was the wife of David Garton, Jr., when he acquired \$8,500,000 in the Subordinate Bonds.

h. Samantha Gale failed to disclose known conflicts between 2000 and 2003.

i. Samantha Gale failed to disclose that she is the daughter of David Garton Jr. and as such potentially benefited from the assignment of the Subordinate Bonds to David Garton Jr. in 2018.

j. Robert Kingston failed to disclose known conflicts between 2000 and 2004, and subsequent to 2005.

k. Mallie Kingston failed to disclose known conflicts between 2000 and 2004, and subsequent to 2005.

l. In 2008, John Hill failed to disclose that he had an interest in Capital Homes, LLC, which purchased property within Buckhorn Valley from Roark Partners, LLLP; in 2009, that BVD, LLC sold property within Buckhorn Valley to 29 Mohawk, LLC at substantially lower than

market value, and that he owned 29 Mohawk LLC; that he has ownership interests in the following ten entities: Teneris, Inc; Teneris Overlook JV, LLLP, 15 Overlook LLC, 21 Overlook LLC, 13 Mohawk LLC, 29 Mohawk LLC, WoMoKe, LLC, Collessi Property, LLC, Ellyce Hills, LLC, Eagle County Liquidity Trust, LLC, and all such entities acquired homes from the developer of the Buckhorn Valley PUD who received funding from District 2 bond proceeds; that he converted such properties into rental income properties from which he personally financially benefits; prior to 2021, that he had roles within various entities operating within the Buckhorn Valley and which would benefit from decisions of the District 1 and District 2 boards of directors, including: BV Devco LLC – Vice President, Mountain Gateway at Buckhorn Valley LLC – authorized signatory, BV Firewheel, LLC – Vice President, Green Valley Homes LLC – Vice President, BV Tomahawk, LLC – Vice President and Fresh Produce Grocery Store – Vice President; that there were 14 home sales to various entities he owned or controlled that also received funds from District 2.

m. In 2018, Ellyce Hills, LLC and Collessi Property, LLC were formed by Green Valley Homes, LLC, an entity controlled by John Hill. These entities acquired three new homes within District 2 from BV Devco, LLC at a combined reported sales price of \$1,221,100. John Hill did not report these three home purchase transactions on any conflict of interest disclosures filed in 2018.

n. Scott Green failed to disclose the full extent of the financial benefits received by his company through contracts with District 1 and District 2 in both 2010 and 2018-2019, and that such contracts were awarded to Scott Green Excavating, Inc. without being competitively bid.

o. Anna Marie Ray failed to disclose known conflicts except during 2019.

p. Nicholas Richards has failed to disclose any known conflicts of interest.

83. The Individual Defendants impermissibly voted on matters about which they had known conflicts of interest.

84. In February 2021, two resident, taxpaying homeowners were appointed to fill two vacancies on the District 2 created by the resignations of Scott Green and Samantha Gale. This was the first instance when a board member serving on the District 2 board was not an owner, representative, employee, agent or designee of the Developer of Buckhorn Valley.

85. The two independent board members appointed to the District 2 board in February 2021 free of conflicts of interest and developer control were Nickolas Viau and Erin Gallimore.

86. During 2021, the residents of District 2 successfully petitioned for the recall of the remaining three developer controlled board members serving on the District 2 board. The ballot issues asking whether to remove from office the three developer-controlled board members passed overwhelmingly.

87. Subsequent to the recall election, three additional independent resident, taxpaying homeowners filled the seats on the District 2 board of directors.

88. As of September, 2021, the District 2 board of directors was comprised of Nickolas Viau, David Fiore, Eliana Walker, Kristine Rossier and Brendon McGlamrey, all independent resident, taxpaying homeowners.

E. BOARD OF DIRECTORS' UNSUBSTANTIATED USE OF PUBLIC FUNDS

89. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

90. Between 2000 and 2021, while under the control of members of the Individual Defendants, District 1 spent public funds on services, materials or products that provided no public benefit to the residents or constituents of District 1 or District 2.

91. In 2018, District 1 received grant funding totaling \$964,700 to fund repairs to the JPO District; such funding taken from the Colorado Water Conservation Board, Trout Unlimited, Town of Gypsum and Colorado Department of Parks and Wildlife.

