



**CITY COUNCIL AGENDA
SEPTEMBER 13, 2016 – 6:00 P.M.
116 SOUTH MAIN STREET**

All Times Listed are Estimates. At the Discretion of the Mayor and Council Times May be Adjusted.

- 1) Call to Order**
- 2) Pledge of Allegiance**
- 3) Roll Call**
- 4) (A) Presentations:**
 - **Proclamation Declaring September 24-Oct 2nd 2016 as “Creek Week”**
 - **Proclamation Declaring September 16, 2016 as National POW/MIA Recognition Day**
 - **Proclamation Of The City Of Fountain Recognizing Colorado Cities & Towns Week, September 12-18, 2016 And Designating September 20, 2016 As Community Night In The Park At Metcalfe Park**
 - **Electric Department Strategic Plan (Curtis Mitchell and Carl Christian)**
- 4) (B) Board/Commission/Committee Appointments**
- 5) City Council Agenda Requests and Announcements**
- 6) Public to be Heard**

Citizens may address the Council on items that are not on the agenda. Please sign up with the City Clerk prior to the meeting. Council may not be able to provide an immediate answer, but will direct staff to follow-up. Out of respect for the Council and others in attendance, please limit your comments to three (3) minutes or less.
- 7) Consent Agenda**

Note: All items listed under the Consent Agenda are considered to be routine and will be approved with one motion. There will be no separate discussion of these items unless a Council Member or citizen so requests, in which case the item may be removed from the Consent Agenda and considered separately, at the discretion of Council. **(Est. time-3 min)**

 - A.** Approval of the August 23, 2016 City Council Meeting Minutes
 - B.** Approval of an Extension of Contract Between the City of Fountain and Locates Colorado LLC for Underground Facility Locating and Marking

- C. Approval to Execute a Technical Services Agreement with the Colorado School of Mines for Pilot-Scale Evaluation of Granular Activated Carbon for Perfluoroalkyl Substance Removal at the City of Fountain
- D. Resolution 16-029, A Resolution Designating An LED Notification Sign To Be Installed In Front Of Firehouse #1 As An Official Sign Of The City Of Fountain, Located On City Property.
- E. Resolution 16-027, Accepting A Landfill Closure/Post Closure Plan And Related Documents Related To Tuscany Ridge At Mesa Village—Near Elmhurst Drive And Willow Pines Place, Fountain, Colorado

8) Old Business

None

9) New Business

- A. Consideration of Items Removed from the Consent Agenda
- ~~B.~~ Resolution 16-026, A Resolution Assigning And Transferring To El Paso County, Colorado The City Of Fountain's 2016 Private Activity Bond Volume Cap Allocation From The State Ceiling For Private Activity Bonds And Authorizing The Execution And Delivery Of An Assignment And Other Related Documents
- C. First Reading Ordinance 1677, An Ordinance Granting Mountain View Electric Association, Inc., A Colorado Corporation, A Franchise To Furnish Electricity And The Authority To Construct, Operate, Maintain, And Extend An Electric Plant And System, And Granting The Right To Use The Streets, Alleys, And Other Public Places Within The Present Or Future Corporate Limits Of The City Of Fountain Colorado
- D. First Reading of Ordinance 1678, An Ordinance Repealing And Reordaining Section 040 (Organization) Of Chapter 18 (Park And Recreation Advisory Board) Of Title 2 (Administration And Personnel) Of The Fountain Municipal Code

10) Correspondence, Comments and Ex-Officio Reports

11) Announcement of Executive Sessions

In accordance with the City Charter and the Colorado Open Meetings Act, the City Council open session is to determine whether it will hold a Closed Executive Session. A Closed Executive Session may be held upon an affirmative vote of two-thirds of the quorum present. If consent to the closed Executive Session is not given, the items may be discussed in open session or withdrawn from consideration.

12) Adjourn

A (Administrative Action) QJ (Quasi-Judicial Action) L (Legislative Action)

**NEXT REGULAR COUNCIL MEETING
SEPTEMBER 27, 2016**

Posting Date:



***PROCLAMATION DECLARING
SEPTEMBER 24th THROUGH OCTOBER 2nd 2016
AS "CREEK WEEK"***

- WHEREAS,** the City of Fountain is fortunate to have extensive and diverse natural resources, such as forests, grasslands, riparian areas, lakes, creeks and a wide variety of open spaces; and
- WHEREAS,** the Fountain Creek watershed, including Fountain Creek, related wetlands, existing trails, and recreational facilities, is a unique watershed that is an important resource and asset to the residents and visitors of Fountain and the Pikes Peak Region; and
- WHEREAS,** the Fountain Creek Watershed Flood Control and Greenway District is partnering with the City of Fountain, Colorado Springs Utilities, El Paso County, Pueblo County, the Cities of Manitou Springs, Colorado Springs, Woodland Park and towns of Monument and Green Mountain Falls, along with numerous community organizations to coordinate "Creek Week" which will encourage the protection, restoration and maintenance of the Fountain Creek watershed; and
- WHEREAS,** this 9-day litter clean-up effort kicks off in Fountain Creek Regional Park on September 24th and runs through October 2nd, 2016 throughout the watershed; and
- WHEREAS,** "Creek Week" programs and activities are designed to raise awareness about the littering issue within our watershed, to encourage organizations and individuals to collect litter and debris to make Fountain Creek and the watershed cleaner and safer; and
- WHEREAS,** businesses, churches, schools, non-profits, neighborhood associations, youth groups, service clubs and individuals are encouraged to form a "Creek Crew" to clean up at a "Creek Week" project site; and
- WHEREAS,** "Creek Week" litter removal activities will reduce pollution in our creeks and clogs in our waterways that can lead to flooding, provide for a safer drinking water supply, and enhance wildlife habitat and property values.

NOW, THEREFORE, the Council Members of the City of Fountain, Colorado hereby proclaim September 24 – October 2, 2016, as "Creek Week" and encourage our citizens to help protect, restore and maintain our waterways by participating in "Creek Week" activities.

DONE THIS ___ day of September, 2016 in Fountain, Colorado.

Gabriel Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk



**PROCLAMATION DECLARING
September 16, 2016
AS "POW/MIA RECOGNITION DAY"**

- WHEREAS,** throughout American history members of America's armed forces have made uncommon sacrifices as Prisoners of War (POW), serving their country under conditions of extreme hardship, while remaining steadfast even when their treatment violated fundamental standards of morality and international codes of conduct; and
- WHEREAS,** Americans held as POW and Americans Missing in Action (MIA) have earned our respect for their courage and devotion to the United States; and
- WHEREAS,** all Americans owe an extraordinary debt of gratitude and appreciation to all the men and women who have served in the Armed Forces of the United States; and
- WHEREAS,** we must give special tribute to the brave service members who have been imprisoned while protecting the wellbeing of their country and those who remain missing; and
- WHEREAS,** because we must not neglect to honor the men and women who have served their country so faithfully, the United States Congress established the third Friday in the month of September as America's Annual National POW/MIA Recognition Day; and

NOW, THEREFORE, BE IT PROCLAIMED, the City Council of the City of Fountain, Colorado hereby recognizes September 16, 2016, as "POW/MIA Recognition Day" in Fountain to observe this day by flying the POW/MIA Flag (the Flag of Hope).

DONE THIS 13th day of September, 2016 in Fountain, Colorado.

Gabriel P. Ortega, Mayor

Attest:

Silvia Huffman, City Clerk



**PROCLAMATION OF THE CITY OF FOUNTAIN
 RECOGNIZING COLORADO CITIES & TOWNS WEEK,
 SEPTEMBER 12-18, 2016
 AND DESIGNATING SEPTEMBER 20, 2016
 AS COMMUNITY NIGHT IN THE PARK AT METCALFE PARK**

WHEREAS, municipal government is the government closest to most citizens and the one with the most direct daily impact upon its residents; and

WHEREAS, municipal government is administered for and by its citizens and is dependent upon public commitment to and understanding of its many responsibilities; and

WHEREAS, municipal government officials and employees share the responsibility to pass along their understanding of public services and their benefits; and

WHEREAS, Colorado Cities & Towns Week is a very important time to recognize the important role played by municipal government in our lives; and

WHEREAS, the Colorado Municipal League's member cities and towns have joined together to teach students and other citizens about municipal government through a variety of different projects and information; and

WHEREAS, Colorado Cities & Towns Week offers an important opportunity to convey to all the citizens of Colorado that they can shape and influence government through their civic involvement.

WHEREAS, the City of Fountain will host a free event for the entire community at Metcalfe Park on Tuesday, September 20 from 4-7 pm. Vehicles will be on display as well as informational booths regarding our fine City. Many of our neighboring partners are invited to share and show off their organizations.

NOW, THEREFORE, the Council Members of the City of Fountain, Colorado hereby proclaim SEPTEMBER 12-18, 2016 as Cities and Towns Week And Designates September 20, 2016 As Community Night In The Park At Metcalfe Park and that the City of Fountain encourages all citizens, municipal government elected officials and employees to do everything possible to ensure that this week is recognized and celebrated accordingly and that the City of Fountain supports and encourages all municipal governments to actively participate in Colorado Cities & Towns Week.

Done this ____ day of _____, 2016.

 Gabriel P. Ortega, Mayor

ATTEST:

 Silvia Huffman, City Clerk



Regular City Council Meeting

Consent – 7A

Council Meeting Minutes

September 13, 2016

Summary Information

Title:

Approval of the August 23, 2016 City Council Meeting Minutes

Initiator : City Clerk

Presenter: Silvia Huffman, City Clerk

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The attached minutes were compiled as the result of the August 23, 2016 City Council Meeting Minutes

Attachments: August 23, 2016 City Council Meeting Minutes

Background Information

N/A

Recommendation

Approve the August 23, 2016 City Council Meeting Minutes

Proposed Motion

Motion to approve shall be included under the consent agenda.

ST

CM Review

CITY COUNCIL MEETING
August 23, 2016

1) Call to Order

Mayor Ortega called the meeting to order at 6:00 P.M.

2) Pledge of Allegiance

The Pledge of Allegiance was recited.

3) Roll Call

Roll call found the following members present:

Mayor Ortega
Mayor Pro Tem Thomas
Council Member Thompson
Council Member Gieck
Council Member Applegate
Council Member Lauer
Council Member Coke

4) (B) Board/Commission/Committee Appointments

Appointment of a Park Board Member to a 4 year term.

Mayor Ortega advanced item 4B in the essence of time.

Scott Taylor, applicant, stated his desire to serve on the Park Board. He briefly reviewed his credentials and history in Fountain.

Robert Brooks, applicant, also stated his desire to serve on the Park Board and his history with the community.

Mayor Pro Tem Thomas and Council Member Thompson both asked about amending the current ordinance to allow for alternates on the Park Board.

It was the consensus of the City Council to consider the alternate ordinance at the next Council meeting.

Mayor Ortega made a motion to appoint Mr. Brooks to the Park Board for the remainder of the term, seconded by Council Member Thomas. All members voted yes (7-0); the motion carried.

4) Special Presentations & Declarations:**A. Urban Wildlife Management Presentation**

Frank McGee, Area 14 Manager gave a report on the recent town meeting that was held regarding wildlife management.

Mayor Pro Tem Thomas asked about discussion allowing hunting inside city limits.

Mr. McGee reported that he has met with many stakeholders and he is just now reaching out to residents asking questions such as hunting but they have yet to reach a decision on that subject.

- **Water Update Presentation**

Utility Director Mitchell reported that the water restrictions have been lifted and thanked Council and customers for helping with this endeavor. He also stated that the city has a combined capacity of just over 4 million gallons per day. Last year according to the agreement with Colorado Springs, Colorado Springs decided that the rebalancing capacity would reduce the capacity to the City of Fountain from 2.25 to 1.4. After speaking with the CEO he approved the 2.25 from the SDS.

He stated that the city is evaluating treatment options and funding sources. He has begun discussions with the Air Force. He noted that it is unknown if there will be any water restrictions next year and that they cannot fix the aquifer but you can treat the water that comes from it.

Mayor Ortega presented City Engineer Greenwood with a "Golden Hammer" plaque of appreciation for his work that was done on the Lorraine Building.

City Engineer Greenwood thanked Council for their support.

5) City Council Agenda Requests and Announcements

Council Member Lauer reported the Fountain Creek Water Shed meeting will be held in the Pueblo County Court House this month.

Council Member Thompson asked staff to address traffic concerns at mile marker 128 to add flashing lights that would prohibit vehicles from traveling the wrong direction on the off ramp. She also asked if city staff could carry comment cards in their vehicles to address any concerns rather than feel that are not being heard.

Mayor Pro Tem Thomas reminded attendees on the upcoming special meeting on September 6 to discuss a possible tax question for next year.

Council Member Applegate reported that he does feel that the electric employees do deserve a raise but voted against the proposal since it was not the percentage of what staff was recommending. He also attended the Pikes Peak Regional Building meeting and they feel that communities outside of Colorado Springs cannot handle the growing businesses but feels that we can manage our own and should no longer be a partner with the Regional Business Alliance. He also mentioned that a hiring incentive would be that the city does not participate in PARA since it is not doing well.

Mayor Ortega reminded all about the upcoming Fire dinner and Dance, Labor Day events, Movie Night in the Park and the Community Night in the Park.

Council Member Coke stated that he is thankful for getting the band to play here. He also stated that employees that are trained by the city have an obligation to maintain employment.

Mayor Ortega stated that has been discussed and found that it would be a financial hardship to the employees.

6) Public to be Heard

Mr. Gonzales, VFW, updated Council on the upcoming events that are hosted by the VFW.

Carrie Webb and Marissa Honeycutt, residents, reported on issues with the street that had been reported to State Representatives. Their street is 2 years old and is in disrepair.

Deputy City Manager Evans reported that the developer of this area has put in writing that they will repair the street.

Jeremy Chaney, Autumn Pl., reported there is flooding in several lots that he believes that it is a natural spring. He asked for assistance to determine what can be done.

Al Lender, REA Rd., stated that the truck route ordinance has passed and requested the signs be installed immediately.

Deborah Stout Meininger, resident, stated her discontent with the response from the Humane Society during a recent call she made.

7) Consent Agenda

A. Approval of the August 9, 2016 City Council Meeting Minutes

B. Resolution 16-025, Authorizing Construction Cost Index Adjustments to the Jimmy Camp Creek Drainage Basin Impact Fees

- C. Request to Approve Increase in Fleet Budget to accommodate making two Part Time Employees Full Time Employees, a Total Amount of \$36,702.85 for 2016. These Positions are Justified as Transit Maintenance is being Transferred to the Fleet Department.**
- D. Referral of an Annexation Petition for Fountain Middle School Annexation, Located Northwest of the Intersection of Alabama Avenue and Santa Fe Avenue.**
- E. Authorize the City Manager to Enter into a Contract with Gordon Signs to Install Two (2) LED Message Board Signs**
- F. Authorize The City Manager To Enter Into A Lease Agreement For The Short Term Lease Of Space Within The Lorraine Center**
- G. Review Bids and Award Contract for the 2016 Pavement Resurfacing Project Contract Award to Kiewit Infrastructure Company in the amount of \$229,744.00**

City Clerk Huffman requested to remove item 7B for further information that will be heard at a later date.

Mayor Pro Tem Thomas made a motion to approve the consent agenda without item 7B, seconded by Council Member Thompson. All members voted yes (7-0); the motion carried.

8) Old Business

There was no old business to be heard.

9) New Business

A. Consideration of Items Removed from the Consent Agenda

There were no items removed for consideration.

B. Review And Approve Compensation Increase For Sworn Public Safety Personnel

Police Chief Heberer reported this request is to consider a wage increase for public safety personnel in order to retain staff. He stated the geographic differences in pay are from \$8k-\$25k. He noted the funding will come from the saving from the establishment of the consolidated 911 center. The projected annual impact of this request is \$325,413 to the General Fund and \$37,380 to the Ambulance Fund (equating to approximately \$363,000/year)

Mayor Pro Tem Thomas made a motion to approve the compensation increase, seconded by Council Member Lauer. All members voted yes (7-0); the motion carried.

10) Correspondence, Comments and Ex-Officio Reports

Deputy City Manager Evans reported on the concept plan for the Heritage neighborhood street repair requirements and cost. He noted that each area of the city will have a concept plan.

Mayor Ortega stated that former Mayor Jeri Howells stated that streets are part of public safety and he feels that this is a priority area of concern to consider during the next special meeting with discussions on a possible ballot question.

Chief Anstine thanked Council for the approval of the public safety raises. He also updated Council on the Dinner and Dance event on Sunday night.

Council Member Thompson suggested having city staff coordinate military events so there is always a city representative there.

11) Announcement of Executive Sessions

City Clerk Huffman requested the following executive sessions:

1. Executive Session pursuant to C.R.S. section 24-6-402(4) for the purpose of review, approval, and amendment of executive session minutes
2. Executive Session pursuant to C.R.S. section 24-6-402(4)(a) to discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest
3. Executive Session pursuant to C.R.S. section 24-6-402(4)(b) for the purpose of receiving legal advice on specific legal questions

Council Member Lauer made a motion to hold the executive sessions as requested, seconded by Council Member Gieck. All members voted yes (7-0); the motion carried.

12) Adjourn

There being no further business Mayor Ortega declared the meeting adjourned at 7:24 P.M.

City Clerk

Mayor



Regular City Council Meeting

Consent Item- 7B

September 13, 2016

Summary Information

Title:

Approval of an Extension of Contract Between the City of Fountain and Locates Colorado LLC for Underground Facility Locating and Marking

Initiator: Carl Christian, Electric Superintendent

Presenter: Carl Christian, Electric Superintendent

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The purpose of this action item is for the Council to approve an Extension of Contract for Underground Facility Locating and Marking Contract with Locates Colorado LLC for locating underground water, electric, and fiber optic lines within the City of Fountain and certificated areas.

Attachments: Original Contract Document and Extension of Contract Document

Background Information

Historically, funding for this service has been approved during the bi-annual budget process due to the nature of service and legal requirements for locating services to be completed. These services are not anticipated to exceed \$100,000 per year.

This Extension of Contract is for locating water lines and underground electric lines as requested through Utility Notification Center of Colorado (UNCC) in accordance with Colorado State Law.

In accordance with the original contract signed with Locates Colorado LLC on October 28, 2014, it is the desire of the Electric Department to exercise its right to extend the contract for another year as outlined in section 1.4 Contract Duration based on the quality of service Locates Colorado LLC has provided and the absence of an increase of costs for services rendered. This will be the last request for extension on this contract in accordance to the verbiage in section 1.4 Contract Duration.

The cost of services will remain the same of \$12.00 per unit normal locate and \$26.00 for approved site watches, emergencies, after hours, weekends and holidays, and any other pre-approved situations in which the ticket charge is not feasible for City Electric and/or Water underground facilities locate requests.

The owner/operator of Locates Colorado LLC has had 21 years of experience in the locating field, with the past 18 years locating within the City of Fountain.

Recommendation

It is the recommendation of the Electric Department to award the contract to Locates Colorado LLC based on the following factors:

- Locates Colorado LLC did not increase costs and provided services at the best competitive rate.
- Locates Colorado LLC is locally owned and operated within the City of Fountain.
- The City has been satisfied with the services provided by Locates Colorado LLC over the past six years.
- The locator for this company has over 18 years of experience locating and marking City of Fountain Underground Facilities and is knowledgeable of City of Fountain protocols.

Proposed Motion

"I recommend the approval of the Extension of Contract for Underground Facility Locating and Marking with Locates Colorado LLC as set forth by the Electric Superintendent and City Manager."

ST
CM Review



Extension of the Underground Facilities Locating and Marking Contract

THIS EXTENSION OF CONTRACT (“Extension”) made this 13th day of September 2016 for the purpose of extending the contract known as Underground Facilities Locating and Marking Contract (“Original Contract”) dated October 28, 2014, between The City of Fountain, a home rule city and Colorado municipal corporation on behalf of its Electric, Water, and Wastewater Utility Enterprise (“City”), and Locates Colorado LLC (“Contractor”) as an independent contractor.

