

RESOLUTION 04-2017

RESOLUTION OF THE BOARD OF DIRECTORS OF TRIVIEW METROPOLITAN DISTRICT ADOPTING POLICY IN REGARDS TO FUNDING AND COST-RECOVERY PROTOCOL FOR CONSTRUCTION OF WESTERN MONUMENT INTERCEPTOR PROJECT

WHEREAS, Triview Metropolitan District ("District") has determined that it is appropriate to adopt, amend and supplement portions of its existing rules and regulations concerning the District's policy in regards to funding and cost recovery as concerns construction and maintenance of a "Western Monument Interceptor", as to be constructed within the District for wastewater treatment purposes; and,

WHEREAS, by Resolution 04-2014 the District implemented a policy requiring each developer to bear the costs of its own development, so that such expenses would not be shared by the taxpayers and ratepayers of the District as a whole; and,

WHEREAS, the District has determined that its current wastewater infrastructure is reaching maximum capacity due to the significant amount of present and anticipated future development within the District, and that it is therefore necessary to construct a second wastewater sewer interceptor/line known as the "Western Monument Interceptor" (i.e., the Project), serving the Western and Northeastern portions of the District; and,

WHEREAS, the District believes it inequitable for residents throughout the District not benefitted through the construction and operation of the Western Monument Interceptor to be assessed or otherwise responsible for funding the construction of such system, and therefore implements this policy describing the procedures for initial funding of the Western Monument Interceptor, and for partial cost-recovery for those providing the initial funding on a pro-rata basis as other development occurs and other users come online; and,

WHEREAS, the District and the District's consultants have identified the current owners of parcels of land, or generally described parcels, intended to utilize and benefit from the construction of the Western Monument Interceptor as Phoenix Bell ("Phoenix"), Triview 77, LLC ("Triview 77"), Colorado Structures, Inc. ("CSI"), and Homeplace Ranch ("Homeplace") (collectively "Landowners"); and,

WHEREAS, pursuant to C.R.S. §32-1-1001(1)(h),(j) and (k) and §32-1-1004(3) this Board has the authority on behalf of the District to fix and from time to time increase rates, charges and tap & impact fees for services or facilities furnished by the District within and outside District boundaries, and to assess reasonable penalties for delinquency in the payment of such rates, fees or charges; and,

WHEREAS, pursuant to C.R.S. §32-1-1001(m) and (n), this Board has the power to adopt, amend and enforce bylaws and rules and regulations for the District that are

not in conflict with the constitution and laws of the State of Colorado, for the carrying on of the business of the District, and may exercise all rights and powers necessary or incident to or implied from its specific powers; and,

WHEREAS, the Landowners are directly impacted by the funding mechanisms associated with the Project, and therefore their acknowledgement/attestation as to this Policy and Resolution as enacted by the District is requested below, though such acknowledgement is not required in order for this Resolution to be of full force and effect.

NOW THEREFORE, pursuant to the District's authority and the power under C.R.S. §32-1001 and §32-1-1004, the following policy is adopted in regards to the District's policies and expectations for funding, design, engineering, development, and construction of the Western Monument Intercept Project as necessary for provision of wastewater services by the District to development on properties currently owned by the Landowners, forming a portion of the District's rules and regulations as follows:

1. Allocation of Costs. Based on the District's engineering contractor's (JDS Hydro Consultants, Inc.), preliminary design and analysis, an initial estimate of projected costs associated with the Project are to be allocated to each individual member of the Landowners in proportion to the amount of property owned/services used, as described below, and as more particularly allocated as described on attached **Exhibit A**, and depicted by associated segment of the Project on attached **Exhibit B**:

Figure 1. Western Monument Interceptor Project: Estimated Costs Allocated Among Landowners		
<u>Name of Party</u>	<u>Cost by Parcel (\$)</u>	<u>Relative Percentage (%)</u>
Phoenix Bell	305,963.51	14.82
Triview 77	8,761.33	0.42
CSI	1,509,041.31	73.09
Homeplace	240,933.86	11.67
TOTAL	2,064,700.00	100.00