92. District 1 paid \$489,912 from the grant funding to Scott Green Excavating, Inc., without proper competitive bidding or as an impermissible sole source contract.

93. Per District 1's 2018 audited financial statements, an additional \$474,788 of grant funds was spent but no supporting documentation or explanation of this expenditure has been publicly disclosed by District 1.

94. District 1 spent funds on purposes other than public purposes authorized for the provision of services within District 2.

95. During the 2021 recall election of board members of District 2, District 1 spent funds contesting the legally valid recall, which is an impermissible purpose and contrary to the public interest.

96. During 2022, District 1 spent money negotiating with BV Firewheel, LLC with the intent of reducing fees lawfully owed by BV Firewheel as an owner of property within District 2, which is an impermissible purpose and contrary to the public interest.

F. TERMINATION OF ILLEGAL 2003 INTERGOVERNMENTAL AGREEMENT

97. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

98. On or about October 14, 2021, during a public meeting, the board of directors of District 2 took action to terminate the 2003 Agreement.

99. Representatives of District 1 were present during the public meeting at which District 2 took action to terminate the 2003 Agreement.

100. As of December 31, 2020, the audited financial statements of District 1 showed a \$211,964 credit owed to District 2 resulting from overpayments made by District 2 to District 1 under the 2003 Agreement.

101. Due to cumulative past overpayments made by District 2 under the 2003 Agreement, District 2 has fully funded all remaining Service Costs of District 1 as set forth in the 2003 Agreement.

102. The 2003 Agreement, if valid (which District 2 claims it is not), was terminated effective October 14, 2022.

G. DISTRICT 1'S ILLEGAL RATE SETTING

101. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

102. On or about October 4, 2022, District 1 conducted a public meeting during which its board of directors considered a proposed "Water Fee Dispute Letter Agreement" proposed by the owner of the undeveloped property within District 2, BV Firewheel, LLC.

103. After a confidential discussion of the topic conducted during an executive session, the District 1 board of directors voted to approve the proposed Water Fee Dispute Letter Agreement.

104. BV Firewheel stopped paying irrigation fees imposed by District 1 and District 2 as of approximately July 2021.

105. Prior to July 2021, BV Firewheel, as well as its predecessors in interest regarding the undeveloped property it owns, paid the fees imposed by District 1 and District 2.

106. District 1 and District 2 each have the lawful authority to certify to Eagle County all delinquent charges that have been delinquent for at least six months. Upon certification, Eagle County shall collect 100 percent of the delinquent charges as part of the collection of property taxes.

107. The delinquent fees lawfully owed by BV Firewheel were not certified to Eagle County for collection in 2021 because as of the December 1 deadline to certify established by Eagle County, the delinquent fees were not yet six months' delinquent.

108. In 2021, general counsel for both District 1 and District 2 stated that the delinquent fees owed by BV Firewheel would have been certified to Eagle County for 100 percent collection in 2021 were it not for the fact that the delinquency was not yet six months' delinquent.

109. In a joint public meeting conducted by District 1 and District 2 in the spring of 2022, representatives of District 1 stated publicly that all delinquent fees owed by BV Firewheel would be certified by the Districts to Eagle County in 2022.

110. BV Firewheel has no lawful argument that it does not owe all delinquent fees in full.

111. The proposed Water Fee Dispute Letter Agreement incorrectly characterizes the fees imposed by District 1 and District 2 as “availability of service” fees.

112. In 2021, District 1 retained and paid for a legal opinion to evaluate and opine upon BV Firewheel’s arguments against the lawfully imposed fees. By opinion dated September 21, 2021, District 1 was advised by legal counsel that all fees imposed against BV Firewheel were lawful and were not availability of service fees.

113. By approving the Water Fee Dispute Letter Agreement on October 4, 2022, the board of directors of District 1 implemented a new rate fee structure for the property within District 2’s boundaries.

114. Historically, rates, fee structure and collections were undertaken by both District 1 and District 2.

115. Fee setting is an integral part of the budgetary process of both District 1 and District 2.

116. By approving the Water Fee Dispute Letter Agreement, District 1 reduced the fees against BV Firewheel, resulting in a benefit to the private developer to the detriment of the taxpaying constituents within District 2.