The Original Contract, which is attached hereto as part of this Extension, is described below along with compensation considerations and will end on **October 31, 2017**. The City is committed to providing the highest quality affordable services to its citizens and views its relationship with the Contractor as an extension of this quality service. The City reserves the right to extend this contract on a yearly basis based upon complete satisfaction of the Contractor’s job performance over the previous year. Any cost increases for extended contract years will be accepted in accordance with the U.S. Bureau of Labor Statistics Consumer Price Index as outlined at www.bls.gov/cpi.

DESCRIPTION OF PROJECT

The Contractor agrees to perform locating and marking services for the City and to the City’s satisfaction of City underground facilities located within Colorado, according to the “Specifications for Underground Facilities Location and Marking Service,” hereafter called “Specifications,” referred to in Article III of the Original Contract.

COMPENSATION

In consideration of the Contractor’s performance of said work and the Original Contract, the City agrees to pay to the Contractor according to the amounts per locate shown in Exhibit B of the Original Contract. Contractor shall not increase these prices during the term of this Extension and may only increase for renewal period upon sixty days prior written notice to the City. Contractor shall only increase prices once in a twelve month period, and such increase must be agreed to by the City before implementation.

The Contractor shall render invoices to the City on a weekly or monthly basis, depending on volume of work. Each invoice shall be paid by the City within thirty days of receipt of the invoices.

No payment shall be made until a statement and invoice has been submitted by the Contractor and accepted by the City. As part of the agreement to the Extension of the Original Contract, there is **no increase** in the compensation; it remains the same as outlined in the Original Contract.

1. The City and the Contractor agree to extend the Original Contract for an additional period, which will begin immediately upon the expiration of the original time period and will end on **October 31, 2017**.
2. The Extension binds and benefits the City and the Contractor. This document, including the attached Original Contract, is the entire agreement between the City and the Contractor.

All other terms and conditions of the Original Contract remain unchanged.

Mayor – Gabriel Ortega
City of Fountain

Date

Contractor

Date

Title

Original

UNDERGROUND FACILITIES LOCATING AND MARKING CONTRACT



2014

116 SOUTH MAIN STREET
FOUNTAIN, CO 80817
(719) 322-2092
(719) 391-0463 FAX
www.fountaincolorado.org

UNDERGROUND FACILITIES LOCATING AND MARKING CONTRACT

THIS CONTRACT made this 14th day of October, 2014, by and between the City of Fountain, a home rule city and Colorado municipal corporation on behalf of its Electric, water, and Wastewater Utility Enterprise (“City”) and Locates Colorado, LLC (“Contractor”) as an independent contractor.

In consideration of the following terms, conditions and covenants, it is agreed as follows:

**ARTICLE I
GENERAL PROVISIONS**

1.1 DESCRIPTION OF PROJECT

The Contractor agrees to perform locating and marking services, for the City and to the City’s satisfaction, of City underground facilities located within Colorado, according to the “Specifications for Underground Facilities Location and Marking Service,” hereafter called “Specifications,” referred to in Article III of this Contract.

1.2 GENERAL SCOPE OF WORK

The Contractor agrees that it is the Contractor’s sole responsibility to supervise, control and oversee all work as it relates to this Contract. By assuming this responsibility, the Contractor assures full and sole control of all work as described in the Specifications.

The City agrees to provide the Contractor with the maps necessary to assist in the location its underground facilities. City of Fountain maps, drawings, sketches, or other technical information either oral, written or otherwise furnished or disclosed to or obtained by the Contractor in the performance of this Contract is intended for reference only and shall remain the property of the City. The City of Fountain assumes no liability or responsibility for errors associated with the use of this data, damages or other liabilities due to any inaccuracy, use or misuse of this information. The Contractor and other users are solely responsible for confirming data accuracy. This data is derived from unpublished sources and varies in scale, relative accuracy and quality. These maps or data do not supersede or replace recorded, surveyed documents, deeds or plats of record. All copies of such information obtained from the City shall remain the property of the City and shall be returned to the City upon written request or at the completion of this Contract. Unless such materials were previously known to the Contractor free of any obligation to keep them confidential, or have subsequently been determined to be public documents by the City, the material shall be used only in the performance of this Contract and may not be used for other purposes except upon such terms as any be agreed upon by the City and the Contractor in writing. References elsewhere in this Contract to maps and documents described in this section shall be subject to the limitations set forth in this section.

1.3 COMPENSATION

- A. In consideration of the Contractor’s performance of said work and this Contract, the City agrees to pay to the Contractor according to the amounts per locate shown in Exhibit B. Contractor shall not increase these prices during the term of this Contract and may only increase for renewal period upon

sixty (60) days prior written notice to the City. Contractor shall only increase prices once in a twelve (12) month period and such increase must be agreed to by the City before implementation.

- B. The Contractor shall render invoices to the City on a weekly or monthly basis, depending on volume of work. Each invoice shall be paid by the City within thirty (30) days of receipt of the invoices.
- C. No payment shall be made until a statement and invoice has been submitted by the Contractor and accepted by the City. Compensation shall not exceed **\$12.00** per unit normal locate, **\$26.00** for approved site watches, emergencies and any other pre-approved situations in which a per ticket charge is not feasible and **\$26.00** for after hours, weekends and holidays for City Electric and/or Water underground facilities locate requests.

1.4 CONTRACT DURATION

The contract duration will start **November 1, 2014**, and be completed by **October 31, 2015**. The City is committed to providing the highest quality affordable services to its citizens and views its relationship with the Contractor as an extension of this quality service. The City of Fountain reserves the right to extend this contract on a yearly basis based upon complete satisfaction of the vendors job performance over the previous year up to three years. Any cost increases for extended contract years will be accepted in accordance with the U.S. Bureau of Labor Statistics Consumer Price Index as outlined at www.bls.gov/cpi

1.5 INDEPENDENT CONTRACTOR

In the performance of the Contractor's obligations under this Contract, it is understood, acknowledged and agreed between the parties that the Contractor is at all times acting and performing as an Independent Contractor, and the City shall neither have nor exercise any control or direction over the manner and means by which the Contractor performs the Contractor's obligations under this Contract, except as otherwise stated within the Contract terms. The Contractor understands and agrees that the Contractor and the Contractor's employees, agents, servants, and other personnel are not City employees. The Contractor shall be solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to the Contractor or any of the Contractor's employees, agents, servants or other personnel performing services or work under this Contract, whether it be of a direct or indirect nature. Further in that regard, it is expressly understood and agreed that for such purposes neither the Contractor nor the Contractor's employees, agents, servants or other personnel shall be entitled to any City payroll, insurance, unemployment, worker's compensation, retirement or any other benefits whatsoever.

1.6 SUBCONTRACTORS

No subcontracting will be allowed.

1.7 INSURANCE INSTRUCTIONS

The Contractor shall take out and maintain throughout the Contract period insurance in the following minimum requirements.

- A. **INSURANCE INSTRUCTIONS.** Contractor shall not commence work under this contract until all insurance required under this section has been obtained and such insurance has been approved by the City. The City shall be included as an additional insured on all insurance coverage's except for worker's compensation.

- B. **WORKERS STATUTORY COMPENSATION INSURANCE AND EMPLOYER LIABILITY INSURANCE.** The Contractor shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable state covering all employees. The Contractor shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of \$100,000 with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract and the Contractor.

- C. **COMMERCIAL LIABILITY INSURANCE.** The Contractor shall maintain during the life of this contract such Public Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and property damage, which may arise from operations under this contract. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows:
 - 1. Bodily Injury and Property Damage Limits are \$500,000 per occurrence Combined Single Limit.
 - 2. The Public Liability Insurance required by the Preceding subparagraph shall include the following extensions of coverage.
 - 3. Coverage shall be provided under the Commercial General Liability form of Policy or similar thereto.
 - 4. The property damage coverage shall include a Broad form Property Damage Endorsement.
 - 5. Contractual Liability coverage shall be included.
 - 6. Protective Liability coverage shall be included to protect the Contractor.

- D. **AUTOMOBILE LIABILITY INSURANCE.** The Contractor shall take out and maintain during the life of the contract such comprehensive Automobile Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and (2) property damage, which may arise from operations of any owned, hired, or non-owned automobiles used by or for work in any capacity

in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such comprehensive Automobile Liability Insurance shall be as follows:

- Bodily Injury and Property Damage Limits are \$500,000 per occurrence Combined Single Limit

E. CITY'S PROTECTIVE LIABILITY. The insurance shall be in the name of the City and maintained in force for the duration of the contract by the Contractor. The policy shall provide a liability limit of not less than \$1,000,000 and shall protect against any and all claims, and liabilities for injury or death of persons, or damage to property caused in whole or in part by, or alleged to have been caused in whole or in part by, the negligent acts or omissions of Contractor, Contractors agents, employees, or subcontractor, in connection with or resulting from the operations performed under the terms of the agreement.

F. EXCESS LIABILITY POLICY. The insurance shall protect the Contractor against all claims in excess of the limits provided under the Commercial Automobile Liability and the Commercial General Liability. The liability limits of the Excess Liability Policy shall not be less than \$1,000,000.

G. PROOF OF CARRIAGE OF INSURANCE. The Contractor shall furnish the City satisfactory proof of the carriage of the insurance required. All certificates of insurance shall state that 30 days written notice will be given to the City before the policy is canceled or changed. The Contractor shall include the City and the City's officers, agents and employees as "additional insured parties" on each policy for each project, except for Worker's Compensation Coverage. Each certificate of insurance shall state the type of coverage certified and shall be identified as one of the following:

Insurance Coverage Limits

- Workers CompensationStatutory
- Employer's Liability\$100,000 each person
- Commercial General Liability
 - Bodily Injury\$500,000 each occurrence
 - Property Damage\$500,000 each occurrence
- Commercial Automobile Liability
 - Bodily Injury\$500,000 each occurrence
 - Property Damage \$500,000 each occurrence

- Excess Liability Policy\$1,000,000 (Required)
- City’s Protective Liability Insurance\$1,000,000

Two copies of each certificate shall be sent to the City.

1.8 INDEMNIFICATION

The Contractor shall indemnify and hold harmless the City of Fountain, its officers, agents, and employees from all suits, demands, claims, causes of action, costs, penalties or damages of any kind whatsoever, arising out of or in any way connected with Contractor’s work under this Contract, except those caused by the sole negligence of the City of Fountain. The Contractor shall defend promptly any and all such suits, demands, claims or causes of action, cost, penalties or damages, and resist or defend against such suits, demands, claims or causes of actions, cost, penalties or damages. In the event the City of Fountain is required to institute a cause of action to enforce this provision or any other provision of this Contract, and the City of Fountain prevail, the Contractor shall pay a reasonable sum for the attorney’s fees and costs incurred by the City of Fountain. CONTRACTOR ACKNOWLEDGES AND AGREES THAT UNDER SOME CIRCUMSTANCES, THIS INDEMNIFICATION MAY CONSTITUTE A WAIVER OF CONTRACTOR’S IMMUNITY UNDER WORKER’S COMPENSATION LAWS.

1.8 LABOR, MATERIALS, AND EQUIPMENT

The Contractor shall furnish, at Contractor’s expense, all labor, materials and equipment for the performance of said work.

1.10 DELIVERY OF MATERIALS FURNISHED BY THE CITY

When City desires locating and marking services, City will provide sufficient quantity of the most recently upgraded maps and drawings to the Contractor at a mutually agreeable time.

1.11 CLAIMS AND LIENS

The Contractor shall promptly pay all claims for labor due and materials furnished for the performance of said work and shall keep all said work, and any property of City free from all liens arising from work done or materials furnished thereto.

1.12 WARRANTY

The Contractor warrants that its locating and marking services pursuant to this Contract will be performed by qualified personnel on a reasonable best efforts basis and to the satisfaction of the City. If Contractor or Contractor’s personnel locates or marks incorrectly, Contractor will re-perform the work in a reasonable time and at no expense to the City. If Contractor’s negligent activities for locating or marking causes any damage whatsoever, Contractor will re-perform the work within 3 days after notification by the City and pay for or correct damages to

the satisfaction of the City within 30 days after notification by the City. For the purpose of determining liability for damage to the City's underground facilities, the Contractor will be notified by the City within 30 days after the City determines damage has occurred

1.13 PERMITS

Contractor shall obtain all necessary licenses and permits which may be required for the prosecution of the work hereunder. The Contractor shall comply with all conditions of such licenses and permits.

1.14 BUDGET

It is understood and agreed by Contractor that City's involvement in this Contract does not, in any way, create an obligation upon City to give priority to or to budget moneys for expenditures under this Contract in any given year.

ARTICLE II

CONTRACTOR RESPONSIBILITIES

2.1 CONTRACTOR RESPONSIBILITIES

The general function and responsibilities of the Contractor shall be as follows:

A. Protection to Persons and Property.

The Contractor shall at all times take all reasonable precautions for the safety of employees on the work and of the public, and shall comply with all applicable provisions of Federal, State, and Municipal safety laws and building and construction codes and obtain any permits required by law, as well as the safety rules and regulations of the City. All machinery and equipment and other physical hazards shall be guarded in accordance with the "Manual of Accident Prevention in Construction" of the Associated General Contractors of America unless such instructions are incompatible with Federal, State, or Municipal laws or regulations.

The following provisions shall not limit the generality of the above requirements:

1. All fences which are necessarily opened or moved during the Project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of animals.
2. Provide sufficient qualified staff, office and field equipment, including transportation and supplies to fulfill its duties under this Contract.
3. Receive and record locate requests from the One-Call locator service (Utility Notification Center of Colorado {UNCC}) during the business days and during the office hours of the One-Call locator service (7am through 5pm on business days).
4. Store and safeguard City's facility maps and records.
5. Maintain records appropriate to support the invoicing and recording requirements set forth in this Contract.

6. For each Locate Request received:
 - i. Determine the type of request and, using City's maps and records, determine if a visual inspection is required.
 - ii. When City supplied maps, records or instruction indicate a visual inspection is required, visit the excavation site, and locate City's facilities as required.
 - iii. If marking is not required, provide excavator notification.
 7. For each Normal Locate request received, the Contractor will complete the requirements of above listed item #6 within three (3) business days of receiving the request.
 8. For each Short Notice Locate request received, the Contractor will perform the requirements of above listed item #6 within the time requested by the Excavator, if possible.
 9. For each Emergency Locate request the Contractor will complete the requirements of above listed item #6 within two hours of notification.
 10. The Contractor may be requested to provide, at additional cost, such additional services as site surveillance, inspection, follow-up visits, maintenance of marks and stakes, standby protection and testimonial support. Such additional services and costs to be charges must be specifically approved by the City prior to commencement of the work.
- B. All work shall be performed in conformance with the Rules and Regulations established by Occupational Safety and Health Administration, Environmental Protection Agency, Colorado State Department of Agriculture, Colorado Department of Public Safety, the American National Standards Institute Z133.1, latest revision, the American National Standards Institute A300, latest revision, and the American National Standards Institute/ Scaffold Industry Association A92.2, latest revision.
- C. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following; employment, promotion, demotion, transfer, recruitment, layoff or termination, rate of pay, or other forms of compensation and training. The Contractor, and all solicitation or advertisement of employees placed by or on behalf of Contract shall state that all qualified applicants will receive consideration for employment with regard to race, color, sex, or national origin.
- D. The Contractor is responsible for the preservation of all public and private property. If any direct or indirect damage occurs to public or private property by the Contractor, on account of any act, omission, neglect or misconduct in the execution of the work on the part of the Contractor, such property shall be restored by the Contractor at Contractor's expense to the condition equal to that existing before such damage or injury, and the Contractor shall repair such damage in a manner acceptable to the City.

- E. It is the responsibility of the Contractor to furnish supervision, labor, materials, tools and all equipment necessary to complete the job in an acceptable manner.
- F. The Contractor shall notify the Superintendent of the City's Electric or Water Department or Designee of any damage to public or private property.
- G. The Contractor shall co-ordinate & plan with the Superintendent of the City's Electric or Water Department or Designee.
- H. The Contractor shall submit to the City all advertising, sales promotion, press release and other publicity matters relating to the services performed by the Contractor wherein City's name or marks are mentioned or language from which the connection said names or marks may be inferred or implied; the Contractor further agrees not to publish or use advertising, sales promotion, press releases and publicity matters as set forth in this paragraph without the City's written approval.

2.2 STANDARDS OF SAFETY REQUIRED

A. Conduct of Operations.

1. The right to conduct work in the City does not expressly or implied authorize the Contractor to violate any law while in the process of performing such work.
2. All line locations to be secured by Contractor through Utility Notification Center of Colorado (UNCC) or directly from Utility Provider.
3. All such work shall be conducted in a manner as to cause the least possible interference with, or annoyance to others.
4. Inadequately or improperly trained personnel shall not be utilized for work beyond such person's known capacity or ability to perform properly or safely.
5. Any use of tools or equipment in an unsafe condition or any application of techniques or methods deemed unsafe to persons or property is forbidden.

2.3 RECORD KEEPING

The Contractor agrees that it shall keep full and complete books, records and accounts of all financial transactions with respect to this Contract. Such books, records, and accounts shall be maintained in accordance with Generally Accepted Accounting Principles and shall be maintained in such a fashion as to provide a detailed financial analysis for each transaction area. All such books, records, and accounts that are directly related to this Contract shall be subject to audit upon reasonable notice for audit by the City.

ARTICLE III
SPECIFICATIONS FOR UNDERGROUND FACILITIES
LOCATING & MARKING SERVICE

3.1 GENERAL DESCRIPTION

It is the intent of this Contract to fulfill the City's responsibilities under Colorado Law.

3.2 DEFINITIONS

- A. "Business Day" Any day other than Saturday, Sunday, or any legal local, state or federal holiday.

- B. "Call Out" A situation that requires a locate or damage investigation after regular business hours (5pm to 7am), and weekends and holidays (24 hours).

- C. "Excavation" Any operation in which earth, rock or other material on or below the ground is moved or otherwise displaced by any means, except the tilling or soil less than 12 inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flow line.

- D. "Excavation Site" The area where an excavator intends to do or does excavation.

- E. "Excavator" Any person who engages directly in excavation and/or the design of excavation and request the location of the City's underground facilities.

- F. "Excavator Notification" Notification given to the excavator that underground facilities and plant are not present at the excavation site.

- G. "Facility Owner" The owner of a specific underground facility. For purpose of this Specification, the facility owner is **The City of Fountain**.

- H. "Identified, But Un-locatable" City's underground facility, the presence of which is known, but which cannot be field marked with reasonable accuracy by using devices designed to respond to the presence of the City's underground facility.

- I. "Locate" The process of detection of underground facilities through the use of inductive or conductive equipment and marking to identify the existence and location of underground facilities or underground plant.

- J. "Locate Requests"

- I. “Normal Locate Requests” A request to locate received more than two (2) business days, but not more than thirty (30) days, before the commencement of excavation.
 - ii. “Short Notice Locate Requests” A request to locate received no less than two (2) business days before the commencement of excavation, but an emergency does not exist. Also known as request 1’s and 2’s.
 - iii. “Emergency Locate Request” A request to locate when a condition exists which threatens life or property by virtue of escaping substance, public exposure or interrupted vital service.
- K. “Marking” The use of stakes, paint, flags or “whiskers” at distances of every ten feet in accordance with the current marking standards of the American Public Works Association to show the field location of underground facilities. Markings shall include the identification letters:
- (PWR) indicating the City’s power facilities.
 - (WTR) indicating the City’s water facilities.
- L. “One-Number Locator Service” A service through which a person can notify utilities and request the field-marking of underground facilities. The service the City presently uses is called the “Utility Notification Center of Colorado” (UNCC).
- M. “Person” any individual, partnership, franchise holder, association, corporation, state, city, county or any subdivision or instrumentality of state and its employees, agents, or legal representatives.
- N. “Reasonable Accuracy” Locating within eighteen (18) inches of the outside dimensions of both sides of an underground facility.
- O. “Site Visit” Determining that the City’s facilities are aerial and do not have to be electronically located.
- P. “Underground Facility” or “Underground Plant” Any item buried or placed below the ground for use in connection with the storage or conveyance of water, sewage, electronic, telephonic or telegraphic communications, Cablevision, electric energy, petroleum products, gas, gaseous vapors, hazardous liquids, or other substances; and including but not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, attachments and those parts of poles or anchors below ground.
- Q. “Unit” Locating or clearing all of the City’s facilities within a one thousand (1000) foot lineal distance.
- R. “Visual Examination” Determination of the existence of the facility owner’s plant at the excavation site by visual means rather than from the facility owner’s maps and records.

