

RESOLUTION 2022-01

A RESOLUTION APPROVING A LOAN FROM THE COLORADO WATER CONSERVATION BOARD; AUTHORIZING THE FORM AND EXECUTION OF THE LOAN CONTRACT, PROMISSORY NOTE TO EVIDENCE SUCH LOAN, AND SECURITY AGREEMENT IN CONNECTION THEREWITH; AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS RELATED THERETO AND PRESCRIBING OTHER DETAILS IN CONNECTION THEREWITH.

WHEREAS, the Triview Metropolitan District, acting by and through its water enterprise (the "District"), in the County of El Paso and State of Colorado, is duly organized and existing under the Constitution and the laws of the State of Colorado; and

WHEREAS, the members of the Board of Directors of the District (the "Board") have been duly elected, chosen and qualified; and

WHEREAS, the District has previously determined that its water and wastewater system (the "System") constitutes an enterprise under Article X, Section 20 of the Colorado Constitution ("TABOR"); and

WHEREAS, the Board has heretofore determined that it is in the interests of the District and the public interest and necessity demand and require that the District incur a loan for the Stonewall Springs Reservoir Complex project to support the District's efforts to replace its non-renewable Denver Basin groundwater supplies with renewable surface water supplies (the "Project"); and

WHEREAS, the cost of the Project to the District will not exceed \$4,778,310, including design, engineering, legal, financing and administrative costs relating thereto, and any other costs incidental thereto; and

WHEREAS, the Board has determined that in order to finance the Project, it is necessary and advisable and in the best interests of the District to enter into a loan contract (the "Loan Contract") and a separate security agreement (the "Security Agreement") with the Colorado Water Conservation Board ("CWCB"), a body corporate and political subdivision of the State of Colorado, pursuant to which the CWCB will loan the District up to \$4,778,310 to finance the costs of the Project; and

WHEREAS, the District's repayment obligations under the Loan Contract shall be evidenced by a promissory note (the "Note") to be executed and delivered by the District to the CWCB, which Note will be on a parity with the following:

(i) The District's Water and Wastewater Enterprise Revenue Refunding and Improvement Bonds, Series 2018, dated as of November 29, 2018, originally issued in the aggregate principal amount of \$11,165,000;

(ii) the District's Water and Wastewater Enterprise Revenue Bonds, Series 2020A, dated as of May 27, 2020, originally issued in the aggregate principal amount of \$16,140,000; and

(iii) the District's Water and Wastewater Enterprise Revenue Bonds, Series 2020B, dated as of November 5, 2020, originally issued in the aggregate principal amount of \$10,940,000, (collectively, the "Parity Obligations"); and

WHEREAS, the Note, the Loan Contract and the Security Agreement (collectively, the "Financing Documents") may be approved by the Board without an election; and

WHEREAS, the Financing Documents shall be revenue obligations of the District, payable from the Pledged Revenues (as defined in the Financing Documents); and

WHEREAS, there have been presented to the Board the forms of the Financing Documents; and

WHEREAS, the Board desires to approve the forms of the Financing Documents and authorize the execution thereof.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TRIVIEW METROPOLITAN DISTRICT ACTING BY AND THROUGH ITS WATER ACTIVITY ENTERPRISE IN THE COUNTY OF EL PASO AND STATE OF COLORADO:

Section 1. Approvals, Authorizations, and Amendments. The forms of the Financing Documents presented at this meeting are incorporated herein by reference and are hereby approved. The District shall enter into and perform its obligations under the Financing Documents in the forms of such documents, with such changes as are not inconsistent herewith and as are hereafter approved by the Chairman of the Board of Directors and President of the District (the "President"). The President and Secretary of the District (the "Secretary") are hereby authorized and directed to execute the Financing Documents and to affix the seal of the District thereto, and further

to execute and authenticate such other documents or certificates as are deemed necessary or desirable in connection therewith. The Financing Documents shall be executed in substantially the forms approved at this meeting.

