



**CITY COUNCIL AGENDA
SEPTEMBER 27, 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:**
 - **Arts Month (Andy Vick)**
- 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 September 13, 2016 City Council Meeting Minutes
 - B.** Resolution 16-028, Authorizing Contract To Purchase Wild Oak Farms Subdivision No. 1, Filing No. 2, Tact A for Street Right-Of-Way Purposes Located Westerly of Blossom Field Road
 - C.** Resolution 16-030, A Resolution Approving a Plat Change Certificate to Remove a Plat Note Restriction for Lots 3 and 4, Beckett-Bandley Filing No. 1A, Related to Access to Bandley Drive for Property Located at 7710 and 7750 Office Circle.
- 8) Old Business**
 - A.** Second 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 (Curtis Mitchell)

- B.** Second 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 (Pat McDivitt)

9) New Business

- A.** Consideration of Items Removed from the Consent Agenda
- B.** Resolution 16-031, Approving the 2016 El Paso County CDBG Subrecipient Agreement No. 4161409 for the Fontaine Boulevard Extension Improvement Project. (Duane Greenwood)

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.

1. An 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. An executive session pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of receiving legal advice on specific legal questions

12) Adjourn

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

**NEXT REGULAR COUNCIL MEETING
OCTOBER 11, 2016**

FOLLOWING THE ADJOURNMENT OF THE REGULAR CITY COUNCIL MEETING THE CITY COUNCIL SHALL RECONVENE AS THE EX OFFICIO BOARD OF DIRECTORS OF THE FOUNTAIN GENERAL IMPROVEMENT DISTRICT NO. 2 FOR ACTION ON THE FOLLOWING ITEM:

- 1. First Reading of Ordinance No. 1679GID2, An Ordinance Of The Fountain General Improvement District No. 2, City Of Fountain, Colorado, For Inclusion Of Certain Property Sometimes Known As Eagleside Filing #2 Into The Fountain General Improvement District No. 2, City Of Fountain, Colorado**



**PROCLAMATION
DECLARING OCTOBER AS
NATIONAL ARTS AND HUMANITIES MONTH**

Whereas, the month of October has been recognized as National Arts and Humanities Month by thousands of arts and cultural organizations, communities, and states across the country, as well as by the White House and Congress for more than two decades:

Whereas, the arts and humanities embody much of the accumulated wisdom, intellect, and imagination of humankind;

Whereas, the arts and humanities enhance and enrich the lives of every American, including those of us living in the Pikes Peak region;

Whereas, the arts and humanities play a unique role in the lives of our families, our communities, and our country;

Whereas, the nonprofit arts industry also strengthens our national economy by generating \$135.2 billion in total economic activity annually (\$72 million in economic impact locally) and by supporting the full-time equivalent of 4.13 million jobs (2,168 jobs locally);

NOW, THEREFORE, BE IT RESOLVED, that we the City Council of the City of Fountain do hereby proclaim October as Arts Month in Colorado's Pikes Peak Region and call upon our citizens to celebrate and promote the arts and culture in Fountain Colorado and to specifically encourage the greater participation by those said citizens in taking action for the arts and humanities in their community.

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

Gabriel Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk



Regular City Council Meeting

Consent – 7A

Council Meeting Minutes

September 27, 2016

Summary Information

Title:

Approval of the September 13, 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 September 13, 2016 City Council Meeting Minutes

Attachments: September 13, 2016 City Council Meeting Minutes

Background Information

N/A

Recommendation

Approve the September 13, 2016 City Council Meeting Minutes

Proposed Motion

Motion to approve shall be included under the consent agenda.

ST

CM Review

CITY COUNCIL MEETING
September 13, 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) (A) Presentations:

- **Proclamation Declaring September 24-Oct 2nd 2016 as “Creek Week”**

Larry Small, Fountain Creek Watershed and Allison Plute, Colorado Springs Utilities reported on the upcoming clean-up event known as Creek week. Kick off for this event will be September 24, at 8:00 at the Fountain Creek Nature Center. Mayor Ortega read the proclamation as a motion to approve, seconded by Mayor Pro Tem Thomas. All members voted yes (7-0); the motion carried.

