Resolution No. 2015-11-05

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
GREATROCK NORTH WATER AND SANITATION

Establishing Guidelines for the Processing and Collection of Delinquent Fees and Charges

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WHEREAS, the Greatrock North Water and Sanitation District (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the Board of Directors of the District (the "**Board**") is authorized to fix and from time to time increase or decrease, fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District (collectively, the "**Fees**") to properties within and without (each property individually referred to herein as the "**Property**") the District's boundaries; and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., until paid, the Fees shall constitute a perpetual lien on and against the property served, and any such lien may be foreclosed in the same manner as provided by the laws of the State of Colorado for the foreclosure of mechanics' liens; and

WHEREAS, by this Resolution (the "**Resolution**"), the District desires to set forth guidelines for the processing and collection of unpaid and/or delinquent Fees imposed by the District, together with any and all Late Fees, Interest, Penalties and Costs of Collections (each defined separately in this Resolution), (collectively, the "**Delinquent Fees and Charges**"); and

WHEREAS, notwithstanding anything in this Resolution to the contrary, the guidelines set forth in this Resolution are intended to create orderly and fair procedures for the processing and collection of Delinquent Fees and Charges and any deviation from the guidelines shall not affect the status of the Lien (as defined below) in any way; and

WHEREAS, on July 1, 2010, the Board adopted Resolution No. 2010-07-02: Collection Resolution of Greatrock North Water and Sanitation District (the "Prior Policy"), and the Board desires to adopt this Resolution to amend and restate the Prior Policy in its entirety.

NOW, THEREFORE, the Board hereby RESOLVES:

1. Statement of Lien Guidelines:

a. ***Perpetual Lien***. Pursuant to § 32-1-1001(1)(j)(I), C.R.S., all Delinquent Fees and Charges shall constitute a perpetual lien on and against the Property served by the District (the "**Lien**"). All such Liens shall, to the fullest extent permitted by law, have priority over all other liens of record affecting the Property and shall run with the Property and remain in effect until paid in full. All Liens contemplated herein may be foreclosed as authorized by law at such time as the

District, in its sole discretion, may determine.

i. Notwithstanding the foregoing, the guidelines set forth in this Resolution are intended to create orderly and fair procedures for the processing and collection of Delinquent Fees and Charges and to provide additional notice to interested parties, including, but not limited to, title companies and the Property owner. In the event any or all of the guidelines set forth in this Resolution are not followed, such deviation shall not affect the status of the Lien in any way. Further, the Board may waive any guidelines set forth in this Resolution and may amend them from time to time as it deems necessary.

b. ***District's Manager Procedures***. The District's Manager, Accountant or Billing Agent (any of which are referred to herein as the "**Manager**") is responsible for collecting Fees imposed by the District against the Property. In the event payment of Fees is delinquent, the Manager may perform the procedures listed below. The Fees are considered delinquent when they have not been paid by their corresponding due date (the "**Delinquent Account**"):

i. *Fifteen (15) Calendar Days Past Due:* A delinquent payment "Reminder Letter" may be sent to the address of the last known owner or occupant of the Property according to the Manager's records. In the event the above mailing is returned as undeliverable, the Manager may send a second copy of the Reminder Letter to: (1) the Property; and (2) the address of the last known owner of the Property as found in the real property records of the County Assessor's Office (the "**Assessor**") for the County in which the District is located (collectively, the "**Property Address**"). Said Reminder Letter may: (1) request prompt payment; (2) notify the Property owner that a Reminder Letter Fee and a Late Fee in the amounts set forth in this Resolution have been assessed; and (3) reference the url address of the District's webpage where this Resolution is displayed, if available and requested by the Board.

ii. *Fifteen (15) Calendar Days From the Postmark Date of the Reminder Letter:* A "Warning Letter" may be sent to the Property Address: (1) requesting prompt payment; (2) warning of further legal action should the Property owner fail to pay the total amount due and owing; and (3) referencing the url address of the District's webpage where this Resolution is displayed, if available. Along with the Warning Letter, a copy of the most recent account ledger reflecting the total amount due and owing to the District according to the records of the Manager may also be sent.