117. By approving the Water Fee Dispute Letter Agreement, including the reduction of fees against BV Firewheel, District 1 committed to increasing fees against all other taxpaying constituents within District 2.

118. If it were valid, District 1 did not comply with the terms of the 2003 Agreement by not timely providing District 2 with the 2023 draft budget, and not advising District 2 of District 1’s intent to consider a new rate fee structure.

119. District 1 did not comply with the legal requirements necessary to conduct a public meeting for the purposes of changing, modifying or adding new fees for its services.

120. On October 4, 2022, District 1 was governed and controlled by Individual Defendants, David Garton, Jr., John Hill, Anna Marie Ray, Maxine Hepfer and Nicholas Richards each of whom were granted an ownership interest, or option to purchase interest in the District 1 Parcel owned by Christiane Hepfer, principal of International Capital, LLC (the firm that manages the assets for BV Firewheel, LLC) and mother of Maxine Hepfer.

121. During the October 4, 2022 public meeting of the District 1 board of directors, none of the District 1 board members disclosed their conflicts of interest regarding the BV Firewheel, LLC proposed Water Fee Dispute Letter Agreement.

122. No District 1 board member recused himself/herself from consideration of the BV Firewheel proposed Water Fee Dispute Letter Agreement, nor did any District 1 board member abstain from voting to approved the BV Firewheel proposed Water Fee Dispute Letter Agreement.

123. As of October 14, 2022, the date the 2003 Agreement was effectively terminated (if it was ever valid), the Water Fee Dispute Letter Agreement was not executed by District 1.

124. District 1 had no authority under the 2003 Agreement to approve the Water Fee Dispute Letter Agreement.

III. CAUSES OF ACTION

FIRST CAUSE OF ACTION (Declaratory Relief – Invalidity of 2003 Agreement) (Against District 1)

125. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

126. Both the Initial Agreement and the 2003 Agreement were entered into when Individual Defendants David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston were each granted an ownership interest or an option to purchase an interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley, Roark Partners LLLP.

127. At all times since its organization, District 1 has been under the governing control of the Developer of the Buckhorn Valley PUD. Its board of directors has been comprised of four to five of the Individual Defendants, each of whom were granted an ownership interest or option to purchase an interest in the District 1 Parcel by the then-existing developer of Buckhorn Valley in order to qualify the Individual Defendants as members of the board of directors of District 1.

128. Individual Defendants David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston each financially personally benefited from transactions that benefited the Developer of Buckhorn Valley.

129. While financially personally benefiting from the transactions that benefited the Developer of Buckhorn Valley, the Individual Defendants also served as members of the board of directors of District 2.

130. At the time District 2 entered into the Initial Agreement and the 2003 Agreement, Individual Defendants David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston

and Mallie J. Kingston each served on the board of District 2 and had material conflicts of interest regarding these agreements.

131. The Initial Agreement was superseded by the 2003 Agreement and is no longer binding on any party.

132. The 2003 Agreement was signed by David Garton, Jr. on behalf of District 1 and was attested to by Samantha Gale on behalf of District 1.

133. The 2003 Agreement was signed by David Garton, Jr. on behalf of District 2 and attested to by Samantha Gale on behalf of District 2.

134. At the time of execution of the 2003 Agreement, David Garton, Jr. was the General Partner of Roark Partners LLLP, the Developer of the Buckhorn Valley PUD.

135. At the time of execution of the 2003 Agreement, Samantha Gale, daughter of David Garton, Jr., was an employee of Roark Partners, LLLP, the Developer of the Buckhorn Valley PUD.

136. David Garton, Jr. was the ultimate transferee and holder of the \$8.5 million in Subordinate Bonds.

137. District 1 offers no special powers beyond powers granted to District 2 and District 1 provides no benefits that District 2 could not readily obtain or otherwise provide to itself. In fact, District 1 merely creates duplicative administrative costs to perform functions that District 2 could perform on its own.

138. The 2003 Agreement compels the board of directors of District 2 to relinquish its legislative budgetary authority to District 1.

139. Under the 2003 Agreement, District 1 has all budgetary control over District 2, including the expenditure and transfer of funds from District 2 to District 1 on an annual basis throughout the duration of the 2003 Agreement.

