

Resolution No. 2017-02-01

**FOURTH AMENDED AND RESTATED RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
POUDRE TECH METROPOLITAN DISTRICT**

**CONCERNING THE IMPOSITION OF VARIOUS FEES, RATES, TOLLS, PENALTIES
AND CHARGES FOR WATER SERVICES AND FACILITIES**

WHEREAS, the Poudre Tech Metropolitan District (the “**District**”) was formed pursuant to §§ 32-1-101, *et seq.*, C.R.S., as amended (the “**Special District Act**”), by order of the District Court for Weld County, Colorado, and after approval of the District’s eligible electors at an election; and

WHEREAS, pursuant to § 32-1-1001(1)(h), C.R.S., the Board of Directors of the District (the “**Board**”) shall have the management, control and supervision of all the business and affairs of the District; and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents of the District, to acquire, construct, operate and maintain certain amenities and facilities benefitting property and inhabitants within the District, and the Water Valley Metropolitan District Nos. 1-2 (collectively with the District, the “**Districts**”) which amenities and facilities generally include non-potable water improvements, facilities, appurtenances and rights-of-way (collectively, the “**Facilities**”); and

WHEREAS, the Board has determined it to be in the best interests of the District, and the property owners, taxpayers, and residents of the Districts, to provide certain non-potable water services to property and inhabitants within and without the boundaries of the Districts (collectively, the “**Services**”); and

WHEREAS, pursuant to § 32-1-1001(1)(j)(I), C.R.S., the District is authorized to fix and impose fees, rates, tolls, penalties and charges for services or facilities furnished by the District which, until such fees, rates, tolls, penalties and charges are paid, shall constitute a perpetual lien on and against the property served; and

WHEREAS, the District incurs certain direct and indirect costs associated with the acquisition, construction, installation, repair, replacement, improvement, reconstruction operation and maintenance of the Facilities, as necessary, inclusive of the costs of utilities and capital replacement costs (collectively, the “**Facility Costs**”) in order that the Facilities may be properly provided and maintained; and

WHEREAS, the District incurs certain direct and indirect costs associated with the provision of the Services in order that the Services may be properly provided, the property within

and without the Districts maintained, and that the health, safety and welfare of the Districts, its users and its inhabitants may be safeguarded (collectively, the “**Service Costs**”); and

WHEREAS, the establishment and continuation of fair and equitable fees and charges (collectively, the “**Fees and Charges**”) to provide a source of funding to pay for the Facility Costs and the Service Costs, (collectively, the “**Costs**”), which Costs are generally attributable to the persons and/or properties subject to such Fees and Charges, is necessary to provide for the common good and for the prosperity and general welfare of the District and its inhabitants and for the orderly and uniform administration of the District’s affairs; and

WHEREAS, pursuant to § 32-1-1006(1)(g), C.R.S., the District is empowered to fix and from time to time increase or decrease tap fees; and

WHEREAS, the establishment of a fair and equitable fee (the “**Capital Facilities Fee**” or “**Tap Fee**”) to provide a source of funding to pay for the initial capital direct and indirect costs associated with the construction, installation and acquisition of the Facilities (the “**Capital Facilities Costs**”), which Capital Facilities Costs are generally attributable to each Lot and Commercial Lot (defined below), is necessary to provide for the common good and for the prosperity and general welfare of the District, its users and its inhabitants; and

WHEREAS, on November 19, 2002, the Board adopted a Second Amended and Restated Fee Resolution (the “**Second Amended Resolution**”), and on February, 18 2010, the Board adopted a Resolution of Poudre Tech Metropolitan District to Establish Water Rates for the Year 2010 (the “**2010 Resolution**”), and on April 21, 2016 the Board adopted the Third Amended and Restated Fee Resolution which superseded the Second Amended Resolution and the 2010 Resolution (the “**Prior Fee Resolution**”); and

WHEREAS, the Board recognizes that the Fees and Charges imposed by the District have remained unchanged for many years and an increase in the Fees and Charges is necessary in order to continue to provide the high level of Services to which its customers have become accustomed, and prepare for future maintenance needs; and