CITY RESPONSIBILITIES

4.1 The City will have a representative available to answer any questions by the Contractor concerning the implementation of this Contract.

ARTICLE V
TERMINATION

5.1 BREACH OF TERMS AND CONDITIONS

Except as specified below, this Contract may be terminated upon thirty (30) days written notice by the City or by the Contractor to the other party for breach of any of the terms or conditions contained herein. This Contract may be terminated by the City upon thirty (30) days written notice to the Contractor in the event that the Contractor fails to perform the work required under this Contract in a timely manner. In the event of termination of this Contract either party shall have the rights to all remedies and damages which are provided by law excluding damages for lost profits, punitive damages, or consequential damages.

5.2 NON-APPROPRIATION OF FUNDS

In accord with the City Charter, performance of the City's obligations under this Agreement is expressly subject to appropriation of funds by the City Council for calendar years beyond 2014 - 2015. Funds have been appropriated for payment to the Contractor for work performed during calendar year 2014 - 2015.

5.3 SUSPENSION WITHOUT NOTICE

In the event that Contractor breaches any of the provisions of this Contract, the City shall have the right, in addition to its right under 5.1 above, to summarily suspend this Contract without notice to Contractor; provided however, that after written notice from the Superintendent of the City's Electric or Water Department or Designee to Contractor, not later than one (1) day after the summary suspension, and specifically providing within the notice the reasons therefore, Contractor shall have a period of five (5) days with which to cure the alleged breach. If the breach is cured to the satisfaction of the Superintendent of the City's Electric or Water Department or Designee within the five (5) day period, then this Contract shall be reinstated in full force and effect. If the breach is not cured within the prescribed 5-day period, then this Contract shall, of its own force, be terminated and City shall have the right to all remedies and damages which are provided by law.

ARTICLE VI
CONTRACT ADMINISTRATION

6.1 AMENDMENT

No amendment or modification of this Contract shall be valid unless expressed in writing and executed by the parties hereto.

6.2 INTEGRATION

This is a completely integrated Contract and contains the entire Contract between the parties, and any prior written or oral agreements pertaining to the Contract shall be of no effect and shall not be binding upon either party.

6.3 ASSIGNMENT

The Contractor shall not assign or otherwise transfer this Contract of any right or obligations hereunder without the prior written consent of the City.

6.4 NOTICES

All notices shall be in writing and shall be considered effective when hand-delivered or when mailed, by certified mail, return receipt requested, as follows: for Contractor to Carl Christian, Superintendent City of Fountain Electric Department or Ron Woolsey, Superintendent City of Fountain Water Department 116 South Main Street, Fountain, CO 80817.

6.5 GOVERNING LAW

This contract is subject to and shall be interpreted under the law of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Fountain, Colorado, a Colorado Home Rule city. Court Jurisdiction shall exclusively be in the District Court for El Paso County. The Contractor shall insure that the Contractor and the Contractor's employees, agents, and officers are familiar with, and comply with, applicable Federal, State and Local laws and regulations as now written or hereafter amended.

ARTICLE VII

ILLEGAL ALIENS - PUBLIC CONTRACT FOR SERVICES

7.1 The Contractor agrees to comply with the following.

A. For purposes of this Contract the following definitions apply:

1. "Department" means the department of labor and employment of the state of Colorado.
2. "Department program" means the employment verification program established pursuant to C.R.S. section 8-17.5-102 (5) (c) Colorado Revised Statutes.

Original

3. "E-verify program" means the electronic employment verification program created in Public Law 104-108, as amended and expanded in Public law 108-156, as amended, and jointly administered by the United States department of homeland security and the social security administration, or its successor program.
 4. "Newly hired for employment" means hired to work in the United States since the effective date of the public contract for services (this Agreement).
- B. The Contractor certifies that the Contractor shall comply with the provisions of C.R.S. §8-17.5-101, et seq. and that the Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. By entering into the Contract with the City, the Contractor represents, warrants, and agrees as set forth in the following paragraphs:
1. The Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or the department program established by the Colorado Department of Labor and Employment.
 2. The Contractor shall not use either the e-verify program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
 3. The Contractor shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment.
 4. If the Contractor fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, et seq., the City may terminate this Agreement for breach of the Agreement, and the Contractor shall be liable for actual and consequential damages to the City.

Original

Gabriel P. Ortega
Signature

Gabriel P. Ortega, Mayor
City of Fountain

[Handwritten Signature]
Contractor

OWNER
Title

Date

10 28 14
Date



Regular City Council Meeting

Consent – 7C

September 13, 2016

Summary Information

Title:

Approval to Execute a Technical Services Agreement with the Colorado School of Mines for Pilot-Scale Evaluation of Granular Activated Carbon for Perfluoroalkyl Substance Removal at the City of Fountain

Initiator: Michael Fink, P.E.

Presenter: Michael Fink, Water Resource Engineer

Legal Review: Yes No

Council Action

Council Information

Report to Council

The purpose of this item is to authorize the City Manager to execute the Technical Services Agreement with the Colorado School of Mines for Pilot-Scale Evaluation of Granular Activated Carbon for Perfluoroalkyl Substance Removal at the City of Fountain in the amount not to exceed \$80,000.

Attachments:

Technical Services Agreement (12 pages)

Photograph of Well Number 2 (1 page)

Background Information

Fountain Water Utility has been in contact with the Department of Civil and Environmental Engineering at the Colorado School of Mines (DCEE-CSM) since the poly- and perfluoroalkyl substances (PFAS) in groundwater sources were measured and when the revised health advisories for these unregulated contaminants were updated in May 2016 by the Environmental Protection Agency. The DCEE-CSM operates the Advanced Water Technology Center, which specializes in testing and treating these types of trace contaminants. Professors Christopher Higgins and Christopher Bellona have met and discussed the pilot testing project with Water Utility Staff and with our consultants from Black & Veatch.

The School of Mines personnel will perform the following:

- Set up several columns with Granular Activated Carbon (GAC) pilot testing that will use different compositions of the filtering material in Well #2 (on Alabama Avenue)
- Run well water from Fountain’s wells through these various testing systems to determine the optimal type, gradation, and composition of GAC that can be incorporated into the design and construction of GAC treatment for Fountain’s municipal wells in and near the Aga Park area.

The estimate of expenses and fees is approximately \$50,000, but I am requesting a \$30,000 contingency for a total not-to exceed \$80,000. This will lay the groundwork for design, construction, and operation of this treatment methodology so that Fountain can continue to use the municipal wells as an important part of our water sources portfolio.

Recommendation

After their review, Water Utility Staff and Black & Veatch recommend that the City authorize the City Manager to execute this Technical Services Agreement with the Colorado School of Mines in the amount not to exceed \$80,000.

Proposed Motion

“I recommend the Council authorize the City Manager to execute this Technical Services Agreement with the Colorado School of Mines in the amount not to exceed \$80,000.”

ST

CM Review

**COLORADO SCHOOL OF MINES
TECHNICAL SERVICES AGREEMENT**

1. Introduction

This Technical Services Agreement (the “Agreement”), effective as of **INSERT DATE** (the “Effective Date”) by and between the Board of Trustees of the Colorado School of Mines, for and on behalf of the Colorado School of Mines, located at 1500 Illinois Street, Golden, Colorado 80401, Department of Civil and Environmental Engineering (hereinafter referred to as the “SCHOOL”), a public institution of higher education, and City of Fountain, Colorado, located at 116 S. Main St, Fountain, CO 80817 (hereinafter referred to as CUSTOMER) is made under the following terms.

2. Scope of Work Description

(a) The SCHOOL will perform the following technical services (the “Technical Services”):

The Technical Services are outlined in the Scope of Work document presented as Attachment A.

(b) The SCHOOL will provide the following deliverables (the “Deliverables”):

The SCHOOL will prepare a four-column pilot-scale granular activated carbon (GAC) treatment system and deploy the system at a site within the City of Fountain (CUSTOMER). The GAC system will be operated for a period of five months by the SCHOOL for treating City of Fountain groundwater. The SCHOOL will monitor the GAC system for perfluorinated alkyl acid (PFAA) removal during the five month testing period. If warranted, the SCHOOL will spike the feed water with PFAAs to quantify removal rates during the specified project period. Additionally, operating data will be collected weekly and routine water quality measurements taken biweekly. The SCHOOL will write a technical report summarizing all project findings and will deliver the report to the CUSTOMER within one month of finalizing pilot-scale GAC testing. More details pertaining to the Deliverables can be found in the Scope of Work document presented as Attachment A.

3. Term

The SCHOOL will complete the Technical Services and provide the Deliverables to CUSTOMER within 30 days of receipt of materials to be analyzed (the “Due Date”). The term of this Agreement shall be for a period of six (6) months, beginning on the Effective Date. This term of this Agreement may be extended by mutual written agreement of the parties.

4. Compensation

CUSTOMER agrees to compensate SCHOOL to cover the cost of all direct labor, supervision, supplies, materials, and other operating and incidental expenses necessary for the satisfactory completion of the Technical Services and Deliverables as per the fee schedule below. The maximum cost of the Technical Services and Deliverables paid by CUSTOMER to SCHOOL is \$49,960 (the “Maximum Cost”).

The SCHOOL requests half of the maximum cost constituting \$24,980 upon execution of this agreement from the CUSTOMER. The SCHOOL requests the remainder of the maximum cost constituting \$24,980 upon the delivery of the final report to the CUSTOMER by the SCHOOL.

SCHOOL agrees to provide CUSTOMER with an invoice for the Technical Services completed at the request of CUSTOMER. SCHOOL reserves the right to require CUSTOMER to prepay or submit a deposit prior to providing Technical Services. Although payment is generally requested at the completion of a project, SCHOOL reserves the right to send CUSTOMER invoices on a monthly or periodic basis for lengthy projects and specific services that have been requested.

5. Payments

- a) Payments will be made by CUSTOMER to SCHOOL within thirty (30) days of receipt of an invoice.
- b) Payments shall be submitted to SCHOOL at the following address:
Colorado School of Mines
Department of Civil and Environmental Engineering
1500 Illinois Street
Golden, Colorado 80401
- c) Each payment must reference the Agreement for Services Number shown above.

6. Failure to Pay

If payment is not received from CUSTOMER when due, the full account balance may be accelerated. SCHOOL may also impose a FINANCE CHARGE computed at a periodic monthly rate of 1% per month on the balance or an ANNUAL PERCENTAGE RATE (“APR”) of 12% when computed from the billing date. The unpaid account may be referred for collection, and CUSTOMER agrees to pay all collection costs if SCHOOL must take action to recover any past due amounts owing the SCHOOL.

7. Duties of SCHOOL

SCHOOL shall provide facilities, including office, laboratory, equipment and field space, required for the Technical Services to be completed under this Agreement. The SCHOOL shall provide reasonable efforts to perform the Technical Services requested within the projected costs and time period indicated in this Agreement. In the event the SCHOOL’S costs exceed the Maximum Cost per sample or in the event the Technical Services and Deliverables cannot be completed by the Due Date, in each case due to circumstances beyond the control of the SCHOOL, SCHOOL will notify CUSTOMER as soon as reasonably possible and CUSTOMER shall have the option of (i) terminating this Agreement, without making any payment to SCHOOL other than for any Deliverables previously completed for any samples, or (ii) continuing the Agreement and agreeing to an increase in the Maximum Cost per sample or an extension of the Due Date. SCHOOL shall not exceed the Maximum Cost per sample without obtaining CUSTOMER’S prior written consent. The parties understand and agree that the Technical Services to be performed is limited to reporting on the results obtained and shall not include any intellectual contributions of the School.

8. NO WARRANTY

The Deliverables and the Technical Services completed under this Agreement are believed to be reliable, but no representations, guarantees or warranties of any kind are made as to their accuracy, suitability for particular applications or the results to be obtained. CUSTOMER should determine independently whether results obtained from the Technical Services completed under this Agreement are suitable for the particular use intended by CUSTOMER. SCHOOL DOES NOT MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Ownership Rights

All Deliverables and results provided to CUSTOMER by SCHOOL under the terms of this Agreement are the sole property of CUSTOMER and nothing in this Agreement shall be construed as granting to SCHOOL any right or license under any of CUSTOMER's present or future patent rights, or as granting to SCHOOL any right or license to use for any purpose other than those purposes expressly stated herein any of the Confidential Material or results received or discovered by SCHOOL in connection with performance of the Technical Services. Any improvements of methodology, discoveries, inventions, copyrightable work, equipment, or process developed solely by SCHOOL during the course of this Agreement and which can be used independently of this Agreement (the "Improvements") shall be the sole property of SCHOOL so long as no Deliverables to CUSTOMER are incorporated into or comprise any part of the Improvements.

10. Liability

Each party agrees to accept the responsibility for claims for injury or damage to any person or persons or property that arise out of that party's negligent acts or omissions or willful misconduct in connection with this Agreement. Each party further agrees that the other party shall not be liable for damages arising solely from injuries or damages sustained by any person or persons or property resulting from its own negligent performance or omission or willful misconduct under this Agreement.

11. Nature of Relationship

SCHOOL is an independent contractor and shall not act as an agent for CUSTOMER, nor shall SCHOOL be deemed to be an employee of CUSTOMER for any purposes whatsoever. Neither party shall enter into any agreement or incur any obligations on the other's behalf, or commit the other in any manner without the other's prior written consent.

12. No Expert Testimony

CUSTOMER warrants that services are not sought for the purposes of admitting the results as evidence in litigation. CUSTOMER acknowledges that the SCHOOL does not provide expert witness services. CUSTOMER agrees not to call any SCHOOL employee as an expert witness as a result of the Technical Services rendered under this Agreement.

13. Confidential Material

(a) "Confidential Material" includes CUSTOMER's trade secrets, pending patent applications, invention disclosures, blue prints, documents, spreadsheets, samples, plans, engineering specifications, models, customers, suppliers, distributors, licensees, marketing studies, profits, costs, pricing, tooling, process descriptions, manufacturing processes, and all

other material, whether oral, written or electronic, that CUSTOMER provides to SCHOOL regardless of whether or not such material is marked or identified as “confidential” at the time of disclosure to SCHOOL or at any time thereafter.

“Confidential Material” shall not include any material that:

- A. Was rightfully possessed by the SCHOOL prior to its receipt from CUSTOMER;
- B. Was already available in the public domain through no fault of SCHOOL;
- C. Was subsequently disclosed to SCHOOL by a third party that has the right to disclose it to SCHOOL free of any obligations of confidentiality;
- D. Was independently developed and legally obtained from third parties, and is not obtained, developed or disclosed in violation of this Agreement or applicable law; or
- E. Is required to be disclosed by applicable law.

(b) The confidentiality obligations set forth in this Agreement apply to all or any part of any Confidential Material provided after the Effective Date of this Agreement. SCHOOL’s confidentiality obligations under this Agreement shall survive the termination of this Agreement and remain binding on SCHOOL notwithstanding the termination or expiration of this Agreement for any reason for a period of five (5) years from the Effective Date of this Agreement.

(c) The Confidential Material is the exclusive property of CUSTOMER, and SCHOOL agrees that it will maintain such Confidential Material in strict confidence and prevent the disclosure of Confidential Material to others. SCHOOL further agrees that it will not duplicate such Confidential Material or use the same for any purpose other than as provided herein. Further, SCHOOL agrees that it will restrict the disclosure of Confidential Material to other personnel or students provided by SCHOOL who have a need to know the same for the aforesaid purpose. SCHOOL further agrees that the Confidential Material belongs to CUSTOMER and is to be used solely for the benefit of CUSTOMER.

(d) SCHOOL further agrees that, promptly upon receipt of CUSTOMER’s request, SCHOOL shall return to CUSTOMER all Confidential Materials, in written or other tangible form, including, without limitation, the samples used to conduct the Technical Services.

14. Public Statements

SCHOOL shall not disclose, discuss, comment or provide any information (oral, electronic or written) about any aspect of the Technical Services, or its role in connection with the Technical Services, to third parties (excluding CUSTOMER’s contractors who have a need to know such information strictly for the performance of services for the benefit of CUSTOMER) including, but not limited to, members of the media, press, government personnel, or property owners, except as may be required by law, without the prior written consent of CUSTOMER, which consent may be withheld by CUSTOMER in its sole and absolute discretion. SCHOOL shall immediately refer all inquiries or requests for interviews, statements, or the like, to CUSTOMER. SCHOOL shall not publish or permit to be published (including internal publications) any pictorial, written, verbal, electronic or other information relating to this Agreement or any of the Technical Services without the prior written consent of CUSTOMER, which consent may be withheld by CUSTOMER in its sole and absolute discretion. SCHOOL

shall make its employees, subcontractors, suppliers and agents aware of both the terms and conditions of this section, and agree to be bound thereby. The SCHOOL's obligations under this section shall survive the termination of this Agreement and remain binding on SCHOOL notwithstanding the termination or expiration of this Agreement for any reason.

Notwithstanding anything herein, the SCHOOL has notified CUSTOMER that it is a Colorado Public Institution and, as such, is subject to the Colorado Open Records Act, C.R.S. 24-72-101 et seq. ("CORA"). CUSTOMER acknowledges that any information relating to this Agreement may be subject to the legal requirements of CORA; provided, however, if SCHOOL receives any request for disclosure of any information relating to CUSTOMER or this Agreement pursuant to CORA, SCHOOL shall notify CUSTOMER prior to disclosing any such information and within a reasonable period after receiving such request under CORA. CUSTOMER shall have the opportunity to defend, and assume exclusive responsibility for defending, its position as to the confidentiality of the requested information. Neither the SCHOOL, the State of Colorado, nor any of its agencies is or shall be obligated to assist in CUSTOMER's defense. Further, if any such information is required to be disclosed after CUSTOMER has defended its position in legal or administrative proceedings, SCHOOL agrees that disclosure of any such information shall be limited to the maximum extent permitted under law.

15. Publicity and Use of Name

CUSTOMER agrees it will not use, directly or by implication, the name or trademarks of the Colorado School of Mines or the name of any of its employees in any statements, information, publicity or advertising of any nature including endorsements, without the prior written consent of SCHOOL. SCHOOL agrees it will not use, directly or by implication, the name or trademarks of CUSTOMER or the name of any of its employees in any statements, information, publicity or advertising of any nature including endorsements, without the prior written consent of CUSTOMER.

16. Force Majeure

SCHOOL shall not be liable for damages if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its reasonable control such as: lightning, fire, and explosion; pest damage; strikes or labor disputes; floods; acts of God, war, terrorism, civil disturbances, and acts of civil or military authorities or the public enemy; inability to secure raw materials, transportation facilities or fuel that is beyond its reasonable control; energy shortages; acts or omissions of communications carriers; or other causes beyond the SCHOOL'S reasonable control whether or not similar to the foregoing.

17. Termination

Either party may terminate this Agreement by giving the other party thirty (30) days prior written notice. In the event of termination, SCHOOL shall be paid for all services completed and non-cancelable obligations incurred for the exclusive benefit of CUSTOMER prior to the date of termination.

18. Assignment

This Agreement may not be assigned or transferred by either party without the prior written consent of the other party.