140. No board of directors of a Colorado special district may be compelled to relinquish its legislative budgetary authority.

141. The Initial Agreement and the 2003 Agreement are all unfair to District 2 because such agreements created inflated infrastructure costs and increased District 2's debt beyond District 2's financial ability to repay such debt – negative consequences to District 2 taxpayers that would have been avoided if the District 2 board had complied with its statutorily required fiduciary responsibilities to the District 2 taxpayers.

142. District 1 interprets the 2003 Agreement to require District 2 to transfer funds to District 1 every year during the 2003 Agreement's duration without any corresponding

requirement that the District 2 board review and consider approval of an annual appropriation to transfer such funds.

143. If the 2003 Agreement requires District 2 to transfer funds to District 1 every year during the duration of the 2003 Agreement without any corresponding requirement that District 2 board review and consider approval of an annual appropriation to transfer such funds, then the 2003 Agreement constitutes a multiple fiscal year obligation of District 2.

144. If the 2003 Agreement is considered an ongoing multiple fiscal year obligation of District 2, the 2003 Agreement violates Article XX, Section 10 of the Colorado Constitution, known as the Taxpayer Bill of Rights (TABOR).

145. District 2 seeks declaratory relief that the 2003 Agreement is void or voidable under TABOR and/or as an impermissible delegation of legislative authority and seeks return of all monies paid to the Developer under the Initial Agreement and the 2003 Agreement in an amount to be proven at trial

146. Finally, District 2 further seeks to declare null and void all resolutions of District 2 where (1) District 2 transacted business with the Developer while the Developer's agents served on District 2's board and (2) such resolutions place the financial interests of the Developer and/or the Developer's agents ahead of the taxpayers of District 2.

SECOND CAUSE OF ACTION
(Accounting – Against District 1)

147. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

148. If valid (which District 2 alleges it is not), the 2003 Agreement obligates District 2 to transfer funds to District 1 on an annual basis in order to fund necessary Service Costs (operation, maintenance and administrative costs associated with the provision of raw water service and facilities to District 2 property owners and residents).

149. From 2000 to 2021, while both District 1 and District 2 were each under the governance and control of conflicted board members who were owners, representatives, employees, agents or designees of the Developer of the Buckhorn Valley PUD, transfers of funds occurred from District 2 to District 1.

150. From 2000 to 2021, transfers of funds occurred from District 2 to District 1 for purposes other than to fund necessary Service Costs as required under the 2003 Agreement.

151. From 2000 to 2021, transfers of funds occurred from District 2 to District 1 for the benefit of the Developer of the Buckhorn Valley PUD and contrary to the public interest of District 2.

152. Per the December 31, 2020 audited financial statements of District 1, a \$211,964 credit is owed to District 2 resulting from fund transfers under the 2003 Agreement from District 2 to District 1 in excess of Service Costs incurred by District 1.

153. As of December 31, 2020, the audited financial statements of District 1 reflect a collective fund balance in its general fund and water enterprise fund of \$130,938, which is \$81,026 less than the credit owed to District 2.

154. District 1 has failed to account to District 2 for how District 1 has spent, transferred or otherwise disposed of all funds received from District 2.

155. District 2 is entitled to a full accounting of all District 1 finances to determine how funds were spent by District 1 when such funds were not spent on necessary Service Costs as required under the 2003 Agreement.

**THIRD CAUSE OF ACTION
(Breach of Contract – Against District 1)**

156. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

157. If valid (which District 2 alleges it is not), the 2003 Agreement is a contract between District 1 and District 2.

158. If the 2003 Agreement is valid, District 1 has breached the contract by using funds transferred from District 2 for purposes other than funding necessary Service Costs (operation, maintenance and administrative costs associated with the provision of raw water services and facilities to District 2 property owners and residents) as required by the 2003 Agreement.

159. If the 2003 Agreement is valid, District 1 has breached the contract by not complying with the proscribed requirements under the annual budget process; specifically, District 1 concealed its illegal efforts to approve the Water Fee Dispute Letter Agreement and took impermissible and illegal rate setting actions, in part, by not providing District 2 with an annual budget.