WHEREAS, the Board desires to amend and restate the Prior Fee Resolution in its entirety. Any fees, rates, tolls, penalties or charges due under the Prior Fee Resolution, to the extent outstanding and unpaid, shall remain in effect until fully paid and shall not be eliminated hereby; and

WHEREAS, the District finds that the Fees and Charges, as set forth in this Resolution, are reasonably related to the overall cost of providing the Facilities and Services and paying the Costs, and that imposition thereof is necessary and appropriate; and

NOW, THEREFORE, be it resolved by the Board as follows:

1. DEFINITIONS. Except as otherwise expressly provided or where the context indicates otherwise, the following capitalized terms shall have the respective meanings set forth below:

“**Commercial Unit**” means each office space, unit, building or other structure within the District Boundaries that is used and/or zoned for general commercial, industrial, office, retail, or other non-residential uses.

“**District Boundaries**” means the legal boundaries of the District, as the same are established and amended from time to time pursuant to §§32-1-101, *et seq.*, C.R.S., as well as properties outside of the District’s legal boundaries which receive service from the District particularly the Water Valley Metropolitan District Nos. 1 & 2, all as more particularly set forth in the maps attached hereto as **Exhibit B** and incorporated herein by this reference.

“**Due Date**” means the date by which the Fees and Charges and Capital Facilities Fee are due, which Due Date is reflected on the Schedule of Fees.

“**End User**” means any third-party homeowner or tenant of any homeowner occupying or intending to occupy a Residential Unit or a Commercial Unit. End User specifically excludes a tenant occupying an Apartment Unit.

“**Fee Schedule**” or “**Schedule of Fees and Charges**” means the schedule of fees set forth in **Exhibit A**, attached hereto and incorporated herein by this reference, until and unless otherwise amended and/or repealed.

“**Property Owner**” shall include all owners of real property, customers, users, residents, leaseholders and other recipients of District services.

“**Residential Unit**” means each residential dwelling unit (including, without limitation, condominiums, townhomes, and any other attached dwelling unit and detached single family dwelling units) located within the District Boundaries which has been Transferred to an End User.

“**Transfer**” or “**Transferred**” shall include a sale, conveyance or transfer by deed, instrument, writing, lease or any other documents or otherwise by which real property is sold, granted, let, assigned, transferred, exchanged or otherwise vested in a tenant, tenants, purchaser or purchasers.

2. THE FEES AND CHARGES.

a. Service Fees and Charges. The Board has determined, and does again hereby determine, that it is in the best interests of the District and its respective residents, users and property owners to impose, and does hereby confirm the imposition of the Fees and Charges set forth in the Schedule of Fees and Charges to fund the Costs. The Fees and Charges are hereby established and imposed in an amount as set forth by the District from time to time pursuant to an annual “Fee Schedule” and shall constitute the rate in effect until such schedule is amended or repealed. The initial Fee Schedule is set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

b. The Board has determined, and does hereby determine, that the Fees and Charges are reasonably related to the overall cost of providing the Facilities and Services, and is imposed on those who are reasonably likely to benefit from or use the Facilities and Services.

c. The revenues generated by the Fees and Charges will be accounted for separately from other revenues of the District, specifically *ad valorem* property tax revenues, if applicable. The revenue from Fees and Charges will be used solely for the purpose of paying Costs, and, if *ad valorem* property tax revenues are available, may not be used by the District to pay for general administrative costs of the District. This restriction on the use of the Fees and Charges revenue shall be absolute and without qualification.

d. The Board has determined, and does again hereby determine, that the Fees and Charges are calculated to defray the cost of funding the Costs and reasonably distribute the burden of defraying the Costs in a manner based on the benefits received by persons paying the fees and using the Facilities and Services.

3. CAPITAL FACILITIES FEE. A one-time Capital Facilities Fee is hereby established and imposed upon each Residential Unit and each Commercial Unit within the District Boundaries in the amounts set forth in the Schedule of Fees and Charges.