2. Landowners Responsible for Actual Costs. Notwithstanding the preliminary estimates set forth in **Figure 1**, above, and **Exhibit A**, attached, the District and the Landowners by acknowledgement/attestation hereto, recognize that these figures are estimates and actual costs may differ from the projected costs stated above. The costs in Figure 1 are presented only as an overall estimate, the final costs will be allocated based on actual costs broken down by each segment as presented in Exhibit A. The proportions presented in Exhibit A will be used. Landowners will pay actual cost in proportion to their relative stake in the Project, as represented by their respective parcel-allocation, described in **Exhibit A**.

a. The District and/or the District's engineer will provide a monthly accounting of costs related to the Project to each Landowner, including an accounting of funds remaining on deposit, anticipated phased funding required, and anticipated

schedule for each phase and for ultimate completion of the Project.

b. If payments from Landowners on deposit with the District are exceeded by costs incurred without additional pay-in, the project may be stopped or paused by the District, in the District's sole and complete discretion, pending provision by the Landowners of sufficient funding to re-start work on the Project. Any costs associated with delays in payment will be the responsibility of the funding parties, and all parties are cautioned that demobilization of any contractors/subcontractors will only increase costs unnecessarily.

3. Execution of Funding and Reimbursement Agreement. It is acknowledged that the Project is likely to be funded "up-front" or in advance by one or more of the Landowners, CSI and Phoenix Bell and/or their successors and assigns, in light of their apparent urgency in development as compared to other Landowners, though any Landowner may initiate their respective participation in the Project through provision of parcel-allocated funding or advance funding at any time.

a. All necessary permitting and engineering may proceed upon provision by one or more of the Landowners of the estimated funding necessary for the "Permitting/Others" phase of the Project, as described on attached **Exhibit C** schedule, or by the District in the District's sole and complete discretion.

b. The District will administer the planning, design, engineering, construction, funding and any cost-recovery/reimbursement pursuant to this Resolution for no longer than ten (10) years from the date of execution of this Resolution. Any funds remaining on deposit with the District at such time shall revert to the District's ownership and discretionary use, and any cost-recovery/reimbursement entitlements remaining for any Landowner(s) at such time shall be subject to private collection efforts by said Landowners with no recourse against the District.

c. Any funding advanced or previously provided by any party will be offset accordingly within the funding and reimbursement provisions herein, based upon pro rata interests in the Project, as outlined in **Figure 1**, above, and **Exhibit A**, attached. Funding and reimbursement shall be accomplished as discussed/illustrated below:

i. Phoenix Bell currently maintains in an escrow account owned by the District approximately \$227,418.00 dedicated to infrastructure development benefitting its parcels, which constitutes approximately 78% of Phoenix Bell's total estimated allotment of costs associated with the Project. The District may utilize such escrowed funds for all phases of the Project to extinction, at which point Phoenix Bell will be invoiced only for its remaining obligation as to actual costs, unless Phoenix Bell desires to contribute to advance funding of the remainder to timely bring the Project to completion.

ii. Should, as anticipated, Phoenix Bell and CSI elect to advance

funding for the entire Project in the estimated amount of \$2,064,700, then the party(s) so advancing funds beyond their parcel-allocated portion shall be entitled to cost-recovery and reimbursement of such expenditures if and when other Landowners develop their respective parcels. The District shall, as a condition of service as part of the Town of Monument's land use approval process, collect from such Landowner(s) their respective parcel-allocated portion of actual costs, and shall pay Phoenix Bell and/or CSI (or other Landowner(s) providing initial advance funding) a pro-rata portion to their own parcel-allocation upon receipt of such funds. For example, if Phoenix Bell funded only its estimated \$305,963.51, and CSI funded in advance the balance of \$1,758,736.49 for completion of the Project, CSI would be entitled to cost recovery in the amount of \$249,695.19 if/when Triview 77 and/or Homeplace seek development entitlements and fund their portion of the Project.

4. Phased Payments. The Landowners may phase their submission of advance payments to the District for funding of the Project. Such phased payments shall be consistent with the anticipated schedule attached hereto as **Exhibit C** so as to avoid delays and associated additional costs, all of which shall be borne by the Landowners.

