SHARP, SHERMAN & ENGLE LLC
Attorneys and Counselors at Law
401 Lincoln Avenue
P.O. Box 774608
Steamboat Springs, Colorado 80477
Telephone: (970) 879-7600 FAX: (970) 879-8162
tom@tomsharp.com

MELINDA H. SHERMAN
GARY S. ENGLE
ELIZABETH H. HINCHMAN

THOMAS R. SHARP
Of Counsel

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Directors (via email)
Morrison Creek Metropolitan Water
and Sanitation District
24490 Uncompaghre Road
Oak Creek, CO 80467

Re: How to form a special improvement district (MC-SID) under control and Supervision of Morrison Creek Metro W&S District

Dear Directors:

Pursuant to your request, I have investigated matters with respect to an overview of the means of creating a special improvement district (a "MC-SID") under the control and supervision of the Morrison Creek Metropolitan Water and Sanitation District (the "District"), the powers that are vested in such a MC-SID and in the District, and the procedures for borrowing funding for the MC-SID to complete the special improvements.

I previously provided to the District an opinion letter in 2000 regarding the procedures for formation of a County Local Improvement District. Caution: That opinion has NOT been updated. I also previously provided to the District an opinion letter in 2000 regarding the creation by the District of "special areas" in which differential rates could be charged, in order to encourage the extension of main water and sanitary sewer lines in unserved subdivisions. Caution: That opinion has also NOT been updated.

In 2015, the Colorado legislature adopt HB15-1092, which includes a new section, C.R.S. Section 32-1-1101.7, which provides a procedure for the creation of Special Improvement Districts within the confines of a special Title 32 district such as the Morrison Creek Metropolitan Water and Sanitation District. This is an ADDITIONAL and important new method for unserved lot owners within the District to extend main water and sanitary sewer lines to serve their lots. The 2015 legislation reads as follows:

"C.R.S. Section 32-1-1101.7. Establishment of special improvement districts within the boundaries of a special district.

(1) A special district may establish a special improvement district within the boundaries of the special district to finance all or part of the costs of any improvements that the

special district is authorized to finance if the power to levy assessments is authorized in the special district's service plan or statement of purposes or approved in writing by the county or municipality that approved the special district's service plan or accepted the special district's statement of purposes. The name of a special improvement district established on or after August 5, 2015, must include the name of the special district that established the special improvement district.

(2) If a special improvement district is established within the boundaries of a special district, assessments shall be levied on a frontage, area, zone, or other equitable basis and only:

(a) With the written consent of one hundred percent of the owners of the property to be assessed; or

(b) Upon approval of a majority of the eligible electors, as defined in section 32-1-103 (5), within the special improvement district voting thereon.

(3) The method of creating a special improvement district, making the improvements specified for the special improvement district, and the levying and collecting of assessments for the costs of the improvements specified for the special improvement district shall be as provided in part 5 of article 25 of title 31, C.R.S., as amended, subject to the following:

(a) The special district shall have all the rights, powers, and duties of the municipality as set forth in parts 5 and 11 of article 25 of title 31, C.R.S.

(b) The board shall perform the duties of the governing body as set forth in part 5 of articl

(c) The chairman and president of the special district shall perform the duties of the mayor as set forth in part 5 of article 25 of title 31, C.R.S.

(e) The board shall appoint a person to perform the duties of the municipal treasurer as set forth in part 5 of article 25 of title 31, C.R.S.

(f) All actions by the board pursuant to the provisions of part 5 of article 25 of title 31, C.R.S., shall be by resolution, notwithstanding any reference in said part 5 to action by ordinance.

(g) Any bonds payable from the assessments shall be approved by a majority of the eligible electors, as defined in section 32-1-103(5), voting on the question of issuing such bonds. The board may determine by resolution whether the eligible electors voting on the question shall be:

(I) The eligible electors of the special district; or

(II) The eligible electors of the special improvement district."