160. Had District 1 not breached the 2003 Agreement by not providing District 2 with an annual budget, District 2 would have discovered District 1's illegal activity and could have taken action to stop such activity on behalf of District 2's taxpaying constituents.

161. District 2 has been damaged in the amount of all funds it was required to transfer to District 1 for impermissible purposes beyond necessary Service Costs as required by the 2003 Agreement.

**FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)
(Against Individual Defendants)**

162. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

163. From May 2000 to December 2008, Individual Defendants David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston collectively controlled District 2 by holding the five seats on the District 2 board of directors.

164. David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston each owed District 2 and its taxpayers a fiduciary duty due to their roles as members of the board of directors of District 2.

165. David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston each breached their fiduciary duties to District 2 by, among other things:

- a. Approving the Initial Agreement in 2000 when the Initial Agreement was illegal under TABOR;
- b. Approving the Initial Agreement in 2000 when the Initial Agreement was illegal as an illegal delegation of District 2's legislative budgetary authority to District 1;
- c. Approving the Initial Agreement in 2000 knowing that the Initial Agreement favored District 1 to the unfair disadvantage of District 2;
- d. Approving the 2003 Agreement when the 2003 Agreement was illegal under TABOR;
- e. Approving the 2003 Agreement when the 2003 Agreement was illegal as an illegal delegation of District 2's legislative budgetary authority to District 1;
- f. Approving the 2003 Agreement knowing that the 2003 Agreement favored District 1 to the unfair disadvantage of District 2;
- g. Approving the Series 2003 Bonds knowing the projected development and accompanying financial projections for the Buckhorn Valley PUD were insufficient to satisfy the repayment of the Series 2003 Bonds;
- h. Submitting the 2005 Amended and Restated Consolidated Service Plan to the Town of Gypsum for approval when the operations of District 1 and

District 2 favored District 1 to the unfair disadvantage of District 2 and the resident constituents of District 2;

- i. Approving the 2008 Subordinate Bonds when it was known that Roark Partners LLLP and David Garton, Jr. were direct beneficiaries of the 2008 Subordinate Bonds and the projected development and accompanying financial projections for the Buckhorn Valley PUD were insufficient to satisfy the cumulative repayment of the Series 2003 and Series 2008 Bonds;
- j. Approving the 2010 bonds totaling \$7,370,000 at compounding interest rates of between 7.25% and 8.50% and using \$4,000,000 of the proceeds for the purpose of repaying a portion of the 2008 bonds owned by David Garton, Jr's company Roark Partners, LLLP even though (1) such 2008 bonds accrued interest at a lower non-compounding rate of 6% per annum and (2) the District's tax revenue in 2008 and 2009 was insufficient to pay not even half of the annual accrued interest on the 2008 bonds; and
- k. Diverting District 2's property tax cash flows, bond proceeds and Abrams Creek Project grant funds to construct 12 residential properties within District 2 comprised of personal residences and rental income-generating properties.

166. In breaching their fiduciary duties, David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston acted willfully and wantonly and, as such, outside of the scope of their governmental function as board members of District 2.

167. As a direct and proximate result of the breach of fiduciary duties by David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston, District 2 suffered damages in an amount to be proven at trial.

168. Because David Garton, Jr., Sande Garton, Samantha G. Gale, Robert J. Kingston and Mallie J. Kingston benefited personally financially at District 2's expense, they should be disgorged of all benefits received from their breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

169. David Garton, Jr., Samantha G. Gale, John Hill, Gayl Hill and Anna Marie Ray Robert J. Kingston and Mallie J. Kingston each owed District 2 and its taxpayers a fiduciary duty due to their role as members of the board of directors of District 2.

170. David Garton, Jr., Samantha G. Gale, John Hill, Gayl Hill and Anna Maria Ray each breached their fiduciary duties to District 2 by, among other things:

- a. Submitting the 2009 Consolidated Service Plan to the Town of Gypsum for approval when the operations of District 1 and District 2 favored District 1 to the unfair disadvantage of District 2 and its taxpayers;

- b. Approving the Series 2010 Bonds knowing that the projected development and accompanying financial projections for the Buckhorn Valley PUD were insufficient to satisfy the cumulative repayment of the Series 2003, Series 2008 and Series 2010 Bonds;
- c. Using Colorado Land Management, LLC and Buckhorn Valley Development, LLC to divert a portion of District 2's property tax cash flows and bond proceeds to subsidize the construction of 16 residential properties within District 2 comprised of personal residences and rental income-generating properties owned by various entities controlled by John Hill.