The execution of any instrument or certificate or other document in connection with the matters referred to herein by the President and Secretary or by other appropriate officers of the District, shall be conclusive evidence of the approval by the District of such instrument.

Section 2. Election to Apply Supplemental Act. Section 11-57-204 of the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S. (the "Supplemental Act") provides that a public entity, including the District, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply all of the Supplemental Act to the Financing Documents.

Section 3. Delegation.

(a) Pursuant to Section 11-57-205 of the Supplemental Act, the Board hereby delegates to the President, the District Manager, or any member of the Board the authority to make the following determinations relating to and contained in the Financing Documents, subject to the restrictions contained in paragraph (b) of this Section 3:

- (i) The interest rate on the Loan;
 - (ii) The principal amount of the Loan;
 - (iii) The amount of principal of the Loan maturing in any given year and the final maturity of the Loan;
 - (iv) The dates on which the principal of and interest on the Loan are paid;
- and
- (v) The existence and amount of reserve funds for the Loan, if any.

(b) The delegation in paragraph (a) of this Section 3 shall be subject to the following parameters and restrictions:

- (i) the interest rate on each of the Loan shall not exceed 2.05%;
- (ii) the aggregate principal amount of the Loan shall not exceed \$4,778,310; and
- (iii) the final maturity of any of the Loan shall not be later than December 31, 2055.

Section 4. Conclusive Recital. Pursuant to Section 11-57-210 of the Supplemental Act, the Financing Documents shall contain a recital that it is issued pursuant to certain provisions of the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Note after its delivery for value.

Section 5. Pledge of Revenues. The creation, perfection, enforcement, and priority of the pledge of revenues to secure or pay the Financing Documents provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Resolution. The amounts pledged to the payment of the Financing Documents shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge shall have the priority described in the Loan Contract. The lien of such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such persons have notice of such liens.

For purposes of this resolution and the Loan Contract, "Pledged Revenue" shall mean Gross Pledged Revenues remaining after the payment of the Operation and Maintenance Expenses of the System.

"Gross Pledged Revenues" means all income, rents, receipts, charges and revenues derived directly or indirectly by the District from the operation and use of and otherwise pertaining to the System, or any part thereof, whether resulting from Capital Improvements or otherwise, and includes all income, rents, receipts, charges and revenues received by the District from the System, including without limitation:

- (a) All fees, rates and other charges for the use of the System, or for any service rendered by the District in the operation thereof, directly or indirectly, the availability of any such service, or the sale or other disposal of any commodities derived therefrom, including, without limitation, connection charges, but:
 - i. Excluding any moneys borrowed and used for the acquisition of Capital Improvements or for the refunding of securities, and all income or other gain from any investment of such borrowed moneys; and
 - ii. Excluding any moneys received as grants, appropriations or gifts from the Federal Government, the State, or other sources, the use of which is limited by the grantor or donor to the construction of Capital

Improvements, except to the extent any such moneys shall be received as payments for the use of the System, services rendered thereby, the availability of any such service, or the disposal of any commodities therefrom; and

- (b) All income or other gain from any investment of Gross Pledged Revenues (including without limitation the income or gain from any investment of all Net Pledged Revenues, but excluding borrowed moneys and all income or other gain thereon in any acquisition or construction fund, reserve fund, or any escrow fund for any Parity Bonds payable from Net Pledged Revenues heretofore or hereafter issued and excluding any unrealized gains or losses on any investment of Gross Pledged Revenues); and
- (c) All income and revenues derived from the operation of any other utility or other income-producing facilities added to the System and to which the pledge and lien herein provided are lawfully extended by the Board or by the qualified electors of the District.