- **Proclamation Declaring September 16, 2016 as National POW/MIA Recognition Day**

Council Member Thompson stated this is an important time in history and should be recognized and honored. She read the proclamation as a motion to approve, seconded by Council member Gieck. All members voted yes (7-0); the motion carried.

- **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**

City Manager Trainor stated that this proclamation is part of an organized event through the Colorado Municipal League and Fountain is proud to participate. Fountain's Community Night in the Park is scheduled for September 20th beginning at 4:00 P.M. in Metcalfe Park. Mayor Ortega read the proclamation as a motion to approve, seconded by Council Member Applegate. All members voted yes (7-0); the motion carried.

- **Electric Department Strategic Plan**

Electric Superintendent Christian reported this draft plan was distributed to Council in June of this year. He presented Council with the final plan noting the integrated information to help Fountain with future growth.

4) (B) Board/Commission/Committee Appointments

There were no appointments.

5) City Council Agenda Requests and Announcements

Council Member Thompson reported on the upcoming Cemetery Crawl scheduled for October 1st.

Mayor Pro Tem Thomas thanked the Street Department for the efforts going on now with the city clean up. He noted that he has concerns with citizens taking advantage of the clean-up and this benefit may need to be reevaluated.

Mayor Ortega agreed that the cost for the clean-up is increasing as well as the use of staff time. He stated that he may put an article in the newspaper explaining the city's position.

Council Member Gieck thanked the Fire Department for their efforts with the spilled gas containment in Fountain Creek.

Council Member Applegate noted the success of the Labor Day events and thanked all involved.

Mayor Ortega also reported on the success of Labor Day. He read into the record a certificate of appreciation from Mr. Maiurro for the Ride for the Hero's' tour. He also noted the wonderful group of interested members on the Citizenship Academy and its successes.

6) Public to be Heard

Mr. Gonzles, VFW updated Council of the events forthcoming at the VFW.

Deborah Stout-Meininger, reported that she has signed up for the Citizen's Academy and began reading a report that she has sent to the newspaper on her local findings, concerns and comments.

7) Consent Agenda

- 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**

Mayor Pro Tem Thomas made a motion to approve the consent agenda, seconded by Council Member Gieck. 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.

- 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**

City Manager Trainor reported that this is a pro forma request and this assigns allocation to El Paso County that allows the County to bond for improvements. There is no money paid from the City.

Mayor Pro Tem Thomas made a motion to approve Resolution 16-026 seconded by Council Member Coke. All members voted yes (7-0); the motion carried.

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

Utility Director Mitchell stated this is a routine renewal of a ten year franchise agreement.

Council Member Gieck made a motion to approve Ordinance 1677 on first reading, seconded by Council Member Lauer. All members voted yes (7-0); the motion carried.

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

City Attorney McDivitt reported that Council directed staff to draft an ordinance that would allow for alternate members on the Park Board and this ordinance fulfills that request.

Council Member Thompson made a motion to approve Ordinance 1678, seconded by Council Member Gieck. All members voted yes (7-0); the motion carried.

10) Correspondence, Comments and Ex-Officio Reports

City Manager Trainor reported on the upcoming “Trunk or Treat” event. He updated Council on the meetings regarding the recreational center discussions as well as the final budget preparations for the city’s biannual review.

Council Member Thompson reported on her attendance at the Color Run, Dinner and Dance and Labor Day events noting their success.

11) Announcement of Executive Sessions

There were no executive sessions requested.

12) Adjourn

There being no further business Mayor Ortega declared the meeting adjourned at 6:53 P.M.

City Clerk

Mayor



Regular City Council Meeting

Consent- 7B

September 27, 2016

Summary Information

Title: Resolution 16-028, Authorizing Contract To Purchase Wild Oak Farms Subdivision No. 1, Filing No. 2, Tact A for Street Right-Of-Way Purposes Located Westerly of Blossom Field Road

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 16-028.