4. LATE FEES AND INTEREST. Pursuant to § 29-1-1102(3), C.R.S., any Fees and Charges and Capital Facilities Fee not paid in full within fifteen (15) days after the scheduled due date will be assessed a late fee in the amount of Fifteen Dollars (\$15.00) or up to five percent (5%) per month, or fraction thereof, not to exceed a total of twenty-five percent (25%) of the amount due. Interest will also accrue on any outstanding Fees and Charges and Capital Facilities Fee, exclusive of assessed late fees, penalties, interest and any other costs of collection, specially including, but not limited, to attorney fees, at the rate of 18% per annum, pursuant to § 29-1-1102(7), C.R.S. The District may institute such remedies and collection procedures as authorized under Colorado law, including, but not limited to, foreclosure of its perpetual lien. The defaulting property owner shall pay all fees and costs, specifically including, but not limited to, attorneys' fees and costs and costs associated with the collection of delinquent fees, incurred by the District and/or its consultants in connection with the foregoing.

5. PAYMENT. Payment for all fees, rates, tolls, penalties, charges, interest and attorney fees shall be made by check or equivalent form acceptable to the District, made payable to "Poudre Tech Metropolitan District" and sent to the address indicated on the Fee Schedule. The District may change the payment address from time to time and such change shall not require an amendment to this Resolution.

6. LIEN. The fees imposed hereunder, together with any and all late fees, interest, penalties and costs of collection, shall, until paid, constitute a statutory, perpetual lien on and against the property served, and any such lien may be foreclosed in the manner provided by the laws of the State of Colorado for the foreclosure of mechanic's liens, pursuant to § 32-1-1001(1)(j)(I), C.R.S. Said lien may be foreclosed at such time as the District, in its sole

discretion, may determine. The lien shall be perpetual in nature (as defined by the laws of the State of Colorado) on the property and shall run with the land. This Resolution shall be recorded in the offices of the Clerk and Recorder of Weld County, Colorado.

7. CERTIFICATION OF ACCOUNT TO COUNTY TREASURER. Pursuant to §32-1-1101(1)(e), C.R.S., the Board may elect to certify any delinquent account and late fees satisfying the criteria established therein to the Weld County Treasurer for collection with the District's *ad valorem* property taxes. The certification process may be in addition to or in lieu of any procedures set forth in this Resolution in the Board's sole discretion. The fees for the certification process shall be in accordance with Colorado law and Weld County policy.

8. SHUT OFF OR DISCONTINUATION OF SERVICE. Pursuant to § 32-1-1006(1)(d), C.R.S., the Board may elect to shut off or discontinue water service for delinquencies. The shut off or discontinuation of service may be in addition to or in lieu of any procedures set forth in this Resolution in the Board's sole discretion. The fees associated with the shut off or discontinuation of service as set forth in the Schedule of Fees and Charges.

9. SEVERABILITY. If any portion of this Resolution is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Resolution, which shall remain in full force and effect. 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.

10. THE PROPERTY. This Resolution shall apply to all property within the District's boundaries, including, but not limited to, the property set forth in **Exhibit B**, attached hereto and incorporated herein by this reference, and any additional property included into the District after the date of this Resolution.

11. EFFECTIVE DATE. This Resolution shall become effective as of January 1, 2017.

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ADOPTED this 9th day of February, 2017.

POUDRE TECH METROPOLITAN DISTRICT, a
quasi-municipal corporation and political
subdivision of the State of Colorado



Officer of the District

ATTEST:



APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON
Attorneys At Law



General Counsel to the District

*Signature page to Resolution Concerning the Imposition of Various Fees and Charges for Water
Services and Facilities*

EXHIBIT A

**POUDRE TECH METROPOLITAN DISTRICT
Schedule of Fees and Charges
Effective January 1, 2017**

Water Valley Metropolitan District No. 1 (North Side)

Fee Type	Classifications	Rate
Fees and Charges	Single Family Residential Unit	\$263.00/year
	Multi-Family Residential Unit (Townhouses & Condominiums)	\$263.00/year
	Metered Commercial Unit	\$263.00/year + \$1.30/1000 over 201,000 gallons
	Non-Metered Commercial Unit	\$263.00/building

Water Valley Metropolitan District No. 2 (South Side)