171. In breaching their fiduciary duties, David Garton, Jr., Samantha G. Gale, John Hill, Gayl Hill and Anna Maria Ray acted willfully and wantonly and, as such, outside of the scope of their governmental function as board members of District 2.

172. As a direct and proximate result of the breach of fiduciary duties by David Garton, Jr., Samantha G. Gale, John Hill, Gayl Hill and Anna Maria Ray, District 2 suffered damages in an amount to be proven at trial.

173. Because David Garton, Jr., Samantha G. Gale, John Hill, Gayl Hill and Anna Maria Ray benefited personally financially at District 2's expense, they should be disgorged of all benefits received from their breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

174. David Garton Jr. owed District 2 and its taxpayers a fiduciary duty due to his role as member of the board of directors of District 2.

175. David Garton Jr. breached his fiduciary duty to District 2 and its taxpayers by personally acquiring the 2008 Subordinate Bonds for the purposes of his individual financial benefit and against the public interest.

176. In breaching his fiduciary duties, David Garton, Jr. acted willfully and wantonly and, as such, outside of the scope of his governmental function as board member of District 2.

177. As a direct and proximate result of the breach of fiduciary duties by David Garton, Jr., District 2 suffered damages in an amount to be proven at trial.

178. Because David Garton, Jr. benefited personally financially at District 2's expense, he should be disgorged of all benefits received from his breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

179. Samantha Gale owed District 2 and its taxpayers a fiduciary duty due to her role as member of the board of directors of District 2.

180. Samantha Gale breached her fiduciary duty to District 2 and its taxpayers by receiving compensation disproportionate to her services provided as part of Colorado Land Management LLC, and to her individual financial benefit and against the public interest.

181. In breaching her fiduciary duties, Samantha Gale acted willfully and wantonly and, as such, outside of the scope of her governmental function as board member of District 2.

182. As a direct and proximate result of the breach of fiduciary duties by Samantha Gale, District 2 suffered damages in an amount to be proven at trial.

183. Because Samantha Gale benefited personally financially at District 2's expense, she should be disgorged of all benefits received from her breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

184. David Garton Jr. and Sande Garton owed District 2 and its taxpayers a fiduciary duty due to their roles as members of the board of directors of District 2

185. David Garton Jr. and Sande Garton breached their fiduciary duties to District 2 and its taxpayers by acquiring property within Buckhorn Valley at substantially below market value.

186. In breaching their fiduciary duties, David Garton, Jr. and Sande Garton acted willfully and wantonly and, as such, outside of the scope of their governmental function as board members of District 2.

187. As a direct and proximate result of the breach of fiduciary duties by David Garton, Jr. and Sande Garton, District 2 suffered damages in an amount to be proven at trial.

188. Because David Garton, Jr. and Sande Garton benefited personally financially at District 2's expense, they should be disgorged of all benefits received from their breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

189. Stephen Kelley owed District 2 and its taxpayers a fiduciary duty due to his role as member of the board of directors of District 2.

190. Stephen Kelley breached his fiduciary duty to District 2 and its taxpayers by entering into contracts between his controlled company and District 1 and District 2 that disproportionally financially benefited himself to the detriment of District 2 and its taxpayers.

191. In breaching his fiduciary duties, Stephen Kelley acted willfully and wantonly and, as such, outside of the scope of his governmental function as board member of District 2.

192. As a direct and proximate result of the breach of fiduciary duties by Stephen Kelley, District 2 suffered damages in an amount to be proven at trial.

193. Because Stephen Kelley benefited personally financially at District 2's expense, he should be disgorged of all benefits received from his breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

194. Scott Green owed District 2 and its taxpayers a fiduciary duty due to his role as member of the board of directors of District 2.

195. Scott Green breached his fiduciary duty to District 2 and its taxpayers by entering into contracts between his controlled company and District 1 and District 2 that disproportionately financially benefited himself to the detriment of District 2 and its taxpayers.