19. Severability

If any clause, provision or section of this Agreement is held to be illegal or invalid by any court, the invalidity of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections and this Agreement shall be construed and enforced as if such illegal or invalid clause, provision or section had not been contained herein.

20. Entirety of Agreement

This Agreement constitutes the entire agreement between SCHOOL and the CUSTOMER with respect to the Technical Services and no statement, whether written or oral, or purchase order made before or at the signing of this Agreement will vary or modify these written terms. Any modification of this Agreement shall be in writing and shall be signed by both parties.

21. Governing Law

This Agreement shall be governed by the laws of the State of Colorado and any disputes arising under it shall be instituted in the appropriate courts in the State of Colorado.

22. Waiver

No waiver by a party of any of the provisions of this Agreement shall be effective unless in writing and signed by such party, and only to the extent expressly provided in such written waiver. Such waiver or a failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision thereof.

23. Counterparts

This Agreement may be executed in multiple originals or counterparts, each of which shall be deemed an original for all purposes, but all such multiple originals or counterparts together shall constitute one and the same instrument. Copies of the Parties' signatures to this Agreement transmitted by facsimile, e-mail or other electronic means shall be considered originals for all purposes.

24. Governmental Immunity

Nothing in this agreement shall be construed to waive, limit, or otherwise modify any governmental immunity available to any of the persons or entities released herein under the Colorado Governmental Immunity Act, C.R.S. §24-10-101, et seq.,.

25. Appropriation of Funds by the City Council

Payment by the City under the provisions of this Agreement after calendar year 2016 is subject to appropriation of funds by the CUSTOMER (Fountain City Council).

In witness whereof, SCHOOL and CUSTOMER have executed this Agreement.

The Board of Trustees of
The Colorado School of Mines

City of Fountain

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

84-6000551
IRS Entity Identification Number

IRS Entity Identification Number

Attachment A – Scope of Work, Deliverables and Budget

Draft Service Proposal to

Michael Fink

City of Fountain
116 S. Main St, Fountain, CO 80817

**Pilot-scale Evaluation of the Efficacy of Granular Activated Carbon for Perfluoroalkyl
Substance Removal at the City of Fountain**

Christopher Bellona, Tzahi Cath, Christopher Higgins

Submitted by

Christopher Bellona
Advanced Water Technology Center (AQWATEC)
Colorado School of Mines (CSM)
Department of Civil and Environmental Engineering
Golden, CO 80401-1887
Phone 303-273-3061
Fax 303-273-3413
E-mail: cbellona@mines.edu



Introduction

Poly- and perfluoroalkyl substances (PFAS) have recently received considerable attention due to their ubiquitous presence and recalcitrance in the environment, and their toxic properties [1-3]. Manufacturing and disposal of PFAS-containing formulations and products, and use of aqueous film forming foam (AFFF) at various sites has resulted in PFAS contamination of groundwater and drinking water supplies [3, 4]. Using water quality data compiled by the USEPA, the New York Times recently reported that approximately 5.2 million Americans have drinking water sources contaminated with various PFAS [5]. As a result of this finding and a review of toxicological data, the USEPA issued a revised human health advisory in May 2016 for two perfluoroalkyl acids (PFAAs) including perfluorooctanoic acid (PFOA) and perfluorooctanoic sulfonate (PFOS). The USEPA advises that water systems with PFOA and PFOS at individual or combined concentrations of 70 ng/l (or parts per trillion) or higher should undertake additional monitoring and corrective actions. The State of Colorado has also included perfluoroheptanoic acid (PFHpA) in their state-issued Health Advisories for PFASs.

The effective removal of PFASs from contaminated water is extremely challenging. Conventional water treatment processes such as coagulation/flocculation/sedimentation and filtration are not effective for the removal of PFAAs [6-8]. Past research has also demonstrated that commonly used advanced oxidation processes (AOPs) such as ultraviolet light (UV) or ozone with peroxide are not effective for PFAA degradation, due to the stability of the carbon-fluorine bond [8, 9]. The most commonly used treatment technology is granular activated carbon (GAC), although short breakthrough times have been reported for certain PFAS compounds. Additionally, there has been limited work evaluating the effectiveness of GAC with a real groundwater matrix that potentially contains a myriad of PFASs and other contaminants, particularly PFASs that may be AFFF-derived.

The City of Fountain uses a combination of groundwater and surface water to meet drinking water demands. It was recently determined that a significant portion of their groundwater supply exceeds the Colorado health advisory recommendations for PFOA, PFOS, and PFHpA. As a proactive measure to meet customer expectations related to drinking water quality, a desire to develop a strategy to protect public health, and a dearth of treatability data for PFASs, the City is considering a full-scale GAC treatment for PFAS removal from its existing groundwater sources. However, based on the lack of GAC treatability data for these existing groundwater sources, the City desires to conduct pilot-scale testing to select the appropriate GAC product, appropriately design the full-scale GAC system and develop opinions of probable cost for construction and operation of such a system.

The service proposed by CSM/AQWATEC includes the evaluation of four GAC products at the pilot-scale. Once installed and operated, the system will be routinely monitored for PFAS removal efficiency and effluent water quality. With consultation from the City of Fountain and/or its contractors (i.e., Black & Veatch), CSM/AQWATEC will design, build, and install an automated pilot-scale GAC system at the City of Fountain, and be operate this with assistance from City Water Utility staff. CSM/AQWATEC will provide a final report that includes a summary of the test equipment, procedures and test results.

Objectives

The objectives of the proposed study are to characterize the efficiency of PFAS removal by four

commercially available GAC products for the City of Fountain, and provide guidance towards the design of an effective full-scale treatment facility to protect human health. The pilot-scale study will be conducted to characterize various parameters related to GAC system design and operation including time to breakthrough for a variety of PFASs, GAC exhaustion rate, and PFAS removal rate. Four promising GAC products will be tested for approximately five months, and results of this study will provide valuable information to the City of Fountain and practitioners dealing with similar PFAS contamination issues.

Technical Approach

GAC System

A fully automated four-column GAC system will be fabricated at CSM. Each GAC column will be built from schedule 40, clear PVC pipes. The system will be automated with a supervisory control and data acquisition (SCADA) system to allow for continuous operation, remote monitoring (if available at the testing site), and collection of operating data during testing. The GAC system will be equipped with temperature probes, flow-control valves and meters, pressure transducers, turbidity meters, and level switches. A backwashing system may be incorporated to allow for recovery of GAC column permeability based on pressure drop data obtained during operation. The system will include metering pumps in the event that PFAS spiking experiments are warranted during the course of the study. Sampling ports will be installed along the column to closely monitor breakthrough behavior and to potentially perform bed depth service time (BDST) analysis using results generated during the study. BDST analysis is useful as it allows for the quantification of the height of the adsorption zone within a GAC system, which can be used to determine the appropriate depth of GAC at full-scale, the GAC exhaustion rate, and the best configuration for operation (e.g., columns in series or in parallel).

GAC System Operation

The team will meet to initially define the planned loading rates, flow rates, contact times and empty bed contact time ranges prior to implementing the testing protocols. The team will work with Black & Veatch and the City to properly size and operate the pilot-scale GAC system so that results can be used to design an effective full-scale GAC contactor system.

The team will work with several vendors to identify promising GAC products for PFAS removal and will evaluate four products during the course of the study. The team currently has two Calgon GAC products, including F400 and F600 that will be considered for pilot testing.

Testing Protocol

We propose to operate the system over a period of approximately five months with weekly sampling and operating data analysis. The number of samples taken each week and the number of samples taken from each of the columns will be defined in the testing protocol. For each weekly sampling campaign, triplicate influent and effluent samples will be collected for PFAS analysis and routine water quality analysis. To reduce analytical costs, we propose to initially only process 20 percent of effluent samples in triplicate (with the additional replicates stored for potential analysis in the event that data are inconsistent). Weekly downloading of operating data will be performed and results will be compiled to determine if operating issues arose between sampling events. If Ethernet or Wi-Fi service will be available, the team will monitor the SCADA system remotely to conduct daily check-ups on system operation. Run time variations for each experiment, based on bed volumes and volumetric flow rates, will be compiled to

facilitate future operational expenses when the process is expanded from pilot testing to full scale treatment operation.

For this study we will focus on the PFAAs on the USEPA third Unregulated Contaminant Monitoring Rule (UCMR) list. These compounds include PFOA, PFOS, perfluorononanoic acid (PFNA), perfluorohexane sulfonic acid (PFHxS), PFHpA, and perfluorobutanesulfonic acid (PFBS). Analysis will be performed using sample isotope dilution, solid phase extraction, and injection on a liquid chromatography mass spectrometry system. Quality assurance and quality control measures will include travel blanks, method blanks, calibration standard checks, and routine instrument maintenance. If desired by the City and time and budget permit, CSM may also provide quantitative and/or semi-quantitative data for other PFASs that may be present in the source waters. The team will also measure other common water quality parameters for influent and effluent samples, including pH, conductivity, total organic carbon, ultraviolet absorbance (UV-254), and cations and anions concentrations. These parameters may be monitored on a different schedule from the PFAS, if the team defines a different schedule.

Budget and Schedule

The team will meet with City Water Utility staff and contractors to confirm the Project Schedule; it is anticipated that the team will perform GAC treatment testing for a maximum period of five months. An additional month is required for fabrication and installation of the GAC system for the City of Fountain. A final report will be delivered to the City within one month after GAC testing is completed

A breakdown of the proposed budget is presented in Table 1. The team requests \$7000 for labor and sampling supplies, \$20,940 for equipment and materials for the GAC system, and \$18,000 for analytical costs. The total budget for this proposed project is \$49,960 including overhead. These costs cover installation and operation of the GAC system, transportation to and from the site for the duration of the study, sampling, water quality analyses including PFAS quantification, data analysis, and report writing.

Table 1. Proposed budget for GAC testing

Item	Units	Unit Cost	Total
GAC System			
Equipment and supplies for GAC column	4	\$3,710	\$14,840
Frame for GAC system	1	\$1,600	\$1,600
Control system	1	\$4,500	\$4,500
		Total	\$20,940
Personnel			
Labor/travel/sampling (per month)	5	\$1,400	\$7,000
		Total	\$7,000
Analysis			
Sample analysis (per month)	5	\$3,600	\$18,000
		Total	\$18,000
Overall Estimate			\$45,940
With 8.75% Administrative Fees			\$49,960

Project Team

The service will be conducted by an experienced team of CSM staff and graduate students under the guidance of Profs. Bellona, Cath, and Higgins. The team has considerable experience fabricating treatment systems, performing pilot-scale evaluations, and performing routine and advanced water quality analyses.

References

1. Schultz, M.M., D.F. Barofsky, and J.A. Field, *Fluorinated Alkyl Surfactants*. Environmental Engineering Science, 2003. **20**(5): p. 487-501.
2. Houtz, E.F., et al., *Persistence of Perfluoroalkyl Acid Precursors in AFFF-Impacted Groundwater and Soil*. Environmental Science & Technology, 2013. **47**(15): p. 8187-8195.
3. Post, G.B., P.D. Cohn, and K.R. Cooper, *Perfluorooctanoic acid (PFOA), an emerging drinking water contaminant: A critical review of recent literature*. Environmental Research, 2012. **116**: p. 93-117.
4. Guelfo, J.L. and C.P. Higgins, *Subsurface Transport Potential of Perfluoroalkyl Acids at Aqueous Film-Forming Foam (AFFF)-Impacted Sites*. Environmental Science & Technology, 2013. **47**(9): p. 4164-4171.
5. Rich, N., *The story behind the EPA's contaminated water revelation*, in *The New York Times Magazine*. 2016: New York.
6. Quiñones, O. and S.A. Snyder, *Occurrence of Perfluoroalkyl Carboxylates and Sulfonates in Drinking Water Utilities and Related Waters from the United States*. Environmental Science & Technology, 2009. **43**(24): p. 9089-9095.
7. Xiao, F., M.F. Simcik, and J.S. Gulliver, *Mechanisms for removal of perfluorooctane sulfonate (PFOS) and perfluorooctanoate (PFOA) from drinking water by conventional and enhanced coagulation*. Water Research, 2013. **47**(1): p. 49-56.
8. Appleman, T.D., et al., *Treatment of poly- and perfluoroalkyl substances in U.S. full-scale water treatment systems*. Water Research, 2014. **51**: p. 246-255.
9. Vecitis, C.D., et al., *Treatment technologies for aqueous perfluorooctanesulfonate (PFOS) and perfluorooctanoate (PFOA)*. Frontiers of Environmental Science & Engineering in China, 2009. **3**(2): p. 129-151.



Regular City Council Meeting

Consent – 7D

September 13, 2016

Summary Information

Title:

RESOLUTION #16-029 A RESOLUTION DESIGNATING AN LED NOTIFICATION SIGN TO BE INSTALLED IN FRONT OF FIREHOUSE #1 AS AN OFFICIAL SIGN OF THE CITY OF FOUNTAIN, LOCATED ON CITY PROPERTY.

Initiator : Scott Trainor, City Manager

Presenter: Scott Trainor, City Manager

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The purpose of this action item is for the Council to adopt a resolution designating a sign to be installed by Firehouse #1 as an official City sign.

Attachments: Resolution #16-029

Background Information

In order to obtain the CDOT permit needed for the installation of an LED notification sign in front of Firehouse #1, CDOT is requiring the City Council to adopt a resolution stating that it is an official City sign.

Recommendation

The recommendation is to adopt the attached resolution, by consent, designating the sign as an official City sign, to meet CDOT requirements.

Proposed Motion

Since this is a Consent Item, there is no proposed motion.

ST

CM Review



RESOLUTION 16-029

**A RESOLUTION DESIGNATING AN LED NOTIFICATION SIGN TO BE
INSTALLED IN FRONT OF FIREHOUSE #1 AS AN OFFICIAL SIGN OF THE
CITY OF FOUNTAIN, LOCATED ON CITY PROPERTY.**

RECITALS:

BE IT RESOLVED by the City Council of the City of Fountain, Colorado:

The LED Notification sign, previously approved by the City Council, is hereby designated as an official sign of the City of Fountain, Colorado, and is located on City property. The sign is to be located in front of, or adjacent to, Firehouse #1, on City property.

Done in Fountain, Colorado, this _____ day of _____, 2016.

CITY OF FOUNTAIN, COLORADO

Gabriel P. Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk



Regular City Council Meeting

Consent- 7E

September 13, 2016

Summary Information

Title: Resolution 16-027, Accepting A Landfill Closure/Post Closure Plan And Related Documents Related To Tuscany Ridge At Mesa Village – Near Elmhurst Drive and Willow Pines Place

Initiator: Duane Greenwood

Presenter: Duane Greenwood, City Engineer

Legal Review: Yes No

- Council Action
- Council Information
- Report to Council

Summary Overview and List of Attachments:

The purpose of this action item is for the Council to review and approve execution of Resolution 16-027.

Attachments: Resolution 16-027 with proposed Landfill Closure Site Plan Exhibits

Background Information

A non-permitted and non-lined landfill was historically established on private property near the current intersection of Elmhurst Drive and Willow Pines Place dating back to 1961. Materials disposed in this subject landfill primarily consists of construction demolition waste material and old tires. Since 2002 the new owners of the Tuscany Ridge at Mesa Village Development began an effort to sort through and clean up the subject landfill site in order to construct residential neighborhoods. Debris material has generally been consolidated into a large un-sifted debris pile at the northeasterly corner of Elmhurst/Willow Pines Place and a separate State permitted tire disposal site located on the westerly side of Elmhurst Drive just south of Willowdale Drive.

A couple years ago State Department of Public Health and Environment (CDPHE) staff discovered a few pieces of asbestos material on site and issued a stop work notice for the ongoing debris sorting reclamation effort. The discovery of asbestos material and associated environmental regulations now makes it financially impractical for the Tuscany Ridge Developers to continue original cleanup sorting plans. Working with the CDPHE the Tuscany Ridge Developers have created a revised plan to further consolidate remaining landfill debris into the two existing primary debris sites. These two open space consolidated landfill closure sites will be covered with a clean layer of soil and vegetated with a native grass seed mixture. The closure plan includes provisions for long term maintenance and monitoring of the two proposed State permitted landfill sites.

CDPHE has requested that the City review and accept the subject Landfill Closure/Post Closure Plan before they will issue a Notice to Proceed to the Tuscany Ridge at Mesa Village Developer.

Recommendation

Staff recommends that City Council approve Resolution 16-027.

Proposed Motion

"I recommend City Council approval of Resolution 16-027."

CM Review ST



RESOLUTION 16- 027

ACCEPTING A LANDFILL CLOSURE/POST CLOSURE PLAN AND RELATED DOCUMENTS RELATED TO TUSCANY RIDGE AT MESA VILLAGE—NEAR ELMHURST DRIVE AND WILLOW PINES PLACE, FOUNTAIN, COLORADO

WHEREAS, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division, has approved a Landfill Closure/Post Closure Plan relating to Tuscany Ridge at Mesa Village-Elmhurst Drive and Willow Pines Place; and

WHEREAS, the subject Landfill Closure/Post Closure Plan Dated October 19 2015 was prepared by Entech Engineering Inc. on behalf of Fountain Lake LLC; and

WHEREAS, the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division subsequently approved letter modification amendments to the subject Landfill Closure/Post Closure Plan Dated October 30, 2015, March 21, 2016 and April 18, 2016; and

WHEREAS, Mr. Ron Hall, Fountain Mesa Construction LLC, Fountain Lake LLC, and others desire to develop the property covered by and adjoining the Subject Landfill Closure/Post Closure Plan; and

WHEREAS, it is in the best interests of the City for the Landfill Closure Plan to be in place before any further development of the impacted and adjoining land; and

WHEREAS, if mitigation measures are not implemented, the City and its citizens may be exposed to environmental hazards; and

WHEREAS, the State wants assurance that the City has reviewed and accepts the subject Landfill Closure/Post Closure Plan before issuance of a Notice to Proceed to the developers/property owners; and

WHEREAS, City staff has reviewed the mitigation requirements established in the subject Landfill Closure/Post Closure Plan and related documents and believe that the plan reasonably protects the City and its citizens;

THEREFORE BE IT RESOLVED by the City Council of the City of Fountain, Colorado:

Section 1: The City accepts the State of Colorado Approved Tuscan Ridge at Mesa Village Landfill Closure/Post Closure Plan and related documents on file with the Colorado Department of Public Health and Environment, Hazardous Materials and Waste Management Division and also at the City of Fountain Engineering/Planning Office.