Fee Type	Classifications	Rate
Fees and Charges	Single Family Residential Unit	\$263.00/year + \$1.30/1000 over 201,000 gallons
	Multi-Family Residential Unit (Townhouses & Condominiums)	\$263.00/year + \$1.30/1000 over 201,000 gallons
	Metered Commercial Unit	
	3/4 inch tap:	\$263.00 + \$1.30/1000 over 201,000 gallons
	1 inch tap:	\$526.00 + \$1.30/1000 over 402,000 gallons
	1 1/2 inch tap:	\$1,315.00 + \$1.30/1000 over 1,005,000 gallons
	2 inch tap:	\$3,287.50 + \$1.30/1000 over 2,512,000 gallons

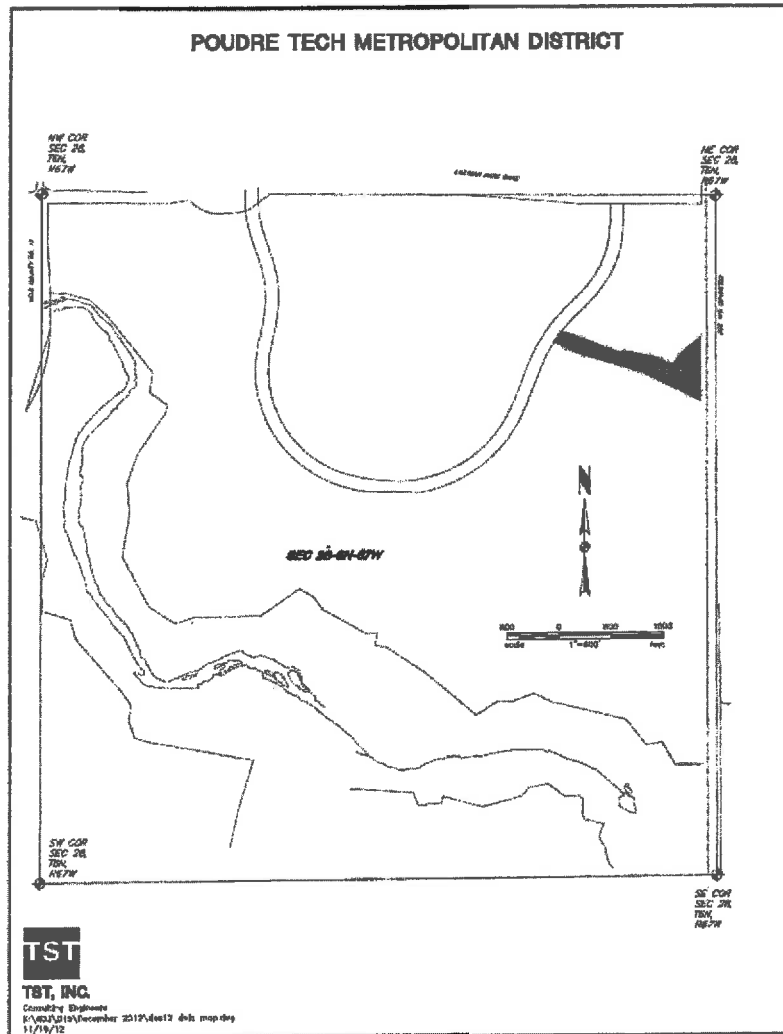
	4 inch tap:	\$23,670.00 + \$1.30/1000 over 18,090,000 gallons
Capital Facilities Fee	Residential Unit	
	Non-Potable Tap 3/4 inch:	\$2,200.00
	Non-Potable Tap 1 inch:	\$3,800.00
	Non-Potable Tap 1 1/2 inch:	\$9,500.00
	Non-Potable Tap 2 inch:	\$47,500.00
	Raw Water (total of potable & non-potable):	\$9,825.00
	Commercial Unit	
	Non-Potable Tap 3/4 inch:	\$2,200.00
	Non-Potable Tap 1 inch:	\$3,800.00
	Non-Potable Tap 1 1/2 inch:	\$9,500.00
	Non-Potable Tap 2 inch:	\$47,500.00
Raw Water (total of potable & non-potable):	\$9,825.00 Based on consumption estimate by Town of Windsor	

PAYMENTS: Payment for each fee shall be made payable to the Poudre Tech Metropolitan District and sent to the following address for receipt by the Due Date:

Poudre Tech Metropolitan District
c/o Advance HOA Management, Inc.
PO Box 370390
Denver, CO 80237

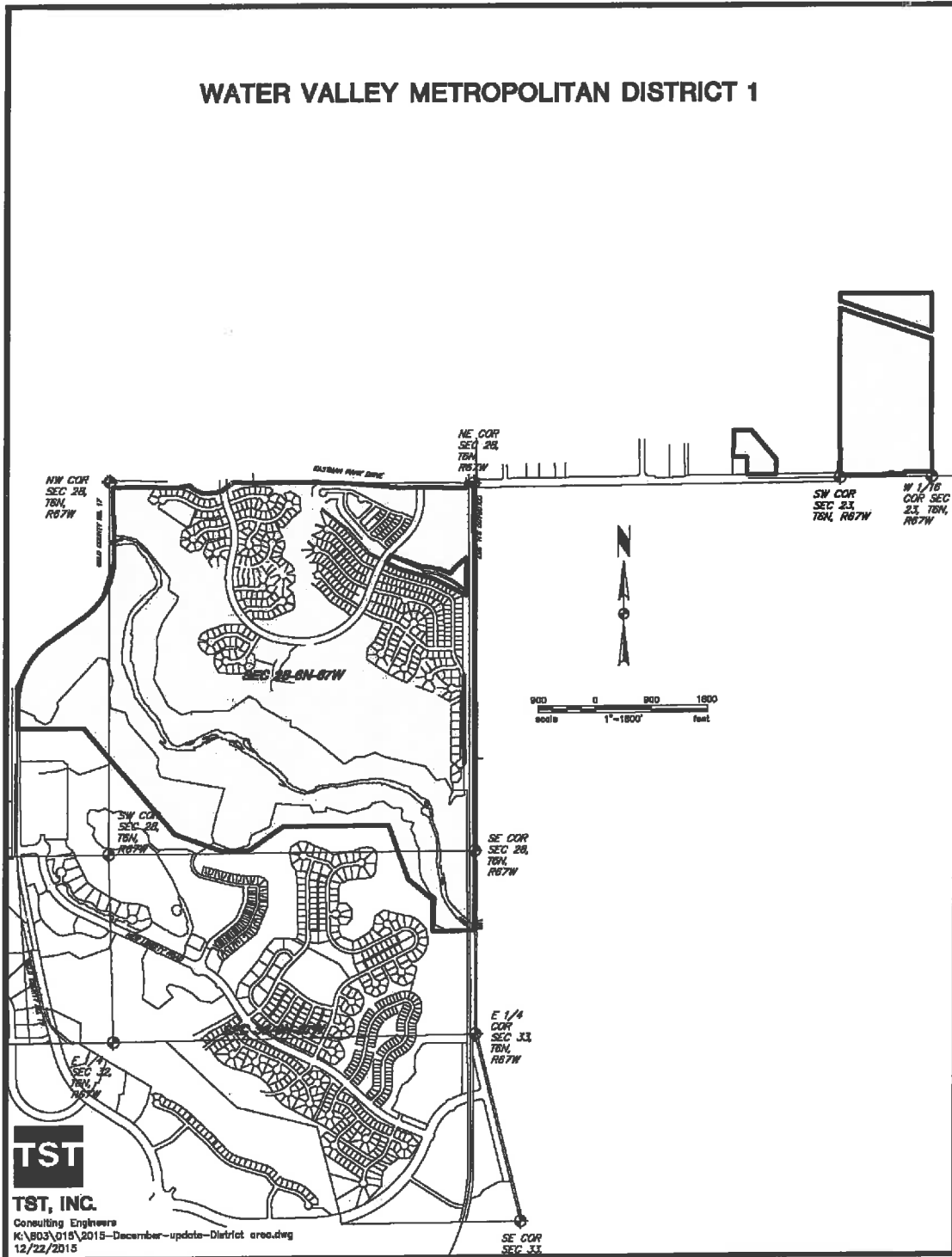
EXHIBIT B
District Boundaries

District Boundary Map



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WATER VALLEY METROPOLITAN DISTRICT 1



WATER VALLEY METROPOLITAN DISTRICT 2