196. In breaching his fiduciary duties, Scott Green acted willfully and wantonly and, as such, outside of the scope of his governmental function as board member of District 2.

197. As a direct and proximate result of the breach of fiduciary duties by Scott Green, District 2 suffered damages in an amount to be proven at trial.

198. Because Scott Green benefited personally financially at District 2's expense, he should be disgorged of all benefits received from his breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

199. John Hill owed District 2 and its taxpayers a fiduciary duty due to his role as member of the board of directors of District 2.

200. John Hill breached his fiduciary duty to District 2 and its taxpayers by acquiring property, individually or through companies or partnerships created to acquire such property, within District 2 at substantially below market value.

201. In breaching his fiduciary duties, John Hill acted willfully and wantonly and, as such, outside of the scope of his governmental function as board member of District 2.

202. As a direct and proximate result of the breach of fiduciary duties by John Hill, District 2 suffered damages in an amount to be proven at trial.

203. Because John Hill benefited personally financially at District 2's expense, he should be disgorged of all benefits received from his breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

204. Individual Defendants owed District 2 and its taxpayers a fiduciary duty due to their roles as members of the board of directors of District 2.

205. Individual Defendants breached their fiduciary duties to District 2 and its taxpayers by impermissibly voting or otherwise taking official action regarding the public business of District 1 and/or District 2 despite having known conflicts of interest regarding such business.

206. In breaching their fiduciary duties, Individual Defendants acted willfully and wantonly and, as such, outside of the scope of their governmental function as board members of District 2.

207. As a direct and proximate result of the breach of fiduciary duties by Individual Defendants, District 2 suffered damages in an amount to be proven at trial.

208. Because Individual Defendants benefited personally financially at District 2's expense, they should be disgorged of all benefits received from their breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

209. David Garton, Jr., John Hill, Anna Maria Ray, Maxine Hepfer and Nicholas Richards each breached their fiduciary duties to District 2 and its taxpayers by, among other things:

- a. Authorizing the expenditure of funds on behalf of District 1, which funds were derived from transfers from District 2, for purposes other than those authorized under the 2003 Agreement;
- b. Approving the Series 2010 Bonds knowing that the projected development and accompanying financial projections for the Buckhorn Valley development were insufficient to satisfy the cumulative repayment of the Series 2003, Series 2008 and Series 2010 Bonds;
- c. Illegally undertaking water rate setting activities in violation of C.R.S. § 32-1-1001(2)(a) regarding such activity.

210. In breaching their fiduciary duties, David Garton, Jr., John Hill, Anna Maria Ray, Maxine Hepfer and Nicholas Richardson acted willfully and wantonly and, as such, outside of the scope of their governmental function as board members of District 2.

211. As a direct and proximate result of the breach of fiduciary duties by David Garton, Jr., John Hill, Anna Maria Ray, Maxine Hepfer and Nicholas Richards, District 2 suffered damages in an amount to be proven at trial.

212. Because David Garton, Jr., John Hill, Anna Maria Ray, Maxine Hepfer and Nicholas Richards benefited personally financially, benefitted a private developer with whom each had a conflict of interest, and at District 2's expense, they should be disgorged of all benefits received from their breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

213. David Garton Jr. owed District 2 and its taxpayers a fiduciary duty due to his role as member of the board of directors of District 2.

214. David Garton Jr. breached his fiduciary duty to District 2 by personally acquiring the Subordinate Bonds for the purposes of using his public office to improve his personal financial position to the financial detriment of the public.

215. In breaching his fiduciary duties, David Garton, Jr. acted willfully and wantonly and, as such, outside of the scope of his governmental function as board member of District 2.

216. As a direct and proximate result of the breach of fiduciary duties by David Garton, Jr., District 2 suffered damages in an amount to be proven at trial.

217. Because David Garton, Jr. benefited personally financially at District 2's expense, he should be disgorged of all benefits received from his breach of fiduciary duty, and a conservative trust should be imposed on such funds for the benefit of District 2.

