

TWO RIVERS METROPOLITAN DISTRICT
A RESOLUTION ADOPTING AND ESTABLISHING
A WATER AND SANITATION ENTERPRISE

WHEREAS, Two Rivers Metropolitan District (“District”) is a special district created pursuant to Article 1, Title 32, C.R.S. (“District Act”), and is authorized to provide, among other activities, the ownership and operation of a domestic water supply system and sanitation system and related activities, services and facilities within and without the District with the power to issue its own revenue bonds; and

WHEREAS, such water and sanitation services include, but are not limited to, the acquisition, diversion, storage, carriage, delivery, distribution, collection, treatment, use, reuse, augmentation, exchange, or discharge of water and wastewater, and the design, acquisition, installation, construction, operation and maintenance of storm or sanitary sewers and systems, flood and surface drainage, treatment and disposal works and facilities, and all services and facilities related thereto (“Water and Sanitation Activities”); and

WHEREAS, District has historically conducted and operated such Water and Sanitation Activities as a government-owned business of the District providing services in exchange for the payment of fees and charges; and the Board of Directors of the District now desires to memorialize and establish a Water and Sanitation Activity Enterprise, in order to exclude the Water and Sanitation Activity Enterprise from the provisions of Section 20, Article X of the State Constitution (“TABOR”); and

WHEREAS, in addition to any other authority or procedure provided by law, District desires to establish its Water and Sanitation Activity Enterprise (“Enterprise” or “Water and Sanitation Activity Enterprise”), which shall be operated and maintained as an Enterprise (as defined by TABOR) and which shall be separate and distinct from the governmental activities of the District (which are subject to TABOR); and

WHEREAS, the adoption of this Resolution and the establishment, operation, and continuation of the Water and Sanitation Activity Enterprise of the District in conformance with the provisions of TABOR will serve a public use and will promote the health, safety, prosperity, security, and general welfare of the customers of the Enterprise and the inhabitants of the District and of the people of the State of Colorado.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District that there is hereby established a Water and Sanitation Activity Enterprise to be operated and maintained as a government-owned business, so as to exclude its activities from the application of TABOR, in accordance with the following terms:

1. **Water and Sanitation Activity Enterprise Activities and Facilities.** The Water and Sanitation Activity Enterprise shall manage, operate, use, maintain, and conduct all Water and Sanitation Activities, services, and facilities of the District. The Water and Sanitation Activity Enterprise is authorized to use, operate, improve, extend, enlarge, repair, replace, acquire, dispose of, encumber, contract with respect to, and otherwise control and supervise all Water and Sanitation Activity facilities and property of the District. The Water and Sanitation Activity Enterprise itself shall be wholly owned by the District. All facilities, property, and assets which are utilized by the Water and Sanitation Activity Enterprise or form part of the Water and Sanitation Activity Enterprise shall be the property of the District and upon termination of the Water and Sanitation Activity Enterprise, shall be returned to the District.

2. **Multiple Enterprises.** All Water and Sanitation Activities shall be conducted as a single Water and Sanitation Activity Enterprise. The Board of Directors may, from time to time, establish other Water, Sanitation, or Water and Sanitation Activity Enterprises, restructure any Water and Sanitation Activity as a separate Enterprise, or establish other enterprises for purposes other than water and sanitation.

3. **Governing Board.** The Board of Directors of the District shall be the Governing Board of the Water and Sanitation Activity Enterprise (“Governing Board”). The Governing Board shall conduct the business of the Water and Sanitation Activity Enterprise in the same manner and follow the same procedures as the Board of Directors of the District. All public business of the Water and Sanitation Activity Enterprise shall be conducted only during regular or special meetings of the Board of Directors at which a quorum is present. The record of proceedings of the Governing Board may be incorporated into the minutes of the Board of Directors of the District. No additional oaths, bonds, or other qualifications shall be required of the Governing Board. All actions of the Governing Board shall be considered as the actions and business of the Water and Sanitation Activity Enterprise undertaken by the Board of Directors acting as the Governing Board of the Water and Sanitation Activity Enterprise. All business of the Water and Sanitation Activity Enterprise and actions of the Governing Board shall be governed by and made subject to all requirements, privileges, immunities, protections, limitations, and other provisions of law.