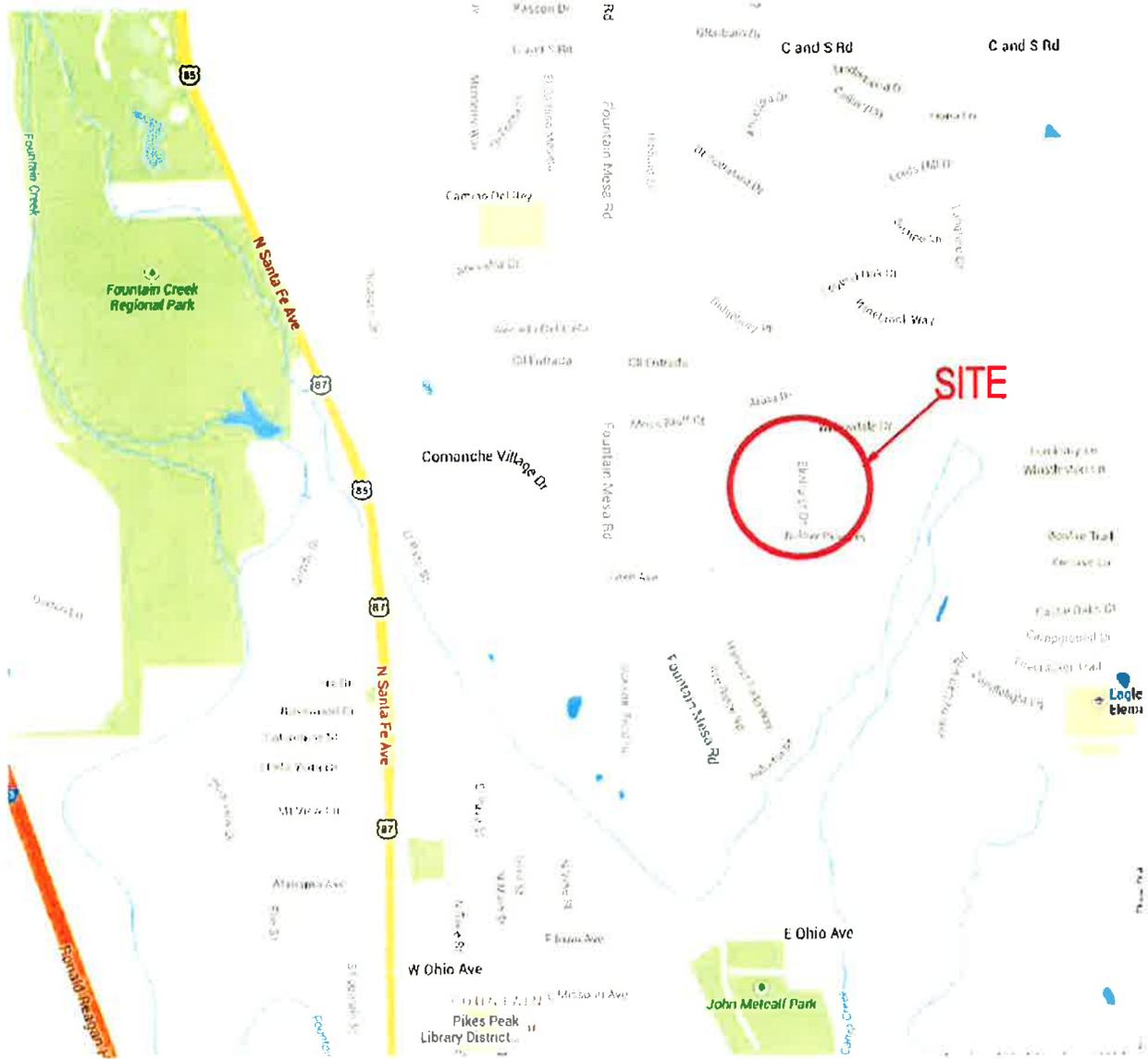
Section 2: The City Manager is authorized and directed to take any action that is necessary or appropriate required by the State to evidence the acceptance of the subject Landfill Closure/Post Closure Plan.

Section 3: This resolution shall be in effect upon approval by City Council.

Gabriel P. Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk



BASE MAP ADAPTED FROM
 GOOGLE MAPS
 2014
 N.T.S.



ENTECH
ENGINEERING, INC.

505 ELKTON DRIVE
 COLORADO SPRINGS, CO 80907 (719) 531-5099

VICINITY MAP
 TUSCANY RIDGE AT MESA VILLAGE
 ELMHURST DRIVE & WILLOW PINE PLACE
 FOUNTAIN, COLORADO
 FOR: FOUNTAIN LAKE, LLC

DRAWN:
 JYP

DATE:
 09.25.14

CHECKED:

DATE:

JOB NO:
 141184

FIG NO:
 1



Regular City Council Meeting

New Business – 9A

Items Removed from Consent

September 13, 2016

Summary Information

Title:

Consideration of Items Removed from the Consent Agenda

Initiator : City Clerk Huffman

Presenter: Silvia Huffman, City Clerk

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

Any Items removed from the Consent agenda for further discussion shall be heard under this item

Background Information

N/A

Recommendation

N/A

Proposed Motion

CM Review



Regular City Council Meeting

New Business-9B

Resolution 16-026

September 13, 2016

Summary Information

Title:
RESOLUTION 16-026, A RESOLUTION ASSIGNING AND TRANSFERRING TO EL PASO COUNTY, COLORADO THE CITY OF FOUNTAIN'S 2016 PRIVATE ACTIVITY BOND VOLUME CAP ALLOCATION FROM THE STATE CEILING FOR PRIVATE ACTIVITY BONDS AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT AND OTHER RELATED DOCUMENTS

Initiator : City Manager	<input checked="" type="checkbox"/> Council Action <input type="checkbox"/> Council Information <input type="checkbox"/> Report to Council
Presenter: City Manager	
Legal Review: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Documents Attached: Resolution 16-026 with Attachment

Background Information

Each year the State, allocates to the City the right to issue private activity bonds. For 2016 the allocation is \$1,424,450. Because of the administrative costs to the City of using its allocation to issue tax exempt private activity bonds, and because the allocated amounts generally are not sufficient for the City to fund a qualifying project, the City assigns its allocation to El Paso County. The County uses this allocation to allocate private activity bonds for qualifying projects in the County, which can include uses in the City.

Recommendation

Staff recommends adoption of the attached resolution.

Proposed Motion

I move adoption of the resolution.

ST
CM Review



RESOLUTION 16-026

ASSIGNING AND TRANSFERRING TO EL PASO COUNTY, COLORADO THE CITY OF FOUNTAIN'S 2016 PRIVATE ACTIVITY BOND VOLUME CAP ALLOCATION FROM THE STATE CEILING FOR PRIVATE ACTIVITY BONDS AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN ASSIGNMENT AND OTHER RELATED DOCUMENTS

WHEREAS, the City of Fountain, Colorado is authorized by the Municipality Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act") and the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes, as amended (the "Supplemental Act"), to finance projects as defined in the Act, including residential housing facilities for low- and middle-income persons and families; and

WHEREAS, on January 1, 2016 the City was awarded \$1,424,450 (the "2016 Allocation") of the bond ceiling for the State of Colorado and its issuing authorities pursuant to the Colorado Private Activity Bond Ceiling Allocation Act, constituting Part 17 of Article 32 of Title 24, Colorado Revised Statutes, as amended (the "Allocation Act"), for use in the issuance of private activity bonds to finance projects under the Act; and

WHEREAS, the Allocation Act provides for the assignment of bond allocations between issuing authorities of the State; and

WHEREAS, the City desires to forfeit its right to use the Allocation and to assign and transfer its 2016 Allocation to El Paso County, Colorado.

WHEREAS, the County will attempt to use Fountain's 2016 Allocation to finance "projects" under the Act; and

WHEREAS, it is necessary to evidence the assignment and transfer and the acceptance by the execution and delivery by the City of an Assignment (the "Assignment"), by and between the City and the County; and

WHEREAS, the County proposes to issue housing revenue bonds pursuant to the Act and the Supplemental Act (the "Bonds") to finance "projects" under the Act (the "Projects");

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FOUNTAIN:

Section 1. The City (i) assigns and transfers to the County the City's 2016 Allocation and (ii) approves, authorizes, and directs the Mayor to sign and deliver and the City Clerk to attest and deliver the Assignment in substantially the form presented to the City Council as Appendix 1.

Section 2. The Mayor is authorized and directed to execute and deliver and the City Clerk is authorized and directed to attest and deliver other agreements and certificates and to take other actions as may be necessary or convenient to carry out and give effect to the Assignment and this Resolution.

Section 3. Nothing in this Resolution or the Assignment shall constitute a debt, indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation of the City within the meaning of the Constitution or statutes of the State of Colorado or the home rule Charter of the City, or give rise to a pecuniary liability of the City or a charge against its general credit or taxing powers.

Section 4. If a section, paragraph, clause or provision of this Resolution is held to be invalid or unenforceable, the invalidity or unenforceability of any that section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect upon its passage and approval.

Adopted this _____ day of June, 2016.

CITY OF FOUNTAIN, COLORADO

Gabriel P. Ortega, Mayor

[SEAL]

Attest:

Silvia Huffman, City Clerk

APPENDIX 1

ASSIGNMENT

THIS ASSIGNMENT (the "Assignment"), dated this 1st day of June, 2016, is by and between the **CITY OF FOUNTAIN, COLORADO**, a home rule city, municipal corporation and political subdivision of the State of Colorado (the "Assignor"), and **EL PASO COUNTY, COLORADO**, a body corporate and politic (the "Assignee");

WHEREAS, the Assignor has been awarded \$1,424,450 (the "2016 Allocation") of private activity bond volume cap allocation for the State of Colorado and its issuing authorities (the "State Ceiling") computed under Section 146(d) of the Internal Revenue Code of 1986, as amended (the "Code"), and under the Colorado Private Activity Bond Ceiling Allocation Act, Part 17 of Article 32 of Title 24, Colorado Revised Statutes, as amended (the "Allocation Act"), for use in the issuance of private activity bonds; and

WHEREAS, subject to the terms and conditions set forth herein, the Assignor desires to assign to the Assignee, and the Assignee desires to accept all of the Assignor's 2016 Allocation, which the Assignor has committed and reserved for the issuance of such private activity bonds; and

WHEREAS, the private activity bonds will be issued by the Assignee pursuant to the County and Municipality Development Revenue Bond Act, constituting Article 3 of Title 29, Colorado Revised Statutes, as amended (the "Act"), and the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, Colorado Revised Statutes, as amended (the "Supplemental Act"), and such bonds will be used only for "projects" as described in the Act;

NOW THEREFORE, in exchange for the agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Section 1. The Assignor hereby assigns and transfers to the Assignee all of the Assignor's 2016 Allocation. The Assignee agrees to use all of the Assignor's 2016 Allocation only for "projects" as described in the Act. In addition, the Assignor hereby consents to the election by the Assignee, if the Assignee in its discretion so decides, to treat all of the Assignor's 2016 Allocation as an allocation for a project with a carryforward purpose, thus avoiding reversion of such 2016 Allocation to the statewide balance under the Allocation Act, or to assign such 2016 Allocation or a portion thereof to another Assignee.

Section 2. The Assignor represents that it has received no monetary consideration for the assignment set forth above.

Section 3. The Assignee hereby accepts the assignment of all of the Assignor's 2016 Allocation from the State Ceiling described above, subject to the terms and conditions contained herein.

Section 4. The Assignor and Assignee each agree that it will take such further action and adopt such further proceedings as may be required to implement the terms of this Agreement, including but not limited to the Assignee filing an IRS Form 8328 "Carryforward Election of Unused Private Activity Bond Volume Cap" with respect to all of the Assignor's 2016 Allocation.

Section 5. This Assignment is effective upon execution and is irrevocable.

IN WITNESS WHEREOF, the Assignor and the Assignee have caused this instrument to be executed to be effective as of the date and year first written above.

CITY OF FOUNTAIN, COLORADO, as
Assignor

By _____
Gabriel P. Ortega, Mayor

[SEAL]

ATTEST:

Silvia Huffman, City Clerk

EL PASO COUNTY, COLORADO,
as Assignee

By _____
Its: Chair, Board of County Commissioners

[SEAL]

ATTEST:

Its: Deputy County Clerk



Regular City Council Meeting

New Business-9C

September 13, 2016

Summary Information

Title:

First Reading of Ordinance 1677 Renewing a Franchise Agreement with Mountain View Electric Association.

Initiator: Curtis Mitchell, Utilities Director

Presenter: Curtis Mitchell, Utilities Director

Legal Review: Yes No

- Council Action
- Council Information
- Report to Council

Summary Overview and List of Attachments:

This Ordinance grants a non-exclusive right to provide electric service within the City to the Mountain View Electric Association under the terms and condition of a Franchise Agreement. This is a ten year renewal of an existing Franchise Agreement with updates made to the included areas.

Attachments: Ordinance 1677

Background Information

Other utilities are allowed to provide service within the City of Fountain under Franchise Agreements. The Agreements provide for terms and conditions related to utility services along with a Franchise Fee. Through annexation we acquire areas that may already be served by another utility, along with some cases where it is currently impractical for us to extend utility services. This Ordinance provides for a ten year extension of an existing Ordinance and it has already received approval from the Mountain View Electric Association Board of Directors on August 23, 2016.

Recommendation

It is the recommendation of the Electric Department to approve Ordinance 1677

Proposed Motion

"I recommend the approval of Ordinance 1677 on First Reading."


CM Review

ORDINANCE NO. 1677

AN ORDINANCE GRANTING MOUNTAIN VIEW ELECTRIC ASSOCIATION, INC., A COLORADO CORPORATION, A FRANCHISE TO FURNISH ELECTRICITY AND THE AUTHORITY TO CONSTRUCT, OPERATE, MAINTAIN, AND EXTEND AN ELECTRIC PLANT AND SYSTEM, AND GRANTING THE RIGHT TO USE THE STREETS, ALLEYS, AND OTHER PUBLIC PLACES WITHIN THE PRESENT OR FUTURE CORPORATE LIMITS OF THE CITY OF FOUNTAIN COLORADO

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FOUNTAIN,

COLORADO: ARTICLE I: GRANT OF FRANCHISE

A. Grant of Franchise. The City of Fountain, hereafter referred to as "City," hereby grants to Mountain View Electric Association, Inc., a Colorado corporation, hereafter referred to as "Company," for the period specified in, and subject to the conditions, terms and provisions contained in this Ordinance, a non-exclusive right to furnish, sell, transmit, and distribute electricity within the City, to the City, and to residents of the City, as specified in the attached Appendices. Subject to the conditions, terms, and provisions contained in this Ordinance, the City also hereby grants to the Company a non-exclusive right to acquire, construct, install, locate, maintain, operate, and extend into, within and through the City all facilities reasonably necessary to furnish, sell, transmit, and distribute electricity within the City and a non-exclusive right to make reasonable use of the streets and other public places as may be necessary to carry out the terms of this Ordinance. All construction of new lines below 30 kV is to be underground, this does not include rebuilds or relocations. All rights granted apply only to furnishing, selling, transmitting, and distributing electricity within designated portions of the City described in the Appendices.

B. Exclusions.

1. This Ordinance does not grant the Company the right, privilege, or authority to engage in the community antenna (cable) television business.
2. The City retains the following rights in regard to this franchise:
 - a. To repeal the franchise for misuse, non-use, or failure of the Company to comply with the provisions hereof;
 - b. To require proper and adequate extension of plant, facilities, and service, and the maintenance thereof at the highest practicable standard of efficiency;
 - c. To establish reasonable standards of service and quality to prevent against discrimination in service or rates;
 - d. To require continuous service to residents in accordance with such standards and the terms of this franchise throughout the entire period hereof;
 - e. To use, control, and regulate the use of city streets, public easements, and other public places and the space above and beneath them; and
 - f. To impose such other regulations as may be determined by the City Council

to be conducive to the health, safety, welfare, convenience, and accommodation of the public.

C. Term of Franchise. This Franchise shall be in full force and effect from and after its passage, approval, and publication, as by law required, provided that the Company has filed with the City Clerk a written acceptance of the terms in a form approved by the City Attorney within thirty days after said passage and approval. The base term of this franchise shall be for ten years, beginning with the effective date of this Ordinance and expiring on November 30, 2026. The base term may be extended thereafter unless terminated by either party upon one year's written notice to the other party, provided, however, any extension is conditioned on the Company's satisfactorily performing all its obligations hereunder and provided, further, no extension shall extend the term of this franchise beyond November 30, 2028.

ARTICLE II: PROVISION OF SERVICE

A. Company shall furnish electrical energy within the corporate limits of that portion of the City described in the attached Appendices, to the City, and to the inhabitants thereof, and to any person or persons or corporation doing business in that portion of the City, at the applicable and effective rates and under the terms and conditions set forth in the rate schedules, standards for service, rules and regulations, and service connection and extension policies as approved by the Company's Board of Directors or as approved by any other competent authority having jurisdiction in the premises.

B. Company will from time to time during the term of this franchise make such enlargements and extensions of its distribution system as the business of the Company and the growth of the franchised area justify, in accordance with its standards for service, rules and regulations, and service connection and extension policies for electric service concurrently in effect as approved by the Company's Board of Directors or as approved by any other competent authority having jurisdiction in the premises.

C. There is hereby granted to the Company the right, in accordance with the applicable National Electrical Safety Code, the privilege and authority to locate, build, construct, acquire, purchase, extend, maintain, and operate into, within, and through those portions of said City described in the attached Appendices all necessary, needful and convenient poles, pole lines, posts, wires, transformers, guy posts and guy wires, apparatus, appliances and works, for the purchase, generation, transmission, and distribution of electrical energy, with the right and privileges for the period and upon the terms and conditions hereinafter specified to furnish, sell, and distribute said electrical energy to those portions of the City, and the inhabitants thereof, for light, heat, and power or other purposes by means of conduits, cables, poles with wires strung thereon, or otherwise, on, over, under, along, across, and through any and all streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places in said portions of the City and on, over, under, along, across and through any extension, connection with or continuation of the same and/or on, over, along, under, across, and through any and all such new streets,

alleys, viaducts, bridges, roads, lanes, and other public ways and places as may be hereafter laid out, opened, located, or constructed within the territory now or hereafter included in the boundaries of said portions of the City. All poles, pole lines, posts, wires, transformers, guideposts and guidewires, apparatus, appliances and works, conduits, plants, substations, or other materials or objects pertaining thereto, used or placed by the Company within the City shall be and remain the property of the Company.

D. Company is further granted the right, privilege, and authority to excavate in, occupy, and use any and all streets, alleys, viaducts, bridges, roads, lanes, and other public ways and places under the supervision of the properly constituted authority of the City (hereinafter referred to as "City Right-of-Way") for the purpose of bringing electrical energy into, within, and through those portions of the City described in the attached Appendices and supplying electrical energy to said portions of the City and the inhabitants thereof and in Company's territory located outside the City, and further to trim or cut down such trees and shrubbery and to control the growth of same by chemical means, machinery, or otherwise, as may be reasonably necessary to effect said purpose or purposes, provided, however, that the Company shall so locate its plants, substations, works, transmissions and distribution structures, lines, equipment, and conduits within said portions of the City as to cause minimum interference with the proper use of streets, alleys, and other public ways and places, and as to cause minimum interference with the rights or reasonable convenience of property owners whose property adjoins any of said streets, alleys, or other public ways and places. Should it become necessary for the Company, in exercising its rights and performing its duties hereunder, to interfere with any sidewalk, pavement, water main, sewer, or any other public or private improvement, the Company shall repair or cause to be repaired and restored to its original condition such sidewalk, graveled or paved street, road, alley, water main, sewer, or other public or private improvement after the installation of its poles, conduits, or other structures.

E. Notwithstanding any provision of law to the contrary, if at any time during the term of this Franchise it shall be necessary to change the position of any pole, conduit, or service connection of the Company located in a City Right-of-Way (including the undergrounding thereof) to permit the City to lay, make or change street grades, pavements, sewers, water mains, or to accommodate street widening projects or other City work constituting an exercise of the City's police power, such changes shall be made by the Company at its own expense. Company hereby waives any rights it may have now or during the term of this Franchise that may differ from the obligation to relocate or underground electric facilities located in a City Right-of-Way as set forth herein at the Company's sole expense, except as provided in C.R.S. 40-9.5-117. Notwithstanding the provisions of C.R.S. 40-9.5-117, before exercising its rights thereunder, the Company shall consult with the City in an effort to reach agreement on the costs of undergrounding, and whether any portion of such costs will be paid by the City in lieu of imposing any surcharge under the statute.

F. City shall have the right to use all poles of the Company within said City for the purpose of stringing wires thereon for electric service provided by the City to its retail customers ("pole attachments"). Provisions for such pole attachments shall be in accord with the following: (i) Company and City shall mutually agree on a reasonable pole attachment fee in accordance with Company's standard Pole Attachment Agreement applicable to other types of services; or (ii) at Company's option, sell the distribution poles and facilities to the

City at a mutually agreed upon price; or (iii) jointly rebuild the facilities on a shared basis as mutually agreed upon; and (iv) the Company assumes and shall be subject to no liability and shall be subject to no additional expense in connection with providing pole attachments on its facilities; and (v) the use of said poles by the City shall not interfere in any unreasonable manner with the Company's use of same.

