

## **TRIVIEW METROPOLITAN DISTRICT**

### **RESOLUTION 2018-04**

#### **RESOLUTION OF THE BOARD OF DIRECTORS OF TRIVIEW METROPOLITAN DISTRICT CONCERNING DEVELOPMENT OF UTILITY INFRASTRUCTURE AND INCLUSION POLICIES**

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 regard to development and construction of utility infrastructure for service to new development within the District, and in regard to inclusion of future properties within the District and the District's expectations and policies for the same;

WHEREAS, pursuant to C.R.S. 32-1-1001(1)(h), (k), and (l), and 32-1-1004(3), this Board has the authority on behalf of the District to manage and control the business affairs of the District, to include the construction, installation, operation and maintenance of District improvements, the furnishing of services, and the acceptance of real and personal property for use by the District, specifically as concerns utility infrastructure;

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 District has considered the somewhat *ad hoc* manner in which inclusions of various properties into the District may have historically occurred, and wishes to ensure that consistent expectations may be established for the construction, warranty, maintenance and conveyance of water and wastewater utility infrastructure by developers and landowners for use by the District in provision of water and wastewater services, both for previously included properties for which no specific criteria was established upon inclusion, as well as for properties which may seek inclusion into the District in the future;

WHEREAS, the District in order to address such concerns, previously enacted resolution 03-2014, which this Resolution is intended to expand upon, supplement, and replace.

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 development, construction, warranty, maintenance, and conveyance to the District of all water and wastewater utility infrastructure necessary for provision of water and wastewater services by the District to new development, and



establishment of pro forma inclusion agreements establishing similar expectations for future to-be-included properties, forming a portion of the District's rules and regulations.

1. Water and Wastewater Utility Infrastructure. It is expressly the policy of the District that each developer should bear the costs of their own development, and that such expenses should not be shared by the taxpayers and ratepayers of the District as a whole, including provision of infrastructure necessary for the District to provide utility services. Therefore, unless expressly stated or agreed to the contrary as part of previously approved inclusion agreements or other District-approved contractual documents, all future development in the District shall be subject to the following requirements as concerns design, development, construction, warranty and maintenance of water and wastewater utility infrastructure necessary for the District to provide water and wastewater services to such future development.

A. The developers of all projects within the District to whom water and wastewater service will be provided by the District shall construct and pay for the water and wastewater delivery and distribution systems as necessary for the proper supply and distribution to and from the District's respective water and wastewater facilities to the subject property (Utility Improvements). Construction and funding of all such infrastructure shall be the Developer's burden.

B. All Utility Improvements shall be designed consistent with the District's design criteria and construction standards, which may be amended or altered from time to time by the District. The District's written confirmation of conformance with said design criteria and construction standards must be obtained prior to any construction activities by the developer, its agents, contractors and assigns, and all such Utility Improvements shall be sufficient to provide the applicable services to the subject property anticipated based upon land use approvals from the Town of Monument for the same, as determined in the District's discretion. Utility Improvements shall include any necessary offsite improvements for adequate service to the property, in the District's discretion.

C. Prior to construction of any Utility Improvements, any land developer shall submit detailed construction plans to the District for design approval. Construction shall not begin until such land developer has obtained the prior written approval by the District of such final design construction plans, which approval shall be in the District's sole discretion.

D. All Utility Improvement designs, and implementation of the same, must be sufficient to meet the anticipated water and wastewater demands of the property to be serviced thereby, based upon the then-applicable demand standards utilized by the District and the Town of Monument in evaluating land use entitlements.

E. Acceptance of Work/Warranty. The Utility Improvement construction obligations of each land developer shall not be complete until completion of the District's inspection and receipt of written preliminary acceptance of the Utility



Improvements and associated infrastructure as being in compliance with the District's specifications and plans accepted by the District for use in construction of the same, which preliminary acceptance shall not occur sooner than one year after completion of all such utility infrastructure. Such preliminary acceptance shall be in accordance with the standard policies and procedures of the District. Said land developer shall subsequently guarantee and warranty all infrastructure for a period of two (2) years after determination of final completion by the District and preliminary acceptance of the same. Said land developer shall maintain the Utility Improvements during said period prior to preliminary acceptance and for the subsequent warranty period, and shall cure any non-conforming work or any failures and workmanship during said periods. At the end of the warranty period, such infrastructure shall be finally accepted by the District, and shall at such time become the property of the District, and shall be maintained and operated by the District. Upon such final acceptance by the District, the land developer shall convey good title for the Utility Improvements to the District, free and clear of all liens and encumbrances.