Attachments: Resolution 16-028 with Contract Exhibit and copy of Wild Oak Farms Subdivision No. 1, Filing No. 2 Plat Map

Background Information

City of Fountain Wild Oak Farms Subdivision No. 1, Filing No.2 Final Plat Map was recorded with El Paso County Clerk & Recorder on April 24, 1985. The Final Plat included a small Tract A parcel at the northwesterly portion of the development located on the westerly side of Blossom Field Road. The Final Plat did not indicate ownership of said Tract A. Tract A has since been developed as an asphalt paved roadway with curb & gutter and some underground utility improvements. Tract A has historically been utilized by adjoining 900 Pond Terrace property owners as convenient driveway access to Blossom Field Road. Tract A has remained under private ownership since filing of the Final Plat.

The City Engineer was recently contacted by the Trustee for the Kennedy Family Trust (Tract A current owners) regarding an offer to sell Tract A to the City of Fountain. The Trustee is working on closing out the subject Family Trust due to recent deaths of both founding parents. The purchase price of \$5,000 was negotiated for the subject 6,656 square feet of improved roadway property. The purchase is contingent upon the final determination of Kennedy Family Trust ownership through Probate Court. An escrow account will be set up to hold purchase funds until the closing date which will occur after Probate Court decision is finalized.

Attached is the Council Resolution and Contract for the proposed Tract A property purchase

Recommendation

Staff recommends that City Council approve Resolution 16-028.

Proposed Motion

"I recommend City Council approval of Resolution 16-028."

CM Review ST



RESOLUTION 16-028

A RESOLUTION OF THE CITY OF FOUNTAIN, COLORADO, AUTHORIZING THE CONTRACT TO PURCHASE WILD OAK FARMS SUBDIVISION NO. 1, FILING NO. 2 TRACT A FOR STREET RIGHT-OF-WAY PURPOSES LOCATED WESTERLY OF BLOSSOM FIELD ROAD

WHEREAS, the City of Fountain, Colorado is a municipal corporation duly organized and operating as a home-rule city under Article XX of the Constitution of the State of Colorado and the Charter of the City (unless otherwise indicated, capitalized terms used in this preamble shall have the meanings set forth in Section 1 of this Resolution); and

WHEREAS, the City Council determines that the City of Fountain should purchase the Property; and

WHEREAS, the form of the Agreement for Purchase and Sale of Real Estate has been presented to the City and made available to the City Council.

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

Section 1. The above recitals are incorporated in this Resolution.

Section 2. Definitions. The following terms (in addition to those defined above) shall have the following meanings as used in this Resolution:

“*Agreement*” means the Agreement to Buy and Sell Real Estate between the Purchaser and the Seller attached as Exhibit 1.

“*Charter*” means the home rule Charter of the City.

“*City*” means the City of Fountain, Colorado

“*City Council*” means the City Council of the City.

“*Purchaser*” means the City of Fountain, Colorado

“*Seller*” shall mean The Kennedy Family Trust, Created U/D/T Dated July 31, 2001, As Amended and/or other such persons as a title insurance commitment may indicate have any legal ownership interest in the property.

Section 3. Approval of Agreement. The form of the Agreement, setting forth the terms, conditions and details of the conditional purchase and the procedures relating thereto, is hereby approved; all City officials and employees are hereby directed to take such actions as are necessary and appropriate to fulfill the obligations of the Purchaser under the Agreement for Purchase and Sale. The Purchaser shall enter into the Agreement and such other documents as are necessary to complete the purchase in substantially the forms presented; provided that such documents may be completed, corrected, or revised as deemed necessary by the parties thereto in order to carry out the purposes of this Resolution.

Section 4. Description of Property. The Property being acquired by Purchaser from Seller consists of approximately **6,656 square feet** of real property located westerly of the Blossom Field Road in Fountain, Colorado which is currently developed as an improved paved roadway providing access to adjoining 900 Pond Terrace property. The Property is described as Wild Oak Farms Subdivision No. 1, Filing No. 2, Tract A. Acquisition of this tract of land by Purchaser is intended for use as public street right-of-way and as such the Property will continue to provide public access to adjoining 900 Pond Terrace.