G. Company, from time to time, may promulgate such rules, regulations, terms, and conditions governing the conduct of its business, including the utilization of electrical energy and payment therefore, and the interference with, or alteration of any of the Company's property upon the premises of its customer, as shall be necessary to ensure continuous service to each and all of its customers and the proper measurement thereof and payment therefore. The Company further agrees to (i) maintain a current set of tariffs and rules and regulations with the City Clerk of the City, and (ii) to provide notice to the City Clerk, including proposed new tariffs, whenever a change is proposed in any rate, rules, or regulations that affect electric service in those portions of the City described in the Appendices.

H. City reserves the right during the term of this Franchise to provide electricity service on an exclusive basis in those portions of the City described in the Appendices. In the event the City provides electric service to any person or persons or corporations inhabiting or doing business in those portions of the City described in the Appendices, and the service is provided to a location within the property described in the Appendices, and the provision of Electric Service by the City occurs during the term of this franchise, the City will compensate the Company for the Company's service rights as provided below. The law to apply for the purposes of calculating any compensation due to the Company hereunder shall be as set forth in C.R.S. § 40-9.5-201, et. seq., with the following "Exceptions:" (i) the date of taking shall be the date that the electrical service is first provided by the City to said persons or corporations, and the amount being calculated for compensation shall include only amounts due from the date of taking forward, and (ii) the price to be paid for electric distribution facilities obtained from the Company shall be calculated at their present-day reproduction cost, new, less depreciation computed on a straight- line basis over thirty-five years with such depreciation being limited to seventy-five percent of such cost. The Company and City acknowledge that the foregoing Exceptions constitute a mutual agreement as referred to in C.R.S. § 40-9.5-206 (1).

ARTICLE III: INDEMNIFICATION OF THE CITY

A. City Held Harmless. Company shall construct, maintain, and operate its plant, equipment, structures, and other facilities in a manner that provides reasonable protection against injury or damage to persons or property, provided, however, said obligation of the Company hereunder shall not increase or decrease its liability on third party claims, and provided further that the Company's obligation to the City hereunder shall not be diminished by said exception. The Company shall save the City harmless and indemnify the City from and against all liability or damage and all claims or demands whatsoever in nature, and reimburse the City for all its reasonable expenses, to include, but not limited to, reasonable attorney fees, arising out of the operations of the

Company within the City or incidental thereto and the securing of and the exercise by the Company of the franchise rights granted in this Ordinance including any third party claims, administrative hearings, and litigation. None of the City expenses reimbursed by the Company under this section shall be surcharged. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend, or hold the City harmless to the extent any claim, demand, or lien was caused solely by the negligent act or by the failure to act by the City or any of its officers or employees. In the event a claim is brought against both the City and the Company, the parties shall attempt to agree concerning each party's percentage of negligence or liability; however, if the parties are unable to agree, then the Company's obligation to indemnify and defend the City shall be reduced by the degree of negligence, if any, attributable to the City as determined by the court or administrative body having jurisdiction of the claim.

B. Notice to Company. Within thirty days after receipt of the same by the City Attorney, the City will provide notice to the Company of the pendency of any claim or action against the City arising out of the exercise by the Company of its franchise rights. The Company will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

C. Financial Responsibility. At the time of the execution of this Ordinance, and from time to time at the City's request, the Company shall provide the City with proof of its ability to meet its obligations under this Ordinance, including its ability to indemnify the City as required by this Article. This proof may take the form of insurance coverage, adequate funding of self-insurance, or the provision of a bond. The Company shall supply the City with a list of its insurance companies with the types of coverage and levels of insurance then in effect. Said list shall be kept current by annual revisions as of January 1 during the term of the franchise. The City may require, from time to time, and the Company agrees to provide, additional reasonable funding of the Company's indemnification obligations as a self-insured, if Company is acting as a self-insured. Nothing herein contained shall create any right in any third party or cause the City to be liable to any party for a failure to so act.

ARTICLE IV: AMENDMENT TO FRANCHISE

At any time during the term of this franchise, the City, through its City Council, or the Company may propose amendments to this franchise by giving sixty days written notice to the other party of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will within a reasonable time negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s).

ARTICLE V: BREACH OF CONTRACT

This franchise constitutes a valid and binding contract between Company and City. If the Company shall be in default in the performance of any of the terms and conditions of this Ordinance and shall continue in default for more than thirty days after receiving notice from the Governing Body of said City of such default, the City shall have a breach of contract claim against the Company, in addition to any other rights provided by the constitution or statutes of the State of Colorado and the said Governing Body may, by

Ordinance duly passed and adopted, terminate all rights granted under this Ordinance to the Company. The notice of default shall specify the provision or provisions in default. Said notice shall be in writing and shall be served in the manner provided by the laws of Colorado for the service of original notices in civil actions. The parties agree that prior to the City passing an ordinance terminating all rights granted under this Ordinance to the Company, that if there is a dispute as to whether or not there has been a breach of this contract, the parties will present that issue to binding arbitration, which shall be conducted within thirty days and which shall be conducted by a three person arbitration panel consisting of one arbiter selected by each of the parties, and a third arbiter shall be selected by the two other arbiters. If the panel is not selected within ten days of the demand for arbitration, either party may ask the District Court for El Paso County to name a third arbiter, and those three shall, within thirty days, determine the issue of whether or not there has been a breach, which shall be binding on both parties.

ARTICLE VI: FRANCHISE FEE

A. Franchise Fee. Inconsideration for the grant of this franchise, the Company shall pay the City a sum equal to three percent (3%) of Gross Revenue received from the sale of electricity within the City or from revenues accruing to the Company from any use of its utility facilities within the City. So long as the Company performs its obligations under this Ordinance, including payment of the franchise fee, the Company will be exempt from the payment of any license fees or charges to the City, but payment of the franchise fee does not exempt the Company from any lawful taxation upon its property from sales and use taxes, property taxes, excavation permit fees and building permit charges, and from fees and charges for excavating for or construction of underground or overhead facilities that are uniform and generally applicable to contractors performing similar work. Gross Revenue from the sale of electricity shall be defined as revenue received by the Company as a result of applying a rate schedule to a metered service, including facility charges, energy charges and demand charges, but not including deposits, taxes, late charges or similar charges. All amounts paid to the Company by the City or any of its departments for electric service shall be excluded from computation of the franchise fee.

B. Payment Schedule. Unless otherwise specifically provided herein, payment of the franchise fee and other charges accruing after the effective date of this Ordinance shall be made in quarterly installments not more than thirty days following the close of the calendar quarter for which payment is to be made. Initial and final payments shall be prorated for the portions of the quarters at the beginning and end of the term of this Ordinance. All payments shall be made to the City Director of Finance.

C. Confirmation of Fee Calculations. The City shall provide copies of all annexation plats to the Company within twenty-five days of the approval of the plats by the City. The Company will provide with each quarterly franchise fee installment payment a detailed accounting of all accounts within the City that have been surcharged to collect the amount of the franchise fee paid for the payment period in a manner and format mutually acceptable to the Company and the City. Employees of the Company will meet with employees or agents of the City at least once in each calendar year to review such plats and accountings and to

reconcile any issues that might appear.

D. Audit. The City Manager or other authorized City representative shall have access to the books of the Company for the purpose of auditing or checking to insure that the franchise fee has been correctly computed and paid. Any late payment by the Company shall be subject to a late payment fee of 1 1/2% per month and reimbursement of any costs incurred by the City in enforcing collection. The Company, or its authorized representative, shall have access to the books of the City for the purpose of auditing or checking to ensure that the City is in compliance with the provisions of this Article VI.

E. Change of Franchise Fee and Other Franchise Terms. Once during each calendar year of the Franchise Term, the City Council, upon giving thirty-days notice to the Company, may review and change the consideration to be paid by the Company under this Ordinance (the Franchise Fee or other consideration the City may be entitled to receive as a part of the Franchise), provided that no such change in consideration will result in the Company paying a greater franchise fee percentage under this Ordinance, as amended, than that of any other holder of a utility franchise from the City.

F. Contract Obligation. This Franchise Ordinance constitutes a valid and binding contract between the Company and the City. In the event that the franchise fee, or any financial obligation of the Company to the City specified in this Ordinance is declared illegal, unconstitutional or void for any reason by any court or other proper authority, the Company shall be contractually bound to pay monthly an occupation tax, subject to the approval of the electorate, or a fee to the City in an aggregate amount that would be, as near as practical, equivalent to the amount which would have been paid by the Company as a franchise fee or other obligation incurred hereunder.

ARTICLE VII: CITY'S NEGOTIATION/REVIEW COSTS

At the City's option, the Company shall pay in advance or reimburse the City for the City's expenses incurred in negotiating and reviewing the franchise which may include but are not limited to the City's expenses incurred in publication of notices, publication and codification of ordinances, photocopying of documents, legal costs arising from the negotiations and/or review of the franchise, long distance telephone charges, and other out-of-pocket expense arising from the negotiations. None of the City expenses reimbursed by the Company hereunder shall be surcharged against the City's ratepayers.

ARTICLE VIII: GOVERNING LAW

This Ordinance shall be governed and construed in accordance with the laws of the State of Colorado, the City of Fountain Municipal Code and ordinances of the City, and the Charter of the City all as now existing or as hereinafter amended, specifically including section 12.6 of the Charter entitled "Public Utilities and Franchises."

ARTICLE IX: JUDICIAL REVIEW

Termination of the franchise under this Ordinance shall be subject to judicial review as provided by law in the District Court of El Paso County, Colorado, or, if subject to federal jurisdiction, in the United States District Court for the District of Colorado.

ARTICLE X: SEVERABILITY

If any clause, sentence or section of this Ordinance is deemed invalid by any judicial, regulatory, or legislative body having proper jurisdiction, the remaining provisions shall not be affected.

ARTICLE XI: NON WAIVER

Any waiver of any obligation or default under this franchise shall not be construed as a waiver of any future defaults, whether of like or different character.

ARTICLE XII: TRANSFER OF FRANCHISE

This franchise is subject to any limitations on transfers, lease, or assignment of franchises that are set forth in the City's Charter. However, Company may assign or transfer this franchise to an affiliate or may pledge, mortgage, or otherwise assign its rights hereunder as security for indebtedness without further prior notice or approval. Any approval that may be required for a transfer, lease, or assignment shall not be unreasonably withheld.

ARTICLE XIII: REPEAL CONFLICTING ORDINANCES

This Ordinance, when accepted by Company as provided below, shall constitute the entire agreement between the City and the Company relating to this franchise and the same shall supersede Ordinance No. 1356 as extended. Ordinance No. 1356 and extensions thereof are hereby repealed as of the effective date hereof.

ARTICLE XIV: EFFECT AND INTERPRETATION OF ORDINANCE

The captions which precede each article of this Ordinance are for convenience in reference only and shall not be taken into consideration in the interpretation of any of the provisions of this Ordinance.

ARTICLE XV: EFFECTIVE DATE AND ACCEPTANCE

This Ordinance shall become effective and is a binding contract between City and Company, upon its final passage and approval by the Fountain City Council, in accordance with applicable laws and regulations, and upon acceptance by Company by written instrument within thirty days of passage by the governing body, and filed with the City Clerk. The City Clerk shall sign and affix the City seal to acknowledge receipt of such acceptance, and return one copy to Company. If Company does not, within thirty days following passage of this Ordinance express in writing its objections to any terms or provisions contained therein, or reject this Ordinance in its entirety, Company shall be

deemed to have accepted this Ordinance and all of its terms and conditions. This Ordinance shall be effective nunc pro tunc as of the date of termination of the franchise granted by Ordinance No. 1356.

ARTICLE XVI: PASSAGE AND PUBLICATION OF ORDINANCE

This Ordinance shall be in full force and effect from and after its publication as provided by the City Charter nunc pro tunc as of the effective date specified herein.

Introduced, read by title, and passed this _____ of _____ 2016 by the City Council, City of Fountain, Colorado, signed by the Mayor, and published by title with a summary written by the City Clerk together with a statement that the Ordinance is available for public inspection and acquisition in the office of the City Clerk in the El Paso County Advertiser and News, a newspaper of general circulation in the City of Fountain.

City of Fountain

ATTEST:

Mayor

City Clerk

Mountain View Electric Association, Inc.

President

ATTEST:

Assistant Secretary

APPENDIX B

SINGER ADDITION

LEGAL DESCRIPTION:

That portion of the Northeast quarter of Section 21, and the Northwest quarter and that portion of the Southwest quarter of the Northeast quarter of Section 22, all in Township 15 South, Range 65 West of the 6¹ P.M., El Paso County, Colorado, more particularly described as follows: Commencing at the point of intersection of the North-South centerline of said Section 21 with a line being 30.00 feet Southerly of and parallel with the North line of the Northeast quarter of said Section 21; thence N 89°45'30" E (all bearings used in this description are relative to said North-South centerline of section 21 which was assumed to be N 00°17'17"W and monumented by a 3 W' aluminum cap PLS 14611 at the South quarter corner and a 3 W' aluminum cap PLS 10377 at the North quarter corner of said Section 21) on said parallel line, 660.00 feet to a point on the Easterly line of that tract of land described in Book 1866 at Page 322 of the records of said County and the POINT OF BEGINNING; thence continue N 89°45'30" E on said parallel line, 1984.59 feet to a point on a line being 30.00 feet Southerly of and parallel with the North line of the Northwest quarter of said Section 22; thence N 89°56'47"¹¹ E on said parallel line, 2632.69 feet to a point on the Westerly line of Cottonwood Grove Filing No. 1 as recorded in Plat Book A-4 at Page 112 of said records; thence Southerly and Easterly on the Westerly and Southerly lines of said Cottonwood Grove Filing No. 1 for the following two (2) courses; (1) thence S 00°01'28"¹¹ E, 1289.82 feet; (2) thence N 89°54'06" E, 1067.32 feet to a point on the Westerly right-of-way line of Marksheffel Road as described in book 5115 at page 0274 of said records; thence S 15°16'47" W on said Westerly right-of-way line, 1368.89 feet to a point on the South line of the North half of said Section 22; thence S 89°54'23" W on the South line, 3333.86 feet to the East quarter corner of said Section 21; thence S 89°45'19" W on the South line of the North half of Said Section 21, 2625.68 feet to a point on the Easterly line of A Vacation And Replat Of Lots 42 thru 48 Peaceful Valley Estates as recorded in Plat Book Y-2 at Page 26 of said records; said Easterly line also being the Easterly line of the those quitclaim deeds as recorded in Book 5624 at Page 367, Book 5624 at Page 360, Book 5624 at page 358, Book 5624 at Page 356, Book 5624 at Page 352 and book 5624 at Page 354 of said records; thence N 00°00'57" W on said Easterly line, 1981.63 feet to a point on the Southerly line of the aforementioned tract of land described in Book 1866 at Page 322; thence Easterly and Northerly on said Southerly and Easterly lines of said tract of land for the following two (2) courses; (1) thence N 89°45'30" E, 638.85 feet ; (2) thence N 00°17'17" W, 630.00 feet to the Point Of Beginning.

Excepting there from Singer's Subdivision as recorded in Plat Book H-3 at Page 81 of said records. The above described tract of land contains 310.502 acres, more or less.

APPENDIX C

APPLETREE ADDITIONS NOS. 4 AND 5

A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22 AND THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6^m P.M., EL PASO COUNTY, COLORADO DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE NORTH RIGHT OF WAY LINE OF PEACEFUL VALLEY ROAD AS DESCRIBED IN BOOK 795, PAGE 377 OF THE RECORDS OF SAID EL PASO COUNTY, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 22 BEARS S00°30'07" E A DISTANCE OF 60.00 FEET; THENCE S88°42'08"W ALONG THE SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 300.00 FEET; THENCE CONTINUE S88°42'08"W ALONG THE SAID NORTHERLY RIGHT OF WAY LINE, A DISTANCE OF 259.90 FEET TO THE SOUTHEAST CORNER OF THE TRACT OF LAND DESCRIBED IN BOOK 2745, PAGE 707 OF THE RECORDS OF SAID EL PASO COUNTY: (THE FOLLOWING 2 COURSES ARE ALONG THE BOUNDARY OF SAID TRACT OF LAND) (1) THENCE N13°33'35"W, A DISTANCE OF 144.65 FEET: (2) THENCE N86°00'34"W, A DISTANCE OF 170.00 FEET TO THE NORTHEAST CORNER OF LOT 1 PEACEFUL VALLEY COUNTRY CLUB ESTATES FILING NO. 1 AS RECORDED IN PLAT BOOK X-2, PAGE 55 OF THE RECORDS OF SAID EL PASO COUNTY: (THE FOLLOWING 6 COURSES ARE ALONG THE EASTERLY BOUNDARY OF SAID PEACEFUL VALLEY COUNTRY CLUB ESTATES FILING NO. 1) (1) THENCE N86°00'34", A DISTANCE OF 176.92 FEET (2) THENCE N88°40'32"W, A DISTANCE OF 517.17 FEET: (3) THENCE N05°22'23"E, A DISTANCE OF 221.140 FEET: (4) THENCE N36°53'50"E, A DISTANCE OF 62.80 FEET (5) THENCE N78°15'49"E, A DISTANCE OF 632.53 FEET: (6) THENCE N49°11'53"W, A DISTANCE OF 577.56 FEET TO THE SOUTHEAST CORNER OF LOT B, REPLAT OF LOT 29 IN PEACEFUL VALLEY COUNTRY CLUB ESTATES FILING NO. 1 & A PORTION OF SECTION 22 AS RECORDED IN PLAT BOOK B-3, PAGE 12 OF THE RECORDS OF SAID EL PASO COUNTY; THENCE N22°13'44"W ALONG THE EASTERLY LINE OF SAID LOT B, A DISTANCE OF 180.61 FEET; (THE FOLLOWING 7 COURSES ARE ALONG THE EASTERLY BOUNDARY OF SAID PEACEFUL VALLEY COUNTRY CLUB ESTATES FILING NO. 1) (1) THENCE N13°56'26"E, A DISTANCE OF 171.73 FEET; (2) THENCE N03°35'39"E, A DISTANCE OF 291.67 FEET; (3) THENCE N33°25'41"E, A DISTANCE OF 210.51 FEET; (4) THENCE N16°30'43"E, A DISTANCE OF 182.86 FEET: (5) THENCE N48°17'02"E, A DISTANCE OF 279.89 FEET: (6) THENCE N20°53'37"W, A DISTANCE OF 128.16 FEET: (7) THENCE N87°19'29"W, A DISTANCE OF 245.36 FEET TO THE SOUTHEAST CORNER OF THE TRACT OF LAND DESCRIBED IN BOOK 2858, PAGE 285 OF THE RECORDS OF SAID EL PASO COUNTY; (THE FOLLOWING 3 COURSES ARE ALONG THE BOUNDARY OF SAID TRACT) (1) THENCE N02°40'31"E, A DISTANCE OF 20.00 FEET: (2) THENCE N87°19'29"W, A DISTANCE OF 20.00 FEET; (3) THENCE S02°40'31"W, A DISTANCE OF 20.00 FEET TO A POINT ON THE NORTH LINE OF LOT 47 OF SAID PEACEFUL VALLEY COUNTRY CLUB ESTATES, FILING NO. 1; (THE FOLLOWING 4 COURSES ARE ALONG THE

BOUNDARY OF SAID PEACEFUL VALLEY COUNTRY CLUB ESTATES, FILING NO. 1) (1) THENCE N87°19'29"W, A DISTANCE OF 20.00 FEET; (2) THENCE N45°20'15"W, A DISTANCE OF 42.43 FEET; (3) THENCE N09°44'40"E, A DISTANCE OF 263.78 FEET; (4) THENCE N00°45'29"W, A DISTANCE OF 40.00 FEET; THENCE CONTINUE N00°45'29"W, A DISTANCE OF 2.00 FEET TO A POINT ON THE NORTH LINE OF THE SOUTEAST ONE QUARTER OF SAID SECTION 22; THENCE N89°21'16"E ALONG SAID NORTH LINE A DISTANCE OF 1,142.38 FEET TO THE QUARTER CORNER COMMON TO SAID SECTIONS 22 AND 23; THENCE N89°35'01"E ALONG THE NORTHERLY LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 23 A DISTANCE OF 2130.21 FEET; THENCE S00°24'59"E ALONG THE WESTERLY LINE OF LOT 8, BLOCK 9 PEACEFUL VALLEY LAKE ESTATES FIRST FILING AS RECORDED IN PLAT BOOK L-2, PAGE 54 OF THE RECORDS OF SAID EL PASO COUNTY, AND THE NORTHERLY EXTENSION THEREOF A DISTANCE OF 675.86 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF ROLLING RIDGE ROAD AS PLATTED IN SAID PEACEFUL VALLEY LAKE ESTATES FIRST FILING (THE FOLLOWING 5 COURSES ARE ALONG THE SOUTHERLY AND EASTERLY RIGHT OF WAY LINES OF SAID ROLLING RIDGE ROAD) ; (1) THENCE S89°34'39"W A DISTANCE OF 17.63 FEET; (2) THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 370.00 FEET, A CENTRAL ANGLE OF 32°21' 12" AND A LENGTH OF 208.93 FEET; (3) THENCE S57°13'27"W A DISTANCE OF 500.00 FEET; (4) THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A RADIUS OF 370.00 FEET, A CENTRAL ANGLE OF 57°34'00" AND A LENGTH OF 373.90 FEET; (5) THENCE S00°40'33"E A DISTANCE OF 1289.82 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SAID PEACEFUL VALLEY ROAD; THENCE S89°20'39"W ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 1118.04 FEET; THENCE N82°06' 56"W ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 202.36 FEET; THENCE S88°42'08"W ALONG SAID NORTHERLY RIGHT OF WAY LINE A DISTANCE OF 3.98 FEET TO THE POINT OF BEGINNING AND CONTAINING 160.67 ACRES MORE OR LESS.