4. **Powers.** The Governing Board of the Water and Sanitation Activity Enterprise may, without limitation, exercise the District's legal authority relating to Water and Sanitation Activities or otherwise available to any enterprise, except as expressly provided herein. Such authority shall include all powers set forth in the District Act, which are consistent with the authorities of an enterprise under the provisions of TABOR and are necessary to operate the Water and Sanitation Activity Enterprise, including, but not limited to, the power to issue or reissue bonds, notes, or other obligations payable from revenues derived or to be derived from the provision of services and to set rates, fees and charges for services provided by the Water and

Sanitation Activity Enterprise. The powers and authorities specifically conferred herein shall not modify, limit, or restrict the powers conferred by any other law directly or indirectly affecting the Water and Sanitation Activities of the Water and Sanitation Activity Enterprise, except as expressly provided herein. The Water and Sanitation Activity Enterprise shall have no power which adversely affects the status of the Water and Sanitation Activity Enterprise for purposes of the application of TABOR.

5. **Taxes.** In no event shall the Water and Sanitation Activity Enterprise have the power to levy or assess any tax which is subject to TABOR or to direct the District to exercise its taxing powers on behalf of the Water and Sanitation Activity Enterprise.

6. **Grants.** The Water and Sanitation Activity Enterprise shall not accept or receive any revenue in grants (as defined in Section 37-45.1-102(2), C.R.S., or otherwise) from the District, State or any local governments, unless expressly authorized by the Board of Directors of the District. The purpose of this provision is to prevent without the District's knowledge and consent, any violation of the rules of TABOR applicable to enterprises.

7. **Contracts.** All contracts relating to Water and Sanitation Activities shall be approved by the Governing Board and executed by District officers with the District as the contracting party. Any pre-existing contract relating to Water and Sanitation Activities shall be considered as having been approved by the Governing Board. All contracts relating to Water and Sanitation Activities shall be implemented and discharged by the Water and Sanitation Activity Enterprise, unless otherwise provided by the Board of Directors. For all purposes under TABOR, this Resolution shall, without further action, be considered as a contract for service between the District and the Enterprise under which Water and Sanitation Activity services will be provided to all properties of the District by the Enterprise, and the District will pay for such services in an amount not to exceed the costs of such services as determined, from time to time, by the Governing Board.

8. **Revenue.** All revenue for Water and Sanitation Activity services and facilities provided by the Water and Sanitation Activity Enterprise, including rates, fees, tolls, charges, payments for services from the District, and all other income of the Water and Sanitation Activity Enterprise shall be collected, used, and expended for Water and Sanitation Activity purposes as determined by the Governing Board in accordance with and as set forth in the fiscal budget of the Water and Sanitation Activity Enterprise adopted pursuant to law. Rates for Water and Sanitation Activity services and facilities provided by the Water and Sanitation Activity Enterprise shall be established by the Governing Board, approved by the Board of Directors, and collected and enforced in accordance with State law. No revenue or spending of the Water and Sanitation Activity Enterprise shall be subject to TABOR.

9. **Enterprise Fund.** A Water and Sanitation Activity Enterprise Fund shall be established to separately account for all revenue and expenditures of the Water and Sanitation Activity Enterprise. The Water and Sanitation Activity Enterprise shall prepare an annual budget and perform an annual audit which may be included in the budget or audit of the District. All budgets, reports, audits, and financial operations of the Water and Sanitation Activity Enterprise shall conform to and be prepared in accordance with generally accepted accounting principles applicable to governmental (enterprise) units and other requirements of State law.

10. **Miscellaneous.** Nothing set forth in this Resolution shall be construed to limit the authority of the Governing Board or the Water and Sanitation Activity Enterprise to utilize other policies or procedures for operating or continuing the Water and Sanitation Activity Enterprise in conformance with the Act and TABOR, except as otherwise expressly provided herein. It is the intent of the Board of Directors to establish the Water and Sanitation Activity Enterprise in conformance with the provisions of TABOR according to the most reasonable interpretations thereof. The application and effect of this Resolution with respect to the Water and Sanitation Activity Enterprise shall be both prospective and retrospective to the effective date of TABOR, unless otherwise determined by the Board of Directors. If any term, section, or provision of this Resolution shall be determined to be invalid or in violation of the enterprise qualification provisions of TABOR, the invalidity or disqualification of such section shall not affect any of the remaining provisions of this Resolution. This Resolution shall remain in effect, whether or not the Water and Sanitation Activity Enterprise currently qualifies as an enterprise pursuant to TABOR, until modified or repealed by the Board of Directors.

THE FOREGOING RESOLUTION was adopted this 19th day of April, 2010, at a regular meeting of the Board of Directors of the Two Rivers Metropolitan District, and is hereby certified as the final Resolution of the Board by me as Secretary of the Board.

TWO RIVERS METROPOLITAN DISTRICT

By: 
Kenneth Kriz, Chairman