Section 5. Execution of Documents. The Mayor, Gabriel P. Ortega; Mayor Pro Tem, James Coke; City Manager, Scott Trainor; Deputy City Manager Todd Evans; City Clerk, Silvia Huffman and City Engineer, Duane Greenwood and all other officers, officials and employees of the City are hereby authorized to execute the Agreement, and all associated documents and certificates necessary or desirable to effectuate the issuance of the purchase of the Property as contemplated by this Resolution and as may be required in connection with such purchase as appropriate; provided that the City Attorney and any other attorney retained by the City for this transaction are satisfied that legal concerns of the City have been properly addressed.

Section 6. Ratification of Prior Actions. All actions heretofore taken (not inconsistent with the provisions of this Resolution) by the Council or by the officers and employees of the City directed toward the approval of the Agreement for the purposes herein set forth are hereby ratified, approved and confirmed.

Section 7. Headings. The headings to the various sections and paragraphs in this Resolution have been inserted solely for the convenience of the reader, are not a part of this Resolution, and shall not be used in any manner to interpret this Resolution.

Section 8. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court to be

invalid or unenforceable, in whole or in part, such determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation; and if any provision hereof or the application thereof is determined by a court to be valid or enforceable only if its application is limited, its application shall be limited as required to most fully implement its purpose.

Section 9. Effective Date. This Resolution shall be in full force and effect upon approval by the City Council.

Done this _____ day of _____, 2016.

Gabriel P. Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk

RESOLUTION 16-028

EXHIBIT 1

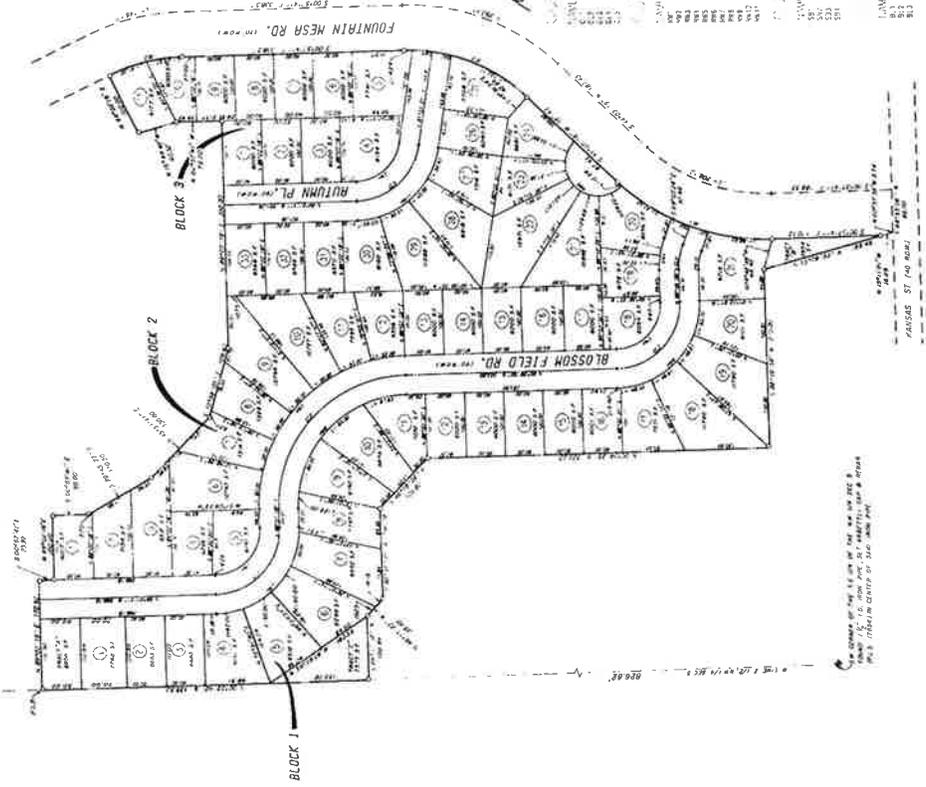
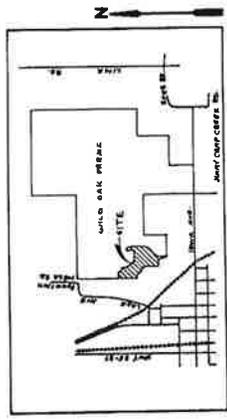
**CONTRACT AGREEMENT TO BUY AND SELL REAL ESTATE
- WILD OAK FARMS SUBDIVISION NO. 1, FILING NO. 2, TRACT A-**