APPENDIX D

APPLETREE ADDITION NO. 2, 3

LEGAL DESCRIPTION:

THOSE PORTIONS OF THE NORTH HALF OF THE NORTH HALF OF SECTION 26 AND OF THE NORTH HALF OF THE NORTH HALF OF SECTION 27, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 5TH P.M., EL PASO COUNTY, COLORADO DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26; THENCE WESTERLY ON THE NORTHERLY LINE OF SECTION 26, A DISTANCE OF 257.00 FEET TO A FOUND YELLOW PLASTIC SURVEYORS CAP STAMPED 11997; THENCE S 00°25'07"¹¹ W (SAID BEARING AND ALL OTHERS USED IN THIS DESCRIPTION BEING ASSUMED AND RELATIVE TO THE WESTERLY LINE OF LOT 1, PEACEFUL VALLEY LAKE ESTATES FILING NO. 2 AS RECORDED IN PLAT BOOK Z-2 AT PAGE 5 OF THE RECORDS OF EL PASO COUNTY) ON THE WESTERLY LINE OF SAID LOT 1 A DISTANCE OF 30.00 FEET TO THE POINT ON BEGINNING; THENCE S 00°25'07" W ON SAID WESTERLY LINE, 927.93 FEET TO AN ANGLE POINT ON THE WESTERLY LINE OF LOT 7 IN THE AFOREMENTIONED FILING NO. 2; THENCE S 00°07'30"¹¹ W ON THE WESTERLY LINE OF SAID LOT 7, A DISTANCE OF 348.27 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7 BEING FOUND YELLOW PLASTIC SURVEYOR'S CAP ON A NO. 5 REBAR; THENCE N 89°59'02" W ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTH HALF OF SAID SECTION 26, A DISTANCE OF 2408.96 FEET TO THE SOUTHWEST CORNER OF THE NORTH HALF OF THE NORTH HALF OF SAID SECTION 26, BEING A FOUND HOOK & ASSOCIATES ONE AND ONE- HALF ALUMINUM SURVEYOR'S CAP STAMPED PLS 10956; THENCE S 89°48'58" W ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTH HALF OF SAID SECTION 26, A DISTANCE OF 2641.19 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTH HALF OF SAID SECTION 27, BEING A FOUND NO. 5 REBAR; THENCE S 89°54'39" W, ON THE SOUTH LINE OF THE NORTH HALF OF THE NORTH HALF OF SAID SECTION 27, A DISTANCE OF 3064.57 FEET; (THE FOLLOWING THREE (3) COURSES ARE ON THE EASTERLY RIGHT OF WAY LINE OF EXISTING MARKSHEFFEL ROAD) (60 FOOT RIGHT OF WAY) (1). N 33°00'56"¹¹ E 241.74 FEET; (2). ON THE ARC OF A CURVE TO THE LEFT, HAVING A CENTRAL ANGLE OF 18°13'24", A RADIUS OF 2394.61 FEET, AN ARC DISTANCE OF 761.62 FEET; (3). N 14°47'32"¹¹ E, TANGENT TO THE LAST MENTIONED CURVE, 14, 91 FEET THE WESTERLY EXTENSION OF THE NORTHERLY LINE OF THE TRACT OF LAND DESCRIBED UNDER RECEPTION NO. 200093254 OF THE SAID RECORDS; THENCE N 89°13' 56" E ON SAID EXTENSION, 26.75 FEET TO THE NORTHWEST CORNER OF THE LAST MENTIONED TRACT; (THE FOLLOWING THREE (3) COURSES ARE ON THE WESTERLY, SOUTHERLY AND EASTERLY LINES OF THE LAST MENTIONED TRACT OF LAND) (1). S

15°17'33¹¹ W, 323.44 FEET TO A FOUND ALUMINUM SURVEYORS CAP STAMPED 1¹¹9853¹¹; (2). THENCE N 89°13'20¹¹ E, 604.77 FEET TO A RECOVERED ALUMINUM CAP STAMPED PLS 9853; (3). N 00°32'48" W, 310.73 FEET TO THE NORTHEAST CORNER OF THE LAST MENTIONED TRACT OF LAND BEING MONUMENTED BY A FOUND NO. 5 REBAR, SAID POINT BEING THE SOUTHWESTERLY CORNER OF THE TRACT OF LAND DESCRIBED IN BOOK 5172 AT PAGE 805 OF THE SAID RECORDS; (THE FOLLOWING THREE (3) COURSES ARE ON THE BOUNDARY LINE OF THE LAST MENTIONED TRACT OF LAND); (1). N 89°16'33" E, 229.57 FEET; (2). N 00°52'25" E, 190.10 FEET; (3). S 89°14'02" W, 229.26 FEET TO THE EASTERLY LINE OF RESTORATION CHURCH SUBDIVISION, AS RECORDED UNDER RECEPTION NO. 98097213 OF THE SAID RECORDS; THENCE N 00°45'58" W ON SAID EASTERLY LINE, 40.00 FEET TO THE SOUTH LINE OF BOWEN SUBDIVISION AS RECORDED IN PLAT BOOK A-3 AT PAGE 37 OF THE SAID RECORDS; THENCE N 89°14'02" E ON THE SOUTHERLY LINE OF SAID BOWEN SUBDIVISION AND ON THE SOUTHERLY LINE OF PEACEFUL VALLEY SHOPPETTE NO. 1 AS RECORDED IN PLAT BOOK Y-2 AT PAGE 24 OF THE RECORDS, 229.26 FEET TO THE SOUTHEASTERLY CORNER OF THE LAST MENTIONED SUBDIVISION; THENCE N 00°45'58" W ON THE EASTERLY LINE OF THE LAST MENTIONED SUBDIVISION, 150.00 FEET TO THE NORTHEAST CORNER THEREOF, SAID POINT LYING ON THE NORTH LINE OF SAID SECTION 27; THENCE N 89°14'02" E ON SAID NORTH LINE, 1850.69 FEET TO THE NORTHEAST CORNER OF SAID SECTION 27 BEING MONUMENTED BY A FOUND 2 AND ONE HALF INCH ALUMINUM SURVEYORS CAP ON A NO. 6 REBAR, PROPERLY STAMPED AND ALSO STAMPED NOLTE 1999 PLS 25955; THENCE S 81°34'19" E ON THE SOUTH LINE OF PEACEFUL VALLEY ROAD (60 FOOT RIGHT OF WAY) 202.00 FEET TO AN ANGLE POINT THEREON; THENCE N 89°53'14" E ON A LINE 30.00 FEET SOUTH OF THE NORTH LINE OF THE AFOREMENTIONED SECTION 26, AND ON THE SOUTH LINE OF PEACEFUL VALLEY ROAD AS DESCRIBED IN BOOK 2277 AT PAGE 978 AND IN BOOK 795 AT PAGE 377 OF THE SAID RECORDS, 2442.02 FEET TO THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 26; THENCE S 89°43'02" E ON A LINE 30.00 FEET SOUTHERLY FROM AND PARALLEL WITH THE NORTH LINE OF SAID SECTION 26, A DISTANCE OF 2419.77 FEET TO THE POINT OF BEGINNING, CONTAINING A CALCULATED AREA OF 9,634,000 SQUARE FEET MORE OR LESS, OR 221,166 ACRES, MORE OR LESS.

APPENDIX E

RUTH LORRAINE, LLC ANNEXATION ADDITION NO.1 AND NO.2

LEGAL DESCRIPTION:

THE SOUTH HALF OF TRACT 27, IN THE FOUNTAIN VALLEY AND IRRIGATION CO. SUBDIVISION NO.1, AND ALL OF TRACT 28 IN THE FOUNTAIN VALLEY AND IRRIGATION SUBDIVISION NO. 1, TOGETHER WITH THAT PLATTED 40' ROAD WHICH LIES NORTH AND ADJACENT TO SAID TRACT 28, ALL IN THE COUNTY OF EL PASO, STATE OF COLORADO.

APPENDIX F

FOUNTAIN EAST ADDITION NO. 1

LEGAL DESCRIPTION:

A portion of Section 33, Township 15 South, Range 65 West, and portions of Sections 3, 4 and 10, Township 16 South, and Range 65 West of the 6¹ Principal Meridian, El Paso County, Colorado, described as follows:

Commencing at the Northwest corner of the Northeast Quarter of said Section 4; said point being the Southeast corner of the Southwest Quarter of said Section 33; thence Easterly 20.00 feet on the South line of said Section 33 to the Easterly right of way line of Link Road, said point being the point of beginning; thence Northerly on said Westerly right of way line, 356.99 feet more or less to the Northwest corner of the tract of land described in Book 3622 at Page 262 of the El Paso County Records; thence Easterly on the Northerly line, 614.34 feet to the Northeasterly corner of said tract; thence Southerly on the Easterly line of said tract, and on the Southerly extension thereof, 377.00 feet more or less to a line 20.00 feet Southerly from and parallel with the South line of said Section 33; thence Easterly on said parallel line and on the Southerly right of way line of Squirrel Creek Road, 2061.03 feet to the East line of said Section 4, said line also being the centerline of a 40.00 foot wide roadway right of way as shown on the plat of The Fountain Valley Land and Irrigation Company's Subdivision No. 1 as recorded in Plat Book L at Page 42 of the said records; thence Southerly on the centerlines of said 40.00 foot wide rights of way, 2030.51 feet more or less to the Westerly extension of the North line of the South Half of Tract 12 in said subdivision; thence Easterly on said extension, and on said North line of said South Half of Tract 12, a distance of 660.00 feet; thence Southerly on the North - South centerline of said Tract 12, a distance of 660.00 feet to the centerline of the 40.00 foot right of way, South of said Tract 12; thence Easterly on the centerline of said 40.00 foot roadway right of way, 660.00 feet to the centerline of a 40.00 foot wide right of way; thence Southerly on the centerline of said rights of way, 3940.00 feet more or less to the centerline of the 40.00 foot wide right of way lying Southerly of Tract 15 in said subdivision; thence Westerly on said centerline, feet to the East line of said Section 9; thence Northerly on said Easterly line, 1320.17 feet to the Northeast corner of said Section 9; thence Westerly on the North line of said Section 9, a distance of 2153.53 feet to the Southeast corner of Lot 2, Graham Subdivision, as recorded under reception no. 097092110 of the said records; thence on the boundary line of said Graham Subdivision the following four (4) courses: 1. Northerly, 501.73 feet; 2. Northwesterly, 290.46 feet; 3. Northeasterly, 819.38 feet; 4. Westerly, 330.77 feet to the Easterly right of way line of Link Road; thence Southerly on said Easterly line of Link Road, 1595.57 feet to the Easterly extension of the Northerly line of Ermel Addition No. 2 as recorded in Plat Book C-4 at Page 97 of the said records; thence Westerly on said extension, and on the Northerly line of Countryside North Addition to the City of Fountain, 50.0 feet to the Westerly line of said Link Road; thence Northerly on the Westerly line of Link Road, 2955.57 feet more or less to the Westerly extension of the Southerly line of Tract 28, in said Fountain Valley Land and Irrigation Company's Subdivision No. 1; thence Easterly on said

extension and on said Southerly line, 1319.59 feet to the Southeast corner of said Tract 28; thence Northerly on the East line of Tract 28, the Northerly extension thereof and the Easterly line of Tract 27, a distance of 2036.65 feet to the Northeast corner of the South Half of Tract 27 in said Subdivision; thence Westerly on the North line of said South Half, feet to the Westerly line of Tract 27 in said Subdivision, said line being on the Easterly line of Link Road; thence Southerly on the Westerly line of Link Road 2001.14 feet to the South Line of said Tract 28; thence Westerly on the Westerly extension of the Southerly line of Tract 28, a distance of 40.00 feet to the West line of Link Road; thence Northerly on said Westerly line, 2720.36 feet to the Northerly line of Squirrel Creek Road; thence Easterly on the Northerly line of Squirrel Creek Road, 40.00 feet to the point of beginning, except that portion lying within Squirrel Creek Road, Easterly of the Easterly line of said Link Road, resulting in an approximate area of 395 Acres more or less.

APPENDIX G

KANE RANCH ADDITION NO. 1

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTIONS 3 AND 10, TOWNSHIP 16 SOUTH, RANGE 65 WEST AND A PORTION OF SECTION 34, TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS:THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO BEING MONUMENTED AT THE WEST END BY A 3 1/4" ALUMINUM CAP IN RANGE BOX, MARKED NW COR SEC 3, T 16 S, R 65 W, 1986, PLS 17654, AND AT THE EAST END BY A 2" ALUMINUM CAP IN RANGE BOX, MARKED U.P. & E., N 1/4 COR, SEC 3, 2004, PLS 11624, ASSUMED TO BEAR N89°28'41 "E, A DISTANCE OF 2639.98 FEET.

COMMENCING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID POINT ALSO BEING AT THE CENTERLINE INTERSECTION OF TWO 40.00 FOOT ROADWAY RIGHTS OF WAY AS SHOWN ON THE PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, RECORDED IN PLAT BOOK L AT PAGE 42, RECORDS OF EL PASO COUNTY, COLORADO, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE N00°31'19"W, A DISTANCE OF 20.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD;

THE FOLLOWING THREE (3) COURSES ARE ON THE NORTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD;

1. N89°28'41"E, A DISTANCE OF 2639.90 FEET TO A POINT LYING 20.00 FEET NORTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

2. N00°45'14"W, A DISTANCE OF 10.00 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

3. N89°28'19"E, A DISTANCE OF 676.18 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 3;

THENCE S00°28'28"E, A DISTANCE OF 5381 .05 FEET TO A POINT ON SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 3, SAID POINT BEING 650.00 FEET EAST OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 3;

THENCE S00¹¹44'43¹¹E, A DISTANCE OF 5339.07 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN;

THENCE S89°19'35"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10, A DISTANCE OF 1.1 FEET TO THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 10, SAID POINT ALSO BEING ON THE CENTERLINE OF A 40.00 FOOT WIDE RIGHT OF WAY, LYING SOUTH OF TRACT 1 AS SHOWN ON THE PLAT OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, SAID POINT ALSO BEING ON THE EASTERLY BOUNDARY LINE OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE N00°44'41"W, ON SAID EASTERLY BOUNDARY LINE OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, A DISTANCE OF 5352.44 FEET TO THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 10;

THENCE N00°45'14"W, CONTINUING ON SAID EASTERLY BOUNDARY LINE OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, A DISTANCE OF 1316.54 FEET TO THE CENTERLINE OF A 40.00 FOOT WIDE ROADWAY RIGHT OF WAY, LYING BETWEEN TRACTS 5 AND 6, AS SHOWN ON THE PLAT OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE S89°18'38"W, ON SAID CENTERLINE, A DISTANCE OF 1320.00 FEET TO THE CENTERLINE OF A 40.00 FOOT WIDE ROADWAY RIGHT OF WAY LYING BETWEEN TRACTS 6 AND 13, AS SHOWN ON THE PLAT OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE N00°45'14"W, ON SAID CENTERLINE, A DISTANCE OF 1320.00 FEET TO THE CENTERLINE OF A 40.00 FOOT WIDE ROADWAY RIGHT OF WAY LYING BETWEEN TRACTS 12 AND 13, AS SHOWN ON THE PLAT OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE S89° 18'40"W, ON SAID CENTERLINE OF A 40.00 FOOT WIDE RIGHT OF WAY, A DISTANCE OF 660.00 FEET TO A POINT LYING SOUTHERLY OF TRACT 12 AS SHOWN ON SAID PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, SAID POINT BEING ON AN EXTENSION OF THE WESTERLY LINE OF THE EAST ONE HALF OF THE SOUTH ONE HALF OF TRACT

12, AS SHOWN ON THE PLAT OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE N00°45'13"W, ON SAID WESTERLY LINE OF THE EAST ONE HALF OF THE SOUTH ONE HALF OF TRACT 12, A DISTANCE OF 660.00 FEET TO A POINT ON THE SOUTHERLY LINE OF THE NORTH ONE HALF OF SAID TRACT 12;

THENCE S89°18'48"W, ON SAID SOUTHERLY LINE OF THE NORTH ONE HALF TRACT 12, A DISTANCE OF 659.89 FEET TO A POINT ON THE CENTERLINE OF A 40.00 FOOT WIDE ROADWAY RIGHT OF WAY LYING WEST OF TRACT 12, AS SHOWN ON THE PLAT OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE N00°45'21 "W, ON SAID CENTERLINE, A DISTANCE OF 2050.51 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SAID SQUIRREL CREEK ROAD, SAID POINT ALSO BEING THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 356.839 ACRES.

APPENDIX H

KANE RANCH ADDITION NO. 2

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING A PORTION OF SECTIONS 1, 2, 3, 10 AND 11, TOWNSHIP 16 SOUTH, RANGE 65 WEST, A PORTION OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 64 WEST, A PORTION OF SECTIONS 34, 35 AND 36, TOWNSHIP 15 SOUTH, RANGE 65 WEST AND A PORTION OF SECTION 31, TOWNSHIP 15 SOUTH, RANGE 64 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, EL PASO COUNTY, COLORADO BEING MONUMENTED AT THE WEST END BY A 3 1/4" ALUMINUM CAP IN RANGE BOX, MARKED NW COR SEC 3, T 16 S, R 65 W, 1986, PLS 17654, AND AT THE EAST END BY A 2" ALUMINUM CAP IN RANGE BOX, MARKED U.P. & E., N 1/4 COR, SEC 3, 2004, PLS 11624, ASSUMED TO BEAR N89°28'41"E, A DISTANCE OF 2639.98 FEET.