iii. *Ten (10) Calendar Days from the Postmark Date of the Warning Letter*: Once the total amount of Delinquent Fees and Charges owing on the Property has exceeded One Hundred Twenty Dollars ($120.00), regardless of whether the Manager has performed the tasks outlined in Section 1(b) of this Resolution, the Manager may refer the Delinquent Account to the District's General Counsel (the "**General Counsel**"). At the time of such referral, the Manager may be requested to provide General Counsel with copies of all notices and letters sent

pursuant to Section 1(b), if any, as well as a copy of the most recent ledger for the Delinquent Account.

c. ***General Counsel Procedures***. Upon referral of a Delinquent Account from the Manager, General Counsel may perform the following:

i. *Upon Referral of the Delinquent Account From the Manager:* A "Demand Letter" may be sent to the Property Address, notifying the Property owner that the Property has been referred to General Counsel for further collections enforcement, including the filing of a statement of lien against the Property. Along with the Demand Letter, a copy of the most recent account ledger reflecting the total amount due and owing the District according to the records of the Manager may also be sent.

ii. *No Sooner than Thirty (30) Calendar Days from the Postmark Date of the Demand Letter:* A Notice of Intent to File a Statement of Lien, along with a copy of the statement of lien to be filed, may be sent to the Property Address of the Delinquent Account notifying the Property owner that a statement of lien will be recorded with the clerk and recorder of the county where the Property is located (the "**Clerk and Recorder**") within no sooner than ten (10) days from the postmark date of the Notice of Intent to File a Statement of Lien.

iii. *No Sooner than Ten (10) Calendar Days from the Postmark Date of the Notice of Intent to File a Statement of Lien:* A Statement of Lien for the total amount due and owing as of the date of the Statement of Lien may be recorded against the Property with the Clerk and Recorder no sooner than ten (10) days from the postmark date of the Notice of Intent to File a Statement of Lien is sent to the Property. Notwithstanding the amount due and owing reflected on the Statement of Lien, all Delinquent Fees and Charges will continue to accrue on the Delinquent Account and will run with the Property until the total amount due and owing the District is paid in full.

d. ***Foreclosure or Bankruptcy***. In circumstances where the Property is being foreclosed upon or where the owner of the Property has declared or is declaring bankruptcy and notice of such bankruptcy action has been provided to the District, the Manager may be permitted, in his or her discretion, to refer the Delinquent Account directly to General Counsel in order to avoid unnecessary, costly and time consuming procedures. Upon referral of the Delinquent Account to General Counsel, General Counsel may, in his or her discretion, immediately file a Statement of Lien on the Property.

2. Late Fees:

a. **"Late Fees**" are assessed on the Property for failure to make timely payments of Fees. Late Fees are applied, regardless of whether the Fees are assessed on a one-time, monthly, quarterly, semi-annual, annual, or any other basis.

b. Late Fee are assessed on the Property **Fifteen (15) calendar days from the payment due date.** Pursuant to § 29-1-1102, C.R.S., such Late Fee may be charged by either of the following two methods, whichever is greater:

i. One Late Fee of Fifteen Dollars ($15.00) may be assessed on the Property per each assessment or installment of Fees not fully paid prior to the Fifteenth (15) calendar day following the payment due date; or

ii. In lieu of Section 2(b)(i) above, a Late Fee of Five Percent (5%) per month, commencing on the Fifteenth (15) calendar day following the payment due date, and each month thereafter, may be charged on unpaid Fees until the Late Fee equals Twenty Five Percent (25%) of all outstanding Fees.

Example:

January 1 Fee (unpaid) . . . . . - $100
5% Late Fee (January 15) . . . . . - $5
February 1 Fee (unpaid) . . . . . - $100
5% Late Fee (February 15) . . . . . - $10
(Net Balance . . . . . - $215)

c. Partial payment of any outstanding Delinquent Fees and Charges will not prevent the imposition of Late Fees pursuant to this Section 2.