Wild Oak Farms

Subdivision No. 1, Filing No. 2
City Of Fountain, El Paso County, Colorado



SEPT 14, 1984



Anna S. Neufeldt

SOCKET TABLE

SOCKET	DELTA	RADIUS	LENGTH	BEARING	CHORD
1	10.00	10.00	10.00	000°00'00"	10.00
2	10.00	10.00	10.00	045°00'00"	14.14
3	10.00	10.00	10.00	090°00'00"	10.00
4	10.00	10.00	10.00	135°00'00"	14.14
5	10.00	10.00	10.00	180°00'00"	10.00
6	10.00	10.00	10.00	225°00'00"	14.14
7	10.00	10.00	10.00	270°00'00"	10.00
8	10.00	10.00	10.00	315°00'00"	14.14
9	10.00	10.00	10.00	360°00'00"	10.00

CHORD TABLE

CHORD	DELTA	RADIUS	LENGTH	BEARING	CHORD
1	10.00	10.00	10.00	000°00'00"	10.00
2	10.00	10.00	10.00	045°00'00"	14.14
3	10.00	10.00	10.00	090°00'00"	10.00
4	10.00	10.00	10.00	135°00'00"	14.14
5	10.00	10.00	10.00	180°00'00"	10.00
6	10.00	10.00	10.00	225°00'00"	14.14
7	10.00	10.00	10.00	270°00'00"	10.00
8	10.00	10.00	10.00	315°00'00"	14.14
9	10.00	10.00	10.00	360°00'00"	10.00

AREA TABLE

AREA	DELTA	RADIUS	LENGTH	BEARING	CHORD
1	10.00	10.00	10.00	000°00'00"	10.00
2	10.00	10.00	10.00	045°00'00"	14.14
3	10.00	10.00	10.00	090°00'00"	10.00
4	10.00	10.00	10.00	135°00'00"	14.14
5	10.00	10.00	10.00	180°00'00"	10.00
6	10.00	10.00	10.00	225°00'00"	14.14
7	10.00	10.00	10.00	270°00'00"	10.00
8	10.00	10.00	10.00	315°00'00"	14.14
9	10.00	10.00	10.00	360°00'00"	10.00

**THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.
NOTE: THIS FORM IS NOT A COLORADO REAL ESTATE COMMISSION FORM.**

CONTRACT TO BUY AND SELL REAL ESTATE

Date: 8/31/16

1. AGREEMENT. Buyer agrees to buy, and Seller agrees to sell, the Property defined below on the terms and conditions set forth in this contract ("Contract").

2. DEFINED TERMS.

2.1 Buyer. Buyer, City of Fountain, a Colorado municipal corporation and Colorado home rule city, will take title to the real property described below as ~~Joint Tenants~~ ~~Tenants in Common~~ **Other**.

2.2 Property. The Property is the following legally described real estate in the County of EL PASO, Colorado:

TRACT A, WILD OAK FARMS SUBDIVISION NO. 1, FILING NO. 2, including all improvements and appurtenances

known as No. N/A, NO STREET ADDRESS ASSIGNED

Street Address _____ City _____ State _____ Zip _____
together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

2.3. Dates and Deadlines.

Item No.	Reference :	Event	Date or Deadline
1	§ 4.2.1	Alternative Earnest Money Deadline	9/1/16
2	§ 5.1	Loan Application Deadline	N/A
3	§ 5.2	Loan Conditions Deadline	N/A
4	§ 5.3	Buyer's Credit Information Deadline	N/A
5	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
6	§ 5.4	Existing Loan Documents Deadline	N/A
7	§ 5.4	Existing Loan Documents Objection Deadline	N/A
8	§ 5.4	Loan Transfer Approval Deadline	N/A
9	§ 6.2.2	Appraisal Deadline	N/A
10	§ 7.1	Title Deadline	9/9/16
11	§ 8.1	Title Objection Deadline	10/7/16
12	§ 7.3	Survey Deadline	N/A
13	§ 8.3.2	Survey Objection Deadline	N/A