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN;

THENCE N89°28'19"E ON THE NORTH LINE OF SAID NORTHEAST QUARTER OF SECTION 3, A DISTANCE OF 676.03 FEET TO THE POINT OF BEGINNING;

THENCE N00°28'28"W, A DISTANCE OF 30.00 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD;

THE FOLLOWING SIX (6) COURSES ARE ON THE NORTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD;

1. N89°28'19"E ON A LINE 30.00 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 1949.99 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTHEAST CORNER OF SAID SECTION 3;

2. N89°25'41 "E ON A LINE 30.00 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPLE MERIDIAN, A DISTANCE OF 2640.78 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 2;

3. N89°26'31"E ON A LINE 30.00 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 2, A DISTANCE OF 2646.78 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTHEAST CORNER OF SAID SECTION 2;

4. N89°26'09"E ON A LINE 30.00 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPLE MERIDIAN, A DISTANCE OF 2631.94 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 1;

5. N89°28'28"E ON A LINE 30.00 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 2632.07 FEET TO A POINT LYING 30.00 FEET NORTH OF THE NORTHEAST CORNER OF SAID SECTION 1;

6. N89°26'42"E ON A LINE 30.00 FEET NORTH OF AND PARALLEL TO THE NORTH LINE OF LOTS 3 AND 4 OF SECTION 6, TOWNSHIP 16 SOUTH, RANGE 64 WEST OF THE SIXTH PRINCIPLE MERIDIAN, A DISTANCE OF 2793.67 FEET;

THENCE S00°08'45"E, A DISTANCE OF 1399.35 FEET; THENCE N89°32'25"W, A DISTANCE OF 1774.01 FEET; THENCE S00°08'24"E, A DISTANCE OF 1320.00 FEET; THENCE N89°31'37"W, A DISTANCE OF 990.50 FEET TO THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 6;

THENCE S00°46'37"E, ON THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 6, A DISTANCE OF 2641.81 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 6;

THENCE S88°45'56"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 1, A DISTANCE OF 2635.20 FEET TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 1;

THENCE S88°47'03"W, ON THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 1, A DISTANCE OF FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF A PARCEL OF LAND AS DESCRIBED IN A DOCUMENT RECORDED IN BOOK 5896 AT PAGE 387, RECORDS OF EL PASO COUNTY, COLORADO ;

THE FOLLOWING EIGHT (8) COURSES ARE ON THE BOUNDARY LINE OF SAID DOCUMENT RECORDED IN BOOK 5896 AT PAGE 387 OF SAID RECORDS;

1. N00°53'33"W, A DISTANCE OF 578.20 FEET; 2.

S88°52'37"W, A DISTANCE OF 1222.86 FEET;

3. N00°46'52"W, A DISTANCE OF 630.43 FEET;

4. S88°51'41"W, A DISTANCE OF 1769.68 FEET;

5. S00°48'01"E, A DISTANCE OF 1201.46 FEET;

6. S88°51'09"W, A DISTANCE OF 928.39 FEET;

7. S00°52'41"E, A DISTANCE OF 3974.15 FEET;

8. N88°48'45"E, A DISTANCE OF 57.66 FEET;

THENCE S01°04'25"E, A DISTANCE OF 1325.41 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 11;

THENCE S88°55'11"W, ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF SECTION 11, A DISTANCE OF 1327.30 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 11;

THENCE S88°55'27"W, ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 11, A DISTANCE OF 1327.24 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 11;

THENCE S89°19'33"W, ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 10, A DISTANCE OF 1981.15 FEET, SAID POINT BEING 650.00 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 10;

THENCE N00°44'43"W, A DISTANCE OF 5339.07 FEET TO A POINT ON THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 3, SAID POINT BEING 650.00 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 3;

THENCE N00°28'28"W, A DISTANCE OF 5351.05 FEET TO THE POINT OF BEGINNING; CONTAINING A CALCULATED AREA OF 2155.064 ACRES.

EXCEPTION

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PARCEL OF LAND TO WIT.

COMMENCING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, SAID POINT ALSO BEING AT THE CENTERLINE INTERSECTION OF TWO 40.00 FOOT

ROADWAY RIGHTS OF WAY AS SHOWN ON THE PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, RECORDED IN PLAT BOOK L AT PAGE 42, RECORDS OF EL PASO COUNTY, COLORADO;

THENCE S00°45'21"E, A DISTANCE OF 20.00 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD;

THENCE N89°28'41"E, CONTINUING ON SAID SOUTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD, A DISTANCE OF 1998.88 FEET TO A POINT ON THE NORTHERLY BOUNDARY LINE OF TRACT 8 AS SHOWN ON SAID

PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE N89°28'41"E, CONTINUING ON SAID SOUTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD, A DISTANCE OF 641.05 FEET TO THE NORTHEAST CORNER OF TRACT 8 AS SHOWN ON SAID PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, SAID POINT ALSO BEING ON THE WESTERLY BOUNDARY LINE OF GEBBY RESERVOIR AS DESCRIBED IN A DOCUMENT RECORDED IN BOOK 2804 AT PAGE 621, OF SAID RECORDS;

THENCE S00°45'14"E, CONTINUING ON SAID SOUTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD, A DISTANCE OF 10.00 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF TRACT 8 AS SHOWN ON SAID PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1, SAID POINT ALSO BEING ON THE WESTERLY BOUNDARY LINE OF GEBBY RESERVOIR AS DESCRIBED IN A DOCUMENT RECORDED IN BOOK 2804 AT PAGE 621, OF SAID RECORDS, SAID POINT ALSO LYING 30.00 FEET SOUTH OF THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF SAID SECTION 3;

THENCE N89°28'19"E, ON THE SOUTHERLY RIGHT OF WAY LINE OF SQUIRREL CREEK ROAD, A DISTANCE OF 518.50 FEET TO A POINT ON THE EASTERLY BOUNDARY LINE OF SAID GEBBY RESERVOIR;

THENCE S00°45'14"E, ON A LINE PARALLEL TO THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 810.00 FEET TO THE SOUTHEAST CORNER OF SAID GEBBY RESERVOIR;

THENCE S89°28'19"W, ON A LINE PARALLEL TO THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 3, A DISTANCE OF 518.50 FEET TO THE SOUTHWEST CORNER OF SAID GEBBY RESERVOIR, SAID POINT ALSO BEING ON THE EASTERLY BOUNDARY LINE OF TRACT 8 AS SHOWN ON SAID PLAT OF FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDIVISION NO. 1;

THENCE N00°45'14"W ON THE WESTERLY BOUNDARY LINE OF SAID GEBBY RESERVOIR AND ON THE EASTERLY BOUNDARY LINE OF SAID FOUNTAIN VALLEY LAND AND IRRIGATION COMPANY'S SUBDMSION NO. 1, A DISTANCE OF 105.42 FEET;

THENCE S76°47'55"W, A DISTANCE OF 18.46 FEET;

THENCE N85°45'23"W, A DISTANCE OF 95.20 FEET;

THENCE N64°05'50"W, A DISTANCE OF 138.18 FEET;

THENCE N66°40'57"W, A DISTANCE OF 122.33 FEET;

THENCE N68°54'38"W, A DISTANCE OF 105.48 FEET;

THENCE N68°10'22"W, A DISTANCE OF 166.63 FEET;

THENCE N74°21'21"W, A DISTANCE OF 37.89 FEET;

THENCE N01°19'41"W, A DISTANCE OF 487.07 FEET TO THE POINT OF BEGINNING;

CONTAINING A CALCULATED AREA OF 18.635 ACRES.

APPENDIX I

A PORTION OF PIKES PEAK MEADOWS NO. 2 AND ALL OF PIKES PEAK
MEADOWS
NO. 3

That portion of Sections 4 and 9, Township 17 South, Range 65 West, and of the 6th P.M. El Paso County, Colorado to wit:

A portion of Pikes Peak Meadows Addition No. 2 as recorded in Plat Book C-4 Page 133, and all of Pikes Peak Meadows Addition #3a as recorded in Plat Book C-4 Page 134 of the records of El Paso County, Colorado, more particularly described as follows: Beginning at the northeast corner of that tract of land described in Book 5029 at Page 1311 of the records of El Paso County, Colorado; thence Westerly and Southerly on the Northerly and Westerly lines of said tract for the following five (5) courses; (1) thence $S 89^{\circ}16'130''^{11} W$, 1828.82 feet; (2) thence $S 00^{\circ}31'103''E$, 1294.32 feet; (3) thence $S 01^{\circ}06'102''^{11}E$, 1318.98 feet; (4) thence $S 00^{\circ}47'06''E$, 21.22 feet; (5) thence $S 15^{\circ}49'50''^{11} E$, 2394.33 feet to a point on the Southeasterly line of Parcel H as described in Book 5120 at Page 532 of said records; thence $S 15^{\circ}49'50'' E$, a distance of 1680.00 feet to a point on the South line of Section 9, Township 17 South, Range 65 West of the 6¹ P.M., El Paso County, Colorado; thence $N 87^{\circ}50'132''^{11} E$, a distance of 4192.87 feet on the South line of said section, thence $N 02^{\circ}55'13''^{11} W$, a distance of 60.80 feet to a point on the Westerly right-of-way line of U.S. Highway 1-25; thence Northwesterly on the said Westerly right-of-way line for the following eleven (11) courses; (1) thence $N 37^{\circ}07'13''^{11} W$, a distance of 1501.00 feet; (2) thence $N 36^{\circ}16'43''^{11} W$, a distance of 256.50 feet; (3) thence on the arc of a curve to the right whose chord bears $N 30^{\circ}22'43''^{11} W$, having a central angle of $08^{\circ}29'00''^{11}$, a radius of 3015.00 feet and an arc length of 446.41 feet; (4) thence $N 24^{\circ}28'43''^{11}W$, a distance of 256.50 feet; (5) thence $N 23^{\circ}38'13''^{11} W$, a distance of 572.80 feet; (6) thence $N 33^{\circ}21'43''^{11} W$, a distance of 177.60 feet; (7) thence $N 68^{\circ}38'13''^{11} W$, a distance of 212.10 feet; (8) thence $N 21^{\circ}52'13''^{11} W$, a distance of 825.49 feet; (9) thence $N 21^{\circ}52'13''^{11} W$, 150.01 feet; (10) thence $N 11^{\circ}32'43''^{11} W$, 715.90 feet; (11) thence $N 23^{\circ}39'53''^{11} W$, 4527.97 feet to the Point of Beginning.

APPENDIX J

FORT ERMEL ADDITION

LEGAL DESCRIPTION:

Lots 1 and 2 in ERMEL HEIGHTS FILING NO. 2, El Paso County, Colorado, and containing 6.71 acres, more or less. Said plat to be known as "FORT ERMEL ADDITION."

APPENDIX K

BUCK ADDITION NO. 1

LEGAL DESCRIPTION:

The South 350' as measured at right angles from the South line of Lot 6 in ERMEL HEIGHTS, according to the Plat thereof recorded in Plat Book J-3 at Page 11 of the records of El Paso County, Colorado.

APPENDIX L

BUCK ADDITION NO. 2

LEGAL DESCRIPTION:

Lot 6, Except the South 350 feet thereof as measured at right angles to the South line, in ERMEL HEIGHTS, according to the Plat thereof recorded in Plat Book J-3 at Page 11 of the records of El Paso County, Colorado.

APPENDIX M

COCKROFT ADDITION NO. 1

LEGAL DESCRIPTION:

That portion of Lot 5 in Ermel Heights according to the plat thereof recorded in Plat Book J-3 at Page 11, El Paso County, Colorado, described as follows:

Beginning at the Southwest corner of said Lot 5, thence North 00°00'00" East on the West line thereof, 500.00 feet; thence North 89°43'40" East, 303.39 feet to the East line of said Lot 5; thence South 00°30'20" West on said East line, 283.31 feet to an angle point thereon; thence South 00°45'30" East on said East line, 216.92 feet to the Southeast corner of said Lot 5; thence on the South line thereof, South 89°46'00" West, 303.76 feet to the POINT OF BEGINNING, and containing 3.47 acres, more or less.

APPENDIX N

COCKROFT ADDITION NO. 2

LEGAL DESCRIPTION:

That portion of Lot 5 in Ermel Heights according to the plat thereof recorded in Plat Book J-3 at Page 11, El Paso County, Colorado, described as follows:

Commencing at the Southwest corner of said Lot 5, thence North 00°00'00" East of the West line thereof, 500.00 feet to the POINT OF BEGINNING of the tract to be described hereby; thence continue on the side West line, North 00°00'00" East, 409.54 feet of the Northwest corner of said Lot 5; thence North 89°43'40" East on the North line thereof, 307.0 feet to the Northeast corner of said Lot 5; thence South 00°30'20" West on the East line thereof, 409.58 feet to intersect a line drawn North 89°43'40" East from the Point of Beginning; thence on said line, South 89°43'40" West, 303.39 feet to the POINT OF BEGINNING, and containing 2.87 acres, more or less.

APPENDIX O

CARRICK ADDITION

LEGAL DESCRIPTION:

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 10, TOWNSHIP 16 SOUTH, RANGE 65 WEST, OF THE 6TH P.M., EL PASO, STATE OF COLORADO. SAID PARCEL BEING TRACT 16 AS SHOWN ON THE PLAT OF "THE FOUNTAIN VALLEY LAND & IRRIGATION CO'S SUBDIVISION NO. 1, AND INCLUDING THAT AREA TO THE CENTERLINES OF THE NOW VACATED ROADWAY SURROUNDING SAID "TRACT 16", AS RECORDED IN PLAT BOOK "L", PAGE 42, EL PASO COUNTY, COLORADO. THE BOUNDARY OF SAID PARCEL TO BE ANNEXED IS AS FOLLOWS: BEGINNING AT THE WEST QUARTER CORNER OF SAID SECTION 10, THENCE ON AN ASSUMED BEARING OF N 0°-54'-30" W, 1390.64' ALONG THE (SECTIONLINE) WESTERLY LINE OF THE NORTHWEST QUARTER OF SAID SECTION 10, SAID LINE BEING COMMON TO THE EASTERLY BOUNDARY OF THE "LITTLE RANCHES OF THE FOUNTAIN" FILING #2, PLAT BOOK F-2, PAGE 72, THENCE N 89°-46'-00" E, 1352.49' ALONG THE CENTERLINE OF SAID VACATED ROADWAY COMMON TO TRACTS 15 & 16, THENCE S 0°-14'-00" E, 1319.94' ALONG THE CENTERLINE COMMON TO THE VACATED ROADWAY BETWEEN 3 & 16, THENCE S 86°-44'-30" W, 1337.97' ALONG THE CENTERLINE OF THE VACATED ROADWAY COMMON TO TRACTS 16 & 17 TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND TO BE ANNEXED CONTAINS 41.83 ACRES.

CERTIFICATION

I hereby certify that Ordinance No. _____ was introduced, read, and passed on first reading at a regular meeting of the City Council of the City of Fountain, Colorado, held on the _____ of _____ 2016, and the same was published in the El Paso County Advertiser and News, a newspaper of general circulation in said City, on the _____ of _____ 2016, and thereafter was read and passed on the second reading, at a regular meeting of the City Council of Fountain, Colorado, held on the _____ of _____ 2016, and duly published in the El Paso County Advertiser and News, a newspaper of general circulation in said City on the _____ of _____ 2016.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Fountain, this _____ of _____ 2016.

City Clerk



Regular
City Council Meeting

New Business-9D

Ordinance 1678

September 13, 2016

Summary Information

FIRST READING OF ORDINANCE 1678, AN ORDINANCE REPEALING AND REORDAINING SECTION 040 (ORGANIZATION) OF CHAPTER 18 (PARK AND RECREATION ADVISORY BOARD) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE FOUNTAIN MUNICIPAL CODE

Initiator : City Attorney

Presenter: City Attorney

Legal Review: Yes No

Council Action

Council Information

Report to Council

Document Attached: Ordinance Amending City Code

Background Information

City Council requested that the City Code be amended to provide that the Park and Recreation Advisory Board membership include alternate members to serve in the absence of a member of the Board. This ordinance amends the City Code to change the composition of the Park and Recreation Advisory Board to include two alternate members to serve on the Board in the absence of a member on a rotating basis.

Recommendation

Staff recommends adoption of Ordinance 1678.

Proposed Motion

I move to approve Ordinance 1678 on first reading.

ORDINANCE 1678

AN ORDINANCE REPEALING AND REORDAINING SECTION 040 (ORGANIZATION) OF CHAPTER 18 (PARK AND RECREATION ADVISORY BOARD) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE FOUNTAIN MUNICIPAL CODE

WHEREAS, the current organizational structure of the Park and Recreation Advisory Board does not provide for alternate members; and

WHEREAS, it is important for the proper functioning of the Board to have the full participation of members whenever possible; and

WHEREAS, the service of alternate members to fulfill the duties of an absent member will assist the Board in fulfilling its powers and duties;

NOW, THEREFORE BE IT ORDAINED by the City Council of the City of Fountain, Colorado:

Section 1. Section 040 (Organization) of Chapter 18 (Park and Recreation Advisory Board) of Title 2 (Administration and Personnel) of the Fountain Municipal Code is repealed and reordained to read:

2.18.040 Organization. The Park and Recreation Advisory Board shall be organized as follows:

A. Membership. The Park and Recreation Advisory Board shall consist of not fewer than three or more than five members and two alternate members to be selected and appointed by the City Council. The Council shall not appoint members of its own body to the Park and Recreation Advisory Board. Members shall serve without compensation, but shall be reimbursed for authorized expenses actually incurred in the discharge of their official duties.

B. Terms of Office. The term of each regular and alternate member shall be four years; provided that the term of one alternate member initially appointed shall be four years and the term of the other alternate member initially appointed shall be two years.

C. Service of Alternate Members. An alternate member may serve at a Park and Recreation Advisory Board meeting in the absence of a regular member. When serving, the alternate member shall have the same authority as a regular member. Service shall rotate between the alternate members except when the alternate member whose turn it is to serve is not available or when both

alternate members are called to serve at the same Park and Recreation Advisory Board meeting.

D. Qualifications of Members. Members of the Park and Recreation Advisory Board shall have attained the age of 18 years, be bona fide residents of the City for at least one year immediately preceding their appointment, and be registered voters. If a member ceases to reside in the City, his or her membership shall terminate. A person who has been a resident of an area annexed to or consolidated with the City for the requisite period of time prior to annexation or consolidation and who is otherwise qualified shall be eligible for membership. Membership should be representative of the City and should provide a balance between different interest groups.

E. Vacancies. Vacancies of the Park and Recreation Advisory Board shall be filled for the remainder of the unexpired term. If an unexpired term is for a period of less than six months, the City Council may appoint a replacement for the next term plus the unexpired portion of the vacated term.

F. Attendance-Removal of Members for Just Cause. When a regular member is absent for three consecutive regular meetings of the Park and Recreation Advisory Board or when an alternate member when requested to serve is unable or unwilling to serve after three consecutive requests to serve at a regular meeting of the Park and Recreation Advisory Board, the Park and Recreation Advisory Board shall notify the City Council. The City Council may remove the member unless the City Council determines that exceptional circumstances exist and that there are sound reasons to believe the member's attendance will improve. The City Council may replace a member at any time upon conviction of a felony, conflict of interest, if the City Council determines that the performance of the member is not in the best interest of the public, or for other just cause as determined by the City Council.

G. Officers. The Park and Recreation Advisory Board shall elect from among their number a chairperson, who shall be a regular member of the Park and Recreation Advisory Board and create and fill other offices as it may establish with regular members. The term of the chairperson shall be one year, with eligibility for re-election.

Section 2. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read by title, and passed on first reading, this _____ of _____, 2016, by City Council and ordered to be published by title in the El Paso County Advertiser and News with a summary written by the City Clerk, and with a statement that the ordinance is available for public inspection and acquisition in the office of the City Clerk, 116 South Main Street, Fountain, Colorado 80817.

[SEAL]

CITY OF FOUNTAIN, COLORADO

Attest:

By: _____
Gabriel P. Ortega, Mayor

By: _____
Silvia Huffman, City Clerk

Introduced, read by title, and passed on second and final reading as amended on the _____ day of _____ 2016 signed by the Mayor, and ordered published by title in the El Paso County Advertiser and News a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.

CITY OF FOUNTAIN, COLORADO

By: _____
Gabriel P. Ortega, Mayor

[Seal]

Attest:

By: _____
Silvia Huffman, City Clerk