5. Final Payment. When the Project is completed, an accounting will be provided for final cost, and the funding parties will immediately either make additional payments to cover any deficiency, or will be entitled to a residual payout of funding provided in excess of actual costs, assuming Project costs are less than the amount paid in advance by the Landowners. The District shall provide such Project-Completion Accounting within 120 days of the Project becoming fully operational.

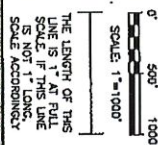
6. Easements. The Landowners shall each, respectively, grant to the District any and all necessary licenses, permits, easements and rights of way across the property of such Landowner in size and location acceptable to the District, as may be required for completion/maintenance and access to the Project at no additional cost. The District will, to the best of its abilities, promptly identify the approximate location and scope of all such easements upon each Landowner's acknowledgment/attestment to this Resolution, as to each such Landowner. All such grants and provisions shall be in accordance with the District's design criteria and specifications to provide for the construction, operation, maintenance, repair and replacement of the mains, pipelines and appurtenances for the Project, together with the right of ingress and egress thereto. The design criteria and specifications for the easements shall include that (1) the utility easements for main lines shall be exclusive easements to the extent reasonably possible, (2) to the extent exclusive easements are not reasonably possible, then any other neighboring utilities (i.e., natural gas, telephone, cable, etc.) shall not be located on top of the District's utility infrastructure within the easements or so close thereto as to interfere with or impair the District's access to and maintenance of the Project within the easements, and (3) to the extent the utility easements exist upon or adjacent to private, non-County, Town, or District maintained roads, such Landowner(s) shall grant access and easements to the District that are within or adjacent to said Landowner(s) private roads, all as may be required by the District. In such instance, such Landowner(s) and

EXHIBITS

Upper Monument Creek Interceptor

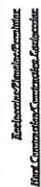
		2007-21	Commutability	Endowment	Total Sources
Segment 1	SFE	Cont.	\$ 981,975.00	\$ -	\$ 981,975.00
Segment 2	SFE	Cont.	\$ 1,805.02	\$ -	\$ 1,805.02
Segment 3	SFE	Cont.	\$ 412,785.00	\$ -	\$ 412,785.00
Segment 4	SFE	Cont.	\$ 391,000.00	\$ -	\$ 391,000.00
Segment 5	SFE	Cont.	\$ 115.54	\$ -	\$ 115.54
From Total			\$ 1,804,200.00	\$ 46,332.00	\$ 1,850,532.00

Note:



NOTE:
1. AERIAL IMAGERY IS NOT ACCURATELY SCALED AND SHOULD BE UTILIZED FOR CONCEPTUAL PURPOSES ONLY (SOURCE: BING MAPS).

West Memphis, Tennessee



Permitting Offices
 Engineering Firms
 Hard Coverings

Note! Each parent will provide surveying within their area

their successors shall be solely responsible for maintaining any such private roads and access as necessary for the District's use and enjoyment of the easements granted, including but not limited to, proper road maintenance, snow removal and traffic control. To the extent that the District is unable to properly access and utilize the easements so granted due to any failure of said Landowner(s) or their successors to comply with these obligations, the District may utilize self-help so as to obtain necessary access and use, and said Landowner(s) shall be solely liable and responsible for all costs incurred by the District, including attorney fees.

7. Determination by the Board. It is the Board=s determination that this policy and the requirements discussed herein are reasonably related to the financial health of the District, and consistent with the District=s policy that costs associated with development within the District shall be paid for by such developers.

8. Other Rates and Fees. All other policies, rules, and regulations of the District not expressly revised by this Resolution shall remain in full force and effect.

9. Enterprise. This Resolution is taken by the District, including as acting through its water activity enterprise.

10. Proper Action. This action is taken by the Board at its regular public meeting after all required public notices and postings of the meeting have been made, with a quorum of the Board in attendance and taking proper action thereon.

THEREFORE, the above policy regarding funding, engineering, design, construction and maintenance, and cost-recovery therefore, of the Western Monument Interceptor Project, was established as rules and regulations of the District, and was enacted by the Board of Directors of the District on this 13th day of June, 2017, by a vote of 5 for and 0 against, to be effective immediately.

ATTEST:

(SEAL)



President
Triview Metropolitan District

ATTEST:



Secretary
Triview Metropolitan District