“Operation and Maintenance Expenses” means all reasonable and necessary current expenses of the District, paid or accrued, of operating, maintaining and repairing the System or any component division or other part thereof, or any other designated facilities in connection with which such term is used including, without limitation, all salaries, labor, materials and repairs necessary to render efficient service; and the term includes, at the option of the District, acting by and through the Board, except as limited by law, without limitation:

- (a) Engineering, auditing, reporting, legal and other overhead expenses of the various departments of the District directly related and reasonably allocable to the administration, operation and maintenance of the System;
- (b) Fidelity bond premiums and property and liability insurance premiums pertaining to the System, or a reasonably allocable share of a premium of any blanket bond or policy pertaining to the System;
- (c) Payments to pension, retirement, health and hospitalization funds, other insurance, and to any self-insurance fund;

(d) Any general (ad valorem) taxes, assessments, excise taxes or other charges which may be lawfully imposed on the District, the System, revenues therefrom, or the District's income from or operations of any properties under its control and pertaining to the System, or any privilege in connection with the System or its operation (but no payments made in lieu of taxes);

(e) The reasonable charges of the Paying Agent, any alternate Paying Agent, any paying agents or escrow agent for any securities payable from the Net Pledged Revenues which have been or will be refunded, and any other depositary bank pertaining to any other securities payable from the Net Pledged Revenues or otherwise pertaining to the System, and the premium for any Reserve Fund Insurance Policy issued other than concurrently with the issuance of any parity obligations;

(f) Contractual services, professional services, salaries, other administrative expenses and costs of materials, supplies, repairs and labor pertaining to the System or to the issuance of the Loan or any other securities relating to the System, including, without limitation, the expenses and compensation of any trustee, receiver or other fiduciary;

(g) The costs incurred by the District in the collection and any refunds of all or any part of the Gross Pledged Revenues;

(h) Any costs of utility services furnished to the System by the District or otherwise, including, without limitation, the contracting by the District for sanitary sewer, electricity, or gas, or any combination thereof, from any Person, for distribution through the System or for the transmission or treatment of wastewater, electricity, or gas for use by the District and its customers and the obligations due under any contract pertaining thereto on a take-and-pay basis or take-or-pay basis or otherwise;

(i) All other administrative, general and commercial expenses pertaining to the System and all other current expenses pertaining to the System which are properly classified as operation and maintenance expenses under generally accepted accounting principles; but

(i) Excluding any allowance for depreciation;

(ii) Excluding any franchise fees;

(iii) Excluding any costs of Capital Improvements (or any combination thereof);

(iv) Excluding any reserves for major capital replacements (other than normal repairs);

(v) Excluding any reserves for operation, maintenance or repair of the System;

(vi) Excluding any allowance for the redemption of any Bond or other security evidencing a loan or other obligation, or the payment of any interest thereon, or any prior redemption premium due in connection therewith, or any reserve therefor;

(vii) Excluding any liabilities incurred in the acquisition or improvement of any properties comprising any project or any existing facilities (or any combination thereof) incorporated into the System, or otherwise;

(viii) Excluding any liabilities incurred by the District as the result of its negligence in the operation of the System or any other ground of legal liability not based on contract; and

(ix) Excluding any such operation and maintenance expense as described above which are paid by District revenues which do not constitute Gross Pledged Revenues.

“System” means the property and facilities comprising the water and wastewater system of the District, now owned or hereafter acquired, including real and personal property and any easements, and also any and all additions and betterments thereto and improvements and extensions hereafter constructed or acquired by the District and used in connection with the water and wastewater facilities of the District.

Section 6. Limitation of Actions. Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings in connection with the Financing Documents shall be commenced more than thirty days after the issuance of the Note.

Section 7. Limited Obligation; Special Obligation. The Financing Documents are payable solely from the Pledged Revenue and the Financing Documents do not constitute a debt within the meaning of any constitutional or statutory limitation or provision.

Section 8. No Recourse against Officers and Agents. Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the District acts in

good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal of or interest on the Note. Such recourse shall not be available either directly or indirectly through the Board or the District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Note and as a part of the consideration of its sale or purchase, CWCB specifically waives any such recourse.

Section 9. Disposition and Investment of Proceeds of the Loan Contract. The proceeds of the Loan Contract shall be applied only to pay the costs and expenses of acquiring, constructing and equipping the Project, including costs related thereto and reimbursement to the District for capital expenditures heretofore incurred and paid from District funds in anticipation of the incurrence of long-term financing therefor, and all other costs and expenses incident thereto, including without limitation the costs of obtaining the Loan Contract. CWCB shall not be responsible for the application or disposal by the District or any of its officers of the funds derived from the Loan Contract.