**FIFTH CAUSE OF ACTION
(C.R.C.P. 106)
(Against District 1)**

218. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

219. In considering and ultimately approving the Water Fee Dispute Letter Agreement, District 1, through its board of directors, was acting in a judicial or quasi-judicial capacity.

220. District 1, through its board of directors, exceeded its jurisdiction, abused its discretion, and acted arbitrarily and capriciously in approving the Water Fee Dispute Letter Agreement.

221. There is no rational authority or support for District 1's decision to grant an unwarranted financial benefit to a private developer to the financial detriment of the taxpaying constituents of District 2.

222. District 1, through its board of directors, misconstrued or misapplied the law in its approval of the Water Fee Dispute Letter Agreement.

223. District 1 misconstrues the validity of the 2003 Agreement.

224. District 1 misconstrues the 2009 Consolidated Service Plan.

225. District 1 misconstrues or misapplies C.R.S. § 32-1-1101(1)(e).

**SIXTH CAUSE OF ACTION
(INJUNCTIVE RELIEF)
(Against District 1)**

226. District 2 incorporates by reference the allegations contained in the preceding and subsequent paragraphs of this Complaint as if fully set forth herein.

227. District 2 will establish success on the merits of its claims raised in this Complaint.

228. If a permanent injunction enjoining District 1, through its board of directors, from taking any further action regarding the Water Fee Dispute Letter Agreement and resulting rate setting is not granted, District 2 and the residents will suffer permanent and irreparable harm because they will be financially burdened through unreasonable and excessive fees imposed against the taxpaying constituents in order for District 1 to benefit a private developer.

229. The harm to District 2 resulting from the Water Fee Dispute Letter Agreement outweighs any harm that may be suffered by District 1.

230. The public interest shall be served by the granting of a preliminary and permanent injunction preventing District 1 from taking any further action regarding the approval of the Water Fee Dispute Letter Agreement, and implementing an illegal rate change.

231. District 2 is acting in furtherance the public interest, specifically all taxpaying constituents within the boundaries of District 2, including the Developer. District 1 is attempting to act in the benefit the Developer to the detriment of the residents within District 2.

232. Preventing District 1 from illegally approving and implementing the Water Fee Dispute Letter Agreement serves the public interest.

IV. RESERVATION OF RIGHTS

District 2 expressly reserves all rights accorded under Colorado law, including but not limited to the right to amend this Complaint as may be necessary in light of new or additional factual information gathered throughout the disclosure and discovery phases of this litigation and the right to plead exemplary damages in accordance with C.R.S. § 13-21-102.

V. JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

VI. PRAYER FOR RELIEF

WHEREFORE, District 2 prays for relief as follows:

- a. That District 2 recover damages, as provided by law, according to proof at trial;
- b. That the Individual Defendants and each of them disgorge all funds wrongfully obtained from or at the expense of District 2;
- c. That Defendants relinquish to District 2 all water rights necessary to ensure the development of all 899 residences, per the development plan disclosed to the 2010 bondholders.
- d. That the Court order an accounting of all amounts received by District 1 from District 2, and the expenditure of such funds by District 1;
- e. That a constructive trust be imposed upon such funds for the benefit of District 2;
- f. That the Individual Defendants pay to District 2 moratory, pre-judgment, and post-judgment interest as allowed by law;
- g. An order requiring District 1 to certify the “Record” pursuant to C.R.C.P. 106;
- h. An order establishing the briefing schedule pursuant to C.R.C.P. 106(a)(4);
- i. An order determining that District 1, through its board of directors, exceeded its jurisdiction, abused its discretion, and acted arbitrarily and capriciously by misconstruing or misapplying the law in the conducting of the October 4, 2022 public meeting, approving the Water Fee Dispute Letter Agreement, and beginning any implementation of a changed rate structure in violation of C.R.S. § 32-1-1001(2)(a);
- j. An order preliminarily and permanently enjoining District 1 from taking any further action regarding the approval of the Water Fee Dispute Letter Agreement and beginning any implementation of a changed rate structure in violation of C.R.S. § 32-1-1001(2)(a);
- k. That District 2 recover its costs of the suit and attorneys’ fees as allowed by law;
- l. That all contracts, transactions and resolutions involving business between District 2 and the Individual Defendants be declared null and void; and
- m. For all other relief allowed by law and equity.