2. Main Lines. In addition to the Utility Infrastructure, each land developer shall be solely responsible, at its expense, for the construction of any and all connections to, and extensions of, the District's existing water and wastewater mainlines to and from the subject property to be serviced thereby, as necessary for the District to provide such utility services to/from the subject property. Such land developers shall thereby be responsible for all construction and expense of all onsite and offsite infrastructure improvements for utility service to the property by the District.

3. Reimbursements. Any land developers designing, constructing and warranting Utility Infrastructure as described above, including main line extensions and connections thereto, shall reimburse the District for its reasonable attorney fees, engineering fees, District staff overtime incurred in connection with the design, plan review and comment, inspection, and approvals by the District of such Utility Infrastructure up until the final acceptance of said Utility Infrastructure by the District. All such amounts shall constitute a charge relating to the subject property to be serviced by such Utility Infrastructure, and any amount not timely paid shall constitute a lien upon such property until paid, and may be enforced in the same manner as the statutory lien upon the property for charges and services due to the District under C.R.S. '32-1-1001(j).

A. Should the District, in its sole and complete discretion, elect to design, construct, fund or otherwise facilitate Utility Infrastructure on behalf of a developer otherwise obligated by this Resolution to provide such designs, construction and funding, the District may recover from such developer all costs associated with the District's expenditures for such Utility Infrastructure including but expressly not limited to engineering and surveying costs, construction costs, land acquisition costs, and legal costs and fees, and interest thereon at a rate not to exceed 18% per annum. The District may assess such costs against such developer in the form of a "special impact fee" assessable against such developer's development requests, whether or not served by the Utility Infrastructure at issue, and may condition service to and approval of any such development upon timely payment of such special impact fees.



4. Easements. All land developers seeking utility service from the District shall also grant and provide to the District, at no cost to the District, any and all necessary licenses, permits, easements and rights of way across the property to be served and over, under and across any area required outside the limits of such property, in size and location acceptable to the District. 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 water and wastewater lines serving the Property, 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 utilities within the easements, and (3) to the extent the utility easements exist upon or adjacent to private, non-County, Town, or District maintained roads, Petitioner shall grant access and utility easements to the District that are within or adjacent to the Petitioner's private roads, all as required by the Districts. The Petitioner and its successors shall be solely responsible for maintaining 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 granted herein due to any failure of the Petitioner or its successors to comply with these obligations, the District shall not be responsible for any failure to provide utility service or to provide for the maintenance or repair of utility infrastructure as a result of the Petitioner's failure to fulfill its obligations. In such event, the Petitioner shall be solely liable and responsible for such limitations in provision of service, maintenance and repair.

4. Future Inclusions. The Board hereby approves the *pro forma* Inclusion Agreement, attached hereto as Exhibit A, as being the standard form to be utilized by the District as concerns future inclusions of property into the District and provision of services thereto. While the Board retains its discretion to vary from this standard agreement on the basis of unique circumstances which may pertain to specific properties, it is the Board's intent that the terms and conditions of the standard agreement be generally retained, so as to provide prospective inclusion petitioners with consistent expectations as concerns the inclusion process and obligations related thereto.

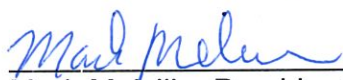
5. Determination by the Board. It is the Board's determination that this policy and the requirements discussed herein are reasonably related to the financial health of the District, and consistent with the District's policy that costs associated with development within the District be paid for by such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

6. 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.

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

8. 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 design, construction and finance of Utility Improvements and associated infrastructure, and for establishing standardized expectations for future inclusion agreements, were established as rules and regulations of the District, and were enacted by the Board of Directors of the District on this 13 day of NOV., 2018, to be effective immediately.



Mark Melville, President

ATTEST:



James Barnhart, Secretary