Example: (using the$15.00 Late Fee)

January 1 Fee (unpaid) . . . . . - $100
Partial Payment on January 5 . . . . . $90
Late Fee (January 15) . . . . . - $15
(Net Balance . . . . . - $25)

d. Payments received will be applied to the balance due in the following order of priority: (1) Late Fees; (2) Interest; (3) Costs of Collections; (4) the earliest imposed and unpaid Fees; (5) any successive unpaid Fees in chronological order from the earliest unpaid Fees to the most recently imposed Fees.

Example A: (using the$15.00 Late Fee)

January 1 Fee (unpaid) . . . . . - $100
Late Fee (January 15) . ……. . - $15
February 1 Fee (unpaid) . . . . . - $100
Late Fee (February 15) …….. . -$15
March 1 Fee (unpaid) . . . . . - $100
Payment on March 10 . . . . . $280
(Net Balance . . . . . - $50)

- *Late Fees Balance = $0*
- *Fees and Charges Balance = - $50*

Example B: (using the$15.00 Late Fee)

January 1 Fee (unpaid) . . . . . - $100
Late Fee (January 15) . ……. . - $15
February 1 Fee . . . . . - $100
Payment on February 10 . . . . . $150
Late Fee (February 15) …….. . - $15

(Net Balance . . . . . - $80)
- Late Fees Balance = - $15
- Fees and Charges Balance = - $65

e. No penalty will be assessed on the Property for a credit balance resulting from the prepayment and/or overpayment of Fees. Such credit balances will be carried forward on the account with all subsequent Fees and Delinquent Fees and Charges being deducted until such time as the credit balance is depleted. A Property carrying a credit balance may be assessed Late Fees as provided herein at such time as the credit balance is insufficient to pay the entire amount of Fees due and owing the District.

Example:

January 1 Fee . . . . . - $100
Payment on January 2 . . . . . $350
February 1 Fee . . . . . - $100
March 1 Fee . . . . . - $100 (balance = $50)
April 1 Fee . . . . . - $100
Late Fee (April 15) . . . . . - $15
(Net Balance . . . . . - $65)

3. Interest:

"**Interest**" charges accrue on all delinquent Fees at the maximum statutory rate of Eighteen Percent (18%) per annum. Interest shall not accrue and be charged on Late Fees, Interest or Costs of Collections. §29-1-1102, C.R.S.

4. Penalties:

"Penalties" may be charged on Delinquent Accounts at a rate determined by the Board and may include, but are not limited to, pro-rated costs associated with collection efforts on behalf of the District for all Delinquent Accounts combined.

5. Costs of Collections:

"**Costs of Collections**" include, but are not limited to, attorneys' fees and all costs, fees and charges associated with the processing and/or collection of Delinquent Fees and Charges, including the following fixed rates and hourly fees and costs:

i. *Action Fees.* The following fixed rate fees are charged to a Delinquent Account once the corresponding action has been taken by either the Manager or General Counsel:

- *Reminder Letter Fee:* Ten Dollars ($10.00) per Reminder Letter. This action is typically performed by the Manager.

- *Warning Letter Fee:* Ten Dollars ($10.00) per Warning Letter sent. This action is typically performed by the Manager.

- *Attorney Transfer Fee:* Thirty Dollars ($30.00) per Delinquent Account transferred from the Manager to General Counsel. This action is performed

by the Manager.

- *Demand Letter Fee:* Eighty Dollars ($80.00) per Demand Letter sent. This action is performed by General Counsel.

- *Notice of Intent to File a Statement of Lien Fee:* One Hundred Twenty Dollars ($120.00) per Notice of Intent to File a Statement of Lien sent. This action is performed by General Counsel.

- *Lien Recording Fee:* One Hundred Fifty Dollars ($150.00) per each lien recorded on the Property. This action is performed by General Counsel.