A MC-SID is not a separate political subdivision, and it has no independent existence apart from the District. The first part of the legislation provides that the District may finance all or part of the costs of any improvements that the special district is authorized to finance. This limits the use of a MC-SID to only water and sewer infrastructure. It cannot be used to improve roadways or extend electric lines. The District is only in the water and sewer business, unless someday it converts to a true Title 32 "metropolitan district" and adds additional functions such as roads, recreation, etc. In addition, the authority of the District to form such MC-SIDs is only

"if the power to levy assessments is authorized in the special district's service plan or statement of purposes or approved in writing by the" Routt County commissioners. Since the statute addition was included in 2015, and the District's service plan was written in 1972, it is obvious that the District will need to approach the Routt County Commissioners to seek a County resolution or ordinance specifically authorizing the District to create MC-SIDs. The County might choose to grant such authorizations on an individual basis, each time a MC-SID is created, or may grant a blanket approval to create as many MC-SIDs as the District chooses. We will have to discuss these options with the County.

Once the District has authority to create one or more MC-SIDs, and finance the water and sewer improvements, the procedures are specifically intended to follow the procedures in statute for municipal special improvement districts within towns and cities. Among the notable provisions of the municipal special improvement district statutes, C.R.S. Sections 31-25-501 et seq., are the following (this is not intended to be inclusive of every detail of the process):

A. The process can begin with a petition from lot owners are expected to be assessed for more than one-half of the cost of the proposed improvements; the petition is to be delivered to the Board of the District, specifying the improvements to be constructed, the materials to be used, and if appropriate the maximum cost of the improvements

B. The process can also begin with a resolution initiated by the Board of the District.

C. Before contracting for or ordering any work to be constructed, whether initiated by the Board or by petition, a preliminary order shall be made by the Board, adopting preliminary plans and specifications for the improvements, definitely describing the materials to be used, or stating that one of several specified materials shall be chosen, determining the number of installments and time in which the cost of the improvements shall be payable, if any, and the lots and property to be assessed for the same, and requiring an estimate of the costs to be made by the District engineer, together with a map of the proposed special improvement district in which the improvements are to be made, and a schedule showing the approximate amounts, if any, to be assessed upon the several lots or parcels of property within the MC-SID. The cost estimates and approximate amounts to be assessed shall be formulated in good faith on the basis of the best information available to the Board but shall not be binding. The payment of installments which will be required from the lot owners may be up to 20 years in length and the method of assessment must be described, which may be by relative property area, street frontage, zone, or other "equitable basis."

D. The General Manager of the District then gives written notice to each affected property owner, of the proposal, and the date of a public hearing of the Board of the District to consider the matter. Notice is also include in the newspaper. Notices have to be at least 3 weeks before the public meeting. If the process is initiated by a petition signed by 100% of the properties to be assessed, the requirements of a notice and public hearing are waived. The form of the notice must include at least the following:

   (1) the kind of improvements proposed;

   (2) the number of installment;

(3) the time in which the cost will be payable;
(4) the extent of the district to be improved;
(5) the probable cost per front foot or other unit basis which, in the judgment of the Board, reflects the benefits which accrue to the properties to be assessed as shown by the estimates of the District engineer;
(6) the time, not less than 20 days after the publication, when a resolution authorizing the improvements will be considered;
(7) that the map, estimates, and schedule showing the approximate amounts to be assessed
(8) that all complaints and objections that may be made in writing concerning the proposed improvement by the owners of any real estate to be assessed will be heard and determined by the Board before final action thereon.

E. If after the public hearing, the District intends to finance the cost of the special improvements by the issuance of District special improvement bonds, then the District must next accomplish the requisite approval of the electors within the special improvement district area to the issuance of the bonds and the payment on such bonds from only the MC-SIC special assessments to its lot owners. The statute allows the District to have such election all-District-wide, but it would be highly recommended that the Board always choose to have that election only among the electors within the special improvement district.

F. After the public hearing, and if the electors within the MC-SID approve the financing ballot issues and special improvement district ballot issues at an election within the MC-SID, then the District board could proceed to consider and pass a resolution authorizing the creation of the MC-SID and the construction and financing of the improvements, and the ultimate assessment to the property owners.