Section 10. Estimated Life of Improvements. It is hereby determined that the estimated life of the Project to be financed with the proceeds of the Loan Contract is not less than the final maturity of the respective Loan.

Section 11. Issuance of Additional Debts or Bonds. The District will not issue any indebtedness payable from the Pledged Revenue and having a lien thereon which is superior to the lien created by the Financing Documents. The District will issue parity debt only with the prior written approval of CWCB, provided that:

(a) the District is at the time approval is requested from CWCB and at the time of the issuance of the parity debt in substantial compliance with all of the obligations of the Loan Contract, including, but not limited to, being current on the annual payments due under the Loan Contract and in the accumulation of all amounts then required to be accumulated in the District's debt service reserve account or fund; and

(b) the District provides to the CWCB a Parity Certificate from an independent certified public accountant certifying that, based on an analysis of the District's revenues, for 12 consecutive months out of the 18 months immediately preceding the date of issuance of such parity debt, the District's revenues are sufficient to pay its annual Operation and Maintenance Expenses, annual debt service on all outstanding indebtedness having a lien on

the Pledged Revenue, including the Loan Contract, the annual debt service on the proposed indebtedness to be issued, and all required deposits to any reserve funds required by the Loan Contract or by the lender(s) of any indebtedness having a lien on the Pledged Revenue. The analysis of revenues shall be based on the District's current rate structure or the rate structure most recently adopted, and no more than 10% of total revenues may originate from tap and/or connection fees.

Section 12. Direction to Take Authorizing Action. The appropriate officers of the District and members of the Board are hereby authorized and directed to take all other actions necessary or appropriate to effectuate the provisions of this Resolution, including but not limited to such certificates and affidavits as may reasonably be required by CWCB.

Section 13. Ratification and Approval of Prior Actions. All actions heretofore taken by the officers of the District and members of the Board, not inconsistent with the provisions of this Resolution, relating to the Financing Documents, or actions to be taken in respect thereof, are hereby authorized, ratified, approved, and confirmed.

Section 14. Repealer. All acts, orders, ordinances, or resolutions, or parts thereof, in conflict herewith are hereby repealed to the extent of such conflict.

Section 15. Severability. Should any one or more sections or provisions of this Resolution be judicially determined invalid or unenforceable, such determination shall not affect, impair, or invalidate the remaining provisions hereof, the intention being that the various provisions hereof are severable.

Section 16. Inconsistencies. In the event of any inconsistencies between this resolution and the Loan Contract, this resolution is controlling.

Section 17. Resolution Irrepealable. After said Promissory Note are issued, this Resolution shall be and remain irrepealable until said Promissory Note and the interest thereon shall have been fully paid, satisfied and discharged.

ADOPTED on February 17, 2022.



Mark A. Melin

President

Attest:

Jim Buehler

Secretary

STATE OF COLORADO)
)
COUNTY OF EL PASO) SS.
)
TRIVIEW METROPOLITAN DISTRICT)

I, James Barnhart, the Secretary of the Board of Directors of the Triview Metropolitan District, El Paso County, Colorado (the "District"), do hereby certify:

(1) The foregoing pages are a true and correct copy of a resolution (the "Resolution") passed and adopted by the Board of Directors (the "Board") of the District at a regular meeting of the Board held on February 17, 2022 by an affirmative vote of a majority of the members of the Board as follows:

	"Yes"	"No"	"Absent"	"Abstain"
Mark Melville, President	X			
Marco Fiorito, Vice President	X			
James Barnhart, Secretary/Treasurer	X			
James Otis	X			
Anthony Sexton	X			

(2) The members of the Board were present at such meeting and voted on the passage of such Resolution as set forth above.

(3) The Resolution was approved and authenticated by the signature of the Chairman of the Board of Directors and President of the District, sealed with the District seal, attested by the Secretary and recorded in the minutes of the Board.