- *Lien Release Fee:* One Hundred Fifty Dollars ($150.00) per lien that is released. This action is performed by General Counsel. It is recommended that the Lien Release Fee be charged to the Delinquent Account at the same time as the Lien Recording Fee.

ii. *Attorney Hourly Fees and Costs.* Upon transfer of a Delinquent Account to General Counsel, all hourly attorneys' fees and costs, including, but not limited to, litigation and expert witness fees and costs, incurred by the District to collect or defend the Delinquent Fees and Charges are assessed to the Delinquent Account and become part of the perpetual Lien on the Property. All such hourly attorneys' fees and costs shall be reasonable.

iii. *Recovery of Costs of Collections.* In accordance with § 29-1-1102(8), C.R.S., nothing in this Resolution shall be construed to prohibit the District from recovering all Costs of Collections whether or not outlined above.

6. Waiver of Late Fees, Interest and Costs of Collections:

a. The Manager and General Counsel each have authority and discretion to waive or reduce portions of the Delinquent Account attributable to Late Fees and Interest. Such action is permitted if either the Manager or General Counsel, in its discretion, determines that such waiver or reduction will facilitate the payment of Delinquent Fees and Charges. Notwithstanding the foregoing, if the cumulative amount due and owing the District on the Delinquent Account exceeds One Thousand Dollars ($1,000.00), neither the Manager nor General Counsel shall have any authority to waive or reduce any portion of the Late Fees or Interest. In such case, the person or entity owing in excess of One Thousand Dollars ($1,000.00) shall first submit a request, in writing, to the Board, and the Board may make the determination in its sole discretion.

b. Neither the Manager nor General Counsel is authorized to waive any portion of the Fees or Costs of Collections. Should the Property owner desire a waiver of such Fees and/or Costs of Collections, s/he may submit a written request to the Board and the Board may make the determination in its sole discretion.

c. Any waiver or reduction of Late Fees or Interest granted pursuant to Sections 6(a) or (b) hereof shall not be construed as a waiver or reduction of future Late Fees and Interest, or as the promise to waive or reduce future Late Fees or Interest. Nor shall any such waiver or reduction be deemed to bind, limit, or direct the future decision making power of the Board, Manager, or General Counsel, whether related to the Property in question or other properties within the District.

7. Payment Plans:

The Manager and General Counsel each have the authority to enter into or establish payment plans for the repayment of a Delinquent Account. Should the Manager or General Counsel elect not to enter into a payment plan with the Property owner, the Property owner may submit a written request to the Board and the Board may make the determination in its sole discretion.

8. Ratification of Past Actions:

All acts, omissions, waivers and/or payment plans heretofor undertaken by the Manager or General Counsel that would otherwise have been authorized by or not required by this Resolution are hereby affirmed, ratified and made effective as of the date said acts, omissions, waivers and/or payment plans occurred.

9. Additional Actions:

The Board directs its officers, staff and consultants to take such additional actions and execute such additional documents as are necessary to give full effect to the intention of this Resolution.

10. Supersedes Prior Resolutions:

This Resolution shall supersede and replace in their entirety all prior resolutions addressing the processing and/or collection of Delinquent Fees and Charges, including the Prior Policy. To the extent that any term or provision in this Resolution conflicts with any term or provision in a previously enacted and valid resolution of the District, the term or provision in this Resolution shall prevail.

11. Severability:

If any term, condition or provision of this Resolution shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such term, condition or provision shall not affect any other provision contained in this Resolution, the intention being that such provisions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Resolution a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

12. Savings Provision:

The failure to comply with the procedures set forth herein shall not affect the status of the Delinquent Fees and Charges as a perpetual Lien subject to foreclosure in accordance with law. Failure by the Manager, General Counsel or other authorized representative to take any action in accordance with the guidelines provided herein shall not invalidate subsequent efforts to collect the Delinquent Fees and Charges.

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ADOPTED this 3rd day of November 2015.

GREATROCK NORTH WATER AND SANITATION DISTRICT

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Officer of the District

ATTEST:

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APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys at Law

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General Counsel to the District