G. The District board, acting as the board of the MC-SID, contracts for construction of the improvements and arranges the financing.

H. Upon completion of any special improvement, or upon completion from time to time of any part thereof, and upon acceptance thereof by the Board, or whenever the total cost of any improvement or of any such part thereof can be reasonably ascertained either prior to, during, or subsequent to the construction of the improvements, the Board shall cause to be prepared a statement showing the whole cost of the improvement, including costs of inspection and collection, capitalized interest on any bonds issued for such period as the Board may deem necessary, capitalized bond reserves, and all other incidental costs, the portion thereof, if any, to be paid by assessments, the portion thereof, if any, to be paid by the District, and the portion thereof to be assessed upon each lot or tract of land to be assessed for the same, which statement shall be filed in the office of the District Manager. If the Board should deem the basis of the assessment to be inequitable in any case, a just and equitable assessment shall be made upon the basis of benefits accruing to any property assessed by reason of the improvements made.

I. The General Manager then gives written notice again to all the lot owners with a copy of the statement and the “final assessment roll,” advising that any complaints may be made to the Board and filed in writing prior to another public hearing to be held by the District board. Again, notice is also published in the newspaper.

J. At the time specified in said notice or at some adjourned time, the Board shall hear and determine all such complaints and objections and may, thereupon, make such modifications and changes as may seem equitable and just or may confirm the first apportionment. The Board shall, thereupon by resolution, assess the costs of said improvements and the passage of such resolution shall be prima facie evidence of the fact that the property assessed is benefitted in the amount of the assessments and that such assessments have been lawfully levied.

K. The board can determine to have all assessments collected by the District itself, OR (and this is more likely), may contract with and certify the final assessment roll to the Routt County Treasurer, who will enter such assessments against the various lots which are to be assessed.

The finding by resolution of the Board that said improvements were duly ordered after notice duly given and after hearing duly held and that such proposal was properly initiated by the Board or that a petition was presented and that the petition was subscribed by the required number of owners shall be conclusive of the facts so stated.

If, before any improvements are made, any piece of real estate to be assessed already has an improvement conforming to the general plan or satisfactory to the Board, an allowance therefore may be made to the owner, and such allowance may be deducted from the owner's assessment and from the contract price. The Board is authorized to enter into contracts and agreements with any owner of property within the district or any other person concerning the construction or acquisition of improvements, the assessment of costs thereof, the waiver or limitation of legal rights, or any other matter concerning the district.

The determination by the Board as to the property to be assessed and the amount of special benefits shall be conclusive of the facts stated therein.

All assessments made in accordance with the statutory requirements, together with all interest thereon and penalties for default in payment thereof, and all costs in collecting the same shall constitute, from the effective date of the assessing resolution, a perpetual lien in the several amounts assessed against each lot or tract of land and shall have priority over all other liens excepting a general tax lien. In other words, the assessment lien of a MC-SIC is superior and ahead of any mortgage or deed of trust encumbering the property. Though there is no case specifically on point in Colorado, it has been contended that the assessment lien supersedes the lien for collection of water and sewer fees and tap fees by a special district. I express no opinion on the relative priority of an assessment lien versus a special district lien. The District Manager shall file with the Routt County clerk's office copies of the assessing resolution after its final adoption by the Board for recording on the land records of each lot or tract of land assessed within the county. In addition, the District Manager shall file copies of such assessing resolution after its final adoption by the Board with the county assessor and the county treasurer.

All special assessments for special improvements shall be due and payable within 30 days after the effective date of the assessing resolution without demand, but all such assessments may be paid, at the election of the owner, in installments with interest as provided below. Failure to pay the whole assessment within said period of 30 days shall be conclusively considered and held to be an election on the part of the assessed landowner, whether under disability or otherwise, to pay in such installments. All persons so electing to pay in installments shall be conclusively held and considered as consenting to said improvements. Such election shall be conclusively held and considered as a waiver of any right to question the power or jurisdiction of the District to construct the improvements, the quality of the work, the regularity or sufficiency of the proceedings, the validity or the correctness of the assessments, or the validity of the lien thereof.