(4) There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

(5) Notice of the meeting of February 17, 2022, in the form attached hereto as Exhibit A was posted on the District's Website, in at least three places within the limits of the District, and, in addition, such notice was posted in the office of the El Paso County Clerk and Recorder not less than three days prior to the meeting in accordance with law.

WITNESS my hand and the seal of said District affixed this February 17, 2022.




Secretary

EXHIBIT A

Attach Notice of Meeting

TRIVIEW METROPOLITAN DISTRICT BOARD OF DIRECTORS

Regular Board Meeting Agenda

Thursday, February 17, 2022

Triview Metropolitan District Office
16055 Old Forest Point Suite 302
Monument, CO 80132
5:30 p.m. – 8:00 p.m.

AGENDA

1. Call to Order
2. Declaration of a Quorum, Notice of Posting
3. Approval of Agenda
4. Approval of Consent Agenda
 - a. Prior Meeting Minutes
 - January 20, 2022 Work Session (enclosure)
 - January 24, 2022 Special Board Meeting (enclosure)
 - b. Billing Summary Rate Code Report (enclosure)
 - c. Taps for January 2022 (enclosure)
 - d. Tax Transfer from Monument (enclosure)
5. Operations Reports
 - a. District Manager Monthly Report (enclosure)
 - b. Public Works and Parks and Open Space Updates (Matt Rayno)
 - c. Utilities Department Updates (Shawn Sexton)
6. Action Items:
 - a. Review and Consider a Lease agreement between the Triview Metropolitan District, acting by and through its Water and Wastewater Enterprise, and the Arkansas Groundwater and Reservoir Association (AGRA) for the lease of up to 365 Acre Feet of reusable Wastewater Effluent and authorization for the District Manager to sign. (enclosure)
 - b. Review and Consider a Lease agreement between the Triview Metropolitan District, acting by and through its Water and Wastewater Enterprise, and the Arkansas Groundwater and Reservoir Association (AGRA) for the lease of the yield from 773 Shares of Fountain Mutual

Irrigation Company (FMIC) and use of Triview's storage in the Stonewall Springs South Reservoir resulting from Triview's Ownership of 1,850 Class A shares in the Stonewall Springs Reservoir Company. (enclosure)

- c. Review and Consider a Lease agreement between the Triview Metropolitan District, acting by and through its Water and Wastewater Enterprise, and the Arkansas Groundwater and Reservoir Association (AGRA) for the lease of yield from 1,341 shares of Excelsior Irrigating Company and authorization for the District Manager to sign. (enclosure)
 - d. Review and Consider Resolution 2022-01, A Resolution Approving a Loan From The Colorado Water Conservation Board in the amount of \$4,778,310 at an interest rate not to exceed 2.05%; Authorizing The Form And Execution Of The Loan Contract, Promissory Note To Evidence Such Loan, And Security Agreement In Connection Therewith; Authorizing the Execution and Delivery Of Documents Related Thereto and Prescribing Other Details In Connection Therewith.
 - e. Review, consider, and authorize District Manager to sign quitclaim deed transferring real property from the Triview Metropolitan District to Pueblo Phase III, LLC, an affiliate of Fremont Sand and Gravel, such property being unintentionally granted to Triview as part of the Stonewall purchase and of no benefit to Triview in the ownership and operation of the SSRC project, and such property being of material import to Fremont in their own gravel operations."
7. Review and Consider approval or ratification of the Triview Metropolitan District Financials and Payables.
- a. Checks of \$5,000.00 or more (enclosure)
 - b. January, 2022 Financials (enclosure)
8. Update Board on Public Relation activities.
- Website Design and Updates
 - Public Meeting Northern Delivery System
9. Executive Session §24-6-402(4) (a), (b), (e), (f) Acquisitions, Legal Advice, Negotiations, and Personnel regarding the following general topics, if needed.
- District Manager Management Contract.
 - Revisions to Personnel Policy and Procedure Manual regarding vacation carry over.
 - Negotiation regarding Northern Delivery System.
10. Adjournment