In case of such election to pay in installments, which is normally the election of almost all property owners in a special improvement district, the assessment shall be payable in two or more installments of principal, the first of which installment shall be payable as prescribed by the Board in not more than five years and the last in not more than twenty years with interest in all cases on the unpaid principal. The number and amount of payment of installments, the period of payment, the interest rate, and the times of payment of interest shall be determined by the Board and set forth in the assessing resolution. The times of payment of installments shall be the same as the times of payment for installments of property taxes as specified in C.R.S. §39-10-104.5(2). The interest rate will usually be set by the District to provide a marketability of such bonds. If the District borrows from the Colorado Water Resources and Power Development Authority, the interest rate will be set by the contract with such Authority, depending upon its programs. Since the creation process takes some period of time, the practice has been that the petitioners request a maximum net effective interest rate, and the Board sets in its resolution a maximum net effective interest rate. Since bonds issued for special improvement district improvements are revenue bonds, the marketplace historically requires a premium of 30 to 50 basis points over general obligation bonds of the same rating.

Failure to pay any installment, whether of principal or interest, when due, shall cause the whole of the unpaid principal to become due and collectable immediately, and the whole amount of the unpaid principal and accrued interest shall thereafter draw interest at the rate established pursuant to C.R.S. §5-12-106(2) and (3), until the day of sale by the county treasurer, which rate is 2 points over the Kansas City Federal Reserve Board discount rate. The delinquency is certified to the county treasurer who sells the assessed property at tax sale in the same manner as sales are made for delinquent real property taxes. Once sold by the treasurer, the delinquency then bears interest at the same rate as that charged by the treasurer for ad valorem property tax sales, being 9 points over the discount rate.

The Board shall have power to contract an indebtedness on behalf of the District, and upon the credit thereof, by borrowing money or issuing the negotiable special assessment interest-bearing bonds of the District, subject, however to constitutional limitations. Under the 2015 legislation, no such debt shall be created for such purposes unless the question of incurring

the same, including the question of the maximum net effective interest rate, shall be submitted at a special election, which election shall be called and conducted, the votes canvassed, and the results declared in the same manner as other Title 32 special district elections. Special assessment bonds of the District (which are revenue bonds) may be issued, under such date and in such form as may be prescribed by the Board, bearing the name of the district improved (e.g., "Stagecoach Special Improvement District No. 1"), and payable in a sufficient period of years (usually 10 to 15 years) after date to cover the period of payment provided, but subject to early call as provided in the statute. The bonds are to be issued in convenient denominations, usually $5,000 denominations, though $1,000 denominations are occasionally used. Such bonds shall be payable out of the monies collected by the County Treasurer and remitted to the General Manager of the District on account of the assessments made for said improvements. All monies collected from such assessments for any improvements shall be applied to the payment of the bonds issued, until payment in full is made of all the bonds, both principal and interest. The bonds may be sold, under such terms and conditions as are established by the Board, in such amounts as will be sufficient to pay for the cost of the improvements.

In connection with the issuance of revenue bonds payable solely from special assessments of a special improvement district, the Board must provide by resolution for the submission of the question of issuing such bonds to the electors eligible to vote on the question. In that case, the Board may provide by resolution that all electors of the District as a whole shall be eligible to vote on the question or that only electors of the MC-SID shall be eligible to vote. The "electors" are those defined within the Title 32 Special District statutes, which are residents within the MC-SIC (of which there may likely be none) and owners, or whose spouses are owners, of real property within the boundary of the proposed MC-SIC and who are registered Colorado voters. It is not clear whether such an election is a "TABOR election" under the Colorado constitution, but I recommend that the Board proceed to regard it as a TABOR election and that it be held in November as required for all TABOR elections, with appropriate ballot language seeking approval under TABOR. C.R.S. §30-20-619(5), adopted by the legislature effective July 1, 1994, addresses the scope of the area within which the vote is necessary for a local improvement district, in light of the mandate of TABOR. Such 1994 statute allows that in the case of bonds payable solely from special assessments the vote may be restricted to electors within the district specially assessed, as opposed to a District-wide vote. That same language is included in subsection 3(g)(II) of C.R.S. Section 32-1-1101.7 quoted above.

Except as described below, all special district improvements made pursuant to the statute shall be constructed by independent contract and all contracts shall be let by the Board. All such contracts shall be let to the lowest reliable and responsible bidder, after public advertisement once in a newspaper of general circulation in the county; except that after such advertisement, if it be determined by the Board that the bids are too high or that the imposed improvement can be made by the District for less than the bid of the lowest reliable and responsible bidder, the District is empowered to provide for doing the work by hiring labor by the day or otherwise and to arrange for purchasing necessary material, all under the supervision of the Board. Except where the District itself does the work, no contract shall be made without a surety bond for its

faithful performance, with sufficient sureties, to be approved by the Board.

Any special improvement district bonds issued in the Stagecoach area would be non-rated bonds, unless insured. The municipal bond market opens up considerably when credit enhancements are utilized. However, bond insurance has not historically been used with local improvement district or special district improvement issues. I have not spoken with any bond insurer, but assume that any insurer would require the issuer (the District) or some other involved entity to provide substantial financial guarantees for repayment of the bonds in the form of letters of credit or the like before an insurer would consider insuring a local improvement district issue. The financial strength of the District may not be able to sustain such assurances. The most likely event would be for a local or regional bank to buy all of the bonds in a private placement, arranged by one or more of the property owners within the MC-SIC.

The District may be able to qualify for consideration of financing by the Colorado Water Resources and Power Development Authority, located in Denver. That Authority is the principal lender to governmental units for water and sewer plants and facilities in the State of Colorado, and will make direct loans up to more than $1,000,000 and, if an issue qualifies, will make leveraged loans resulting from a "pooling" of loans placed into the marketplace on an annual (and sometimes semi-annual) basis. Call the Executive Director at the Authority, 303-830-1550.

So long as the bonds qualify as “exempt facility bonds” under Internal Revenue Code provisions (§142), it has been my experience in the Steamboat II and Tree Haus local improvement district circumstances more than two decades ago that local improvement district bonds issued by Routt County qualified for double-tax exempt status, which enabled the interest rate pricing to be considerable less than taxable bonds. To qualify as exempt facility bonds, however, I understand that the IRC requires the infrastructure to be owned by a local government unit. That will work for water distribution and sewage collection improvements, which must be owned by the District.

I am not a bond attorney and therefore decline to express any definitive views as to whether or not the interest paid on a special improvement district bond issue at Stagecoach would qualify for tax exemption under the Internal Revenue Code of 1986 or the Colorado statutes. Petitioners of any district should consult with bond counsel at the outset of the formation process to reach assurances, if any, with respect to such tax matters, or the District may contact a qualified bond attorney directly.

Bonds issued by Local Improvement Districts are subject to the jurisdiction of the Colorado Securities commissioner, and unless registered, it is necessary to find an exemption under the Colorado Municipal Bond Supervision Act.. There is an exemption under that Act for issues of $2,000,000.00 or less.

In summary, the statutory scheme of the Title 32 special district created special improvement district, created upon the petition of property owners or directly by the Morrison Creek District Board, whose petitioners will bear almost all of the costs, and supported by a favorable TABOR vote within the defined special district area only, is a viable mechanism for completion of water and sewer infrastructure within the existing platted areas at Stagecoach. Construction of roads, sidewalks, gutters, electric, gas, TV cable, fiber optic cable, and telephone lines would not be possible under this special improvement district process. Yet, one significant hurdle and uncertainty remains. First and foremost, Routt County commissioners must adopt an appropriate resolution authorizing the District to create MC-SICs. It is important that the District Board, and perhaps also representatives from SPOA, engage in a dialogue with the County commissioners regarding the willingness of the County to authorize this procedure.

Very truly yours,

Thomas R. Sharp
General Counsel
Morrison Creek Metro Water and San District

:trs
Steve Colby, District Manager (via email)