14	§ 7.2	Document Request Deadline	N/A
15	§ 7.4.4	CIC Documents Objection Deadline	N/A
16	§ 7.4.5	CIC Documents Objection Deadline	N/A
17	§ 8.2	Off-Record Matters Deadline	9/9/16
18	§ 8.2	Off-Record Matters Objection Deadline	10/7/16
19	§ 8.6	Right of First Refusal Deadline	N/A
20	§ 10.1	Seller's Property Disclosure Deadline	N/A
21	§ 10.2	Inspection Objection Deadline	N/A
22	§ 10.3	Inspection Resolution Deadline	N/A
23	§ 10.5	Property Insurance Objection Deadline	N/A
24	§ 12	Closing Date	11/1/16
25	§ 17	Possession Date	AT CLOSING
26	§ 17	Possession Time	AT CLOSING
27	§ 31	Acceptance Deadline Date	8/29/16
28	§ 31	Acceptance Deadline Time	12 NOON MT

2.4. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable and when inserted on any line in **Dates and Deadlines** (§ 2.3), it means that the corresponding provision of the Contract to which reference is made is deleted. The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

3. INCLUSIONS AND EXCLUSIONS.

3.1. Inclusions. The Purchase Price includes the following items (Inclusions):

3.1.1 Fixtures. If attached to the Property on the date of this Contract, lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including remote controls; and ALL FIXTURES AND PERSONAL PROPERTY LOCATED OVER, UNDER OR ON PROPERTY AT CLOSING.

3.1.2 Personal Property. The following are included if on the Property whether attached or not on the date of this Contract: storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: ~~Water Softeners~~ ~~Smoke/Fire Detectors~~ ~~Security Systems~~ ~~Satellite Systems~~ (including satellite dishes).

3.1.3 Other Inclusions.

The Personal Property to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except NONE. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.4 Trade Fixtures. With respect to trade fixtures, Seller and Buyer agree as follows:

NONE INCLUDED.

The Trade Fixtures to be conveyed at Closing shall be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except N/A. Conveyance shall be by bill of sale or other applicable legal instrument.

3.1.5 Parking and Storage Facilities. ~~Use Only~~ ~~Ownership~~ of the following parking facilities: _____; and ~~Use Only~~ ~~Ownership~~ of the following storage facilities: _____.

3.1.6 Water Rights. The following legally described water rights: N/A

Any water rights shall be conveyed by ~~Deed~~ ~~Other~~ applicable legal instrument. If well rights are to be transferred to Buyer, Seller agrees to supply the required information to Buyer for Buyer to submit, and also, if required, a Change in Ownership form as promulgated by the Colorado State Engineer's office. The Well Permit # is N/A.

3.1.7 Growing Crops. With respect to growing crops, Seller and Buyer agree as follows:

N/A

3.2. Exclusions. The following items are excluded: NONE. ALL FIXTURES, IMPROVEMENTS AND PERSONAL PROPERTY INCLUDED.

4. PURCHASE PRICE AND TERMS.

4.1 Price and Terms. The Purchase Price set forth below shall be payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$ 5,000.00	\$ 5,000.00
2	§ 4.2	Earnest Money	\$ 5,000.00	\$ 5,000.00
3	§ 4.5	New Loan	0	0
4	§ 4.6	Assumption Balance	0	0
5	§ 4.7	Seller or Private Financing	0	0
6				
7				
8	§ 4.3	Cash at Closing	0	0
9		TOTAL	\$ 5,000.00	\$ 5,000.00

4.2. Earnest Money. The Earnest Money set forth in this section, in the form of CHECK, is part payment of the Purchase Price and shall be payable to and held by TITLE COMPANY (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit shall be tendered with this Contract unless the parties mutually agree to an **Alternative**

Earnest Money Deadline (§ 2.3) for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction shall be transferred to such fund.

4.2.1 Alternative Earnest Money Deadline. The deadline for delivering the Earnest Money, if other than at the time of tender of the contract is as set forth as the **Alternative Earnest Money Deadline** (§ 2.3).

4.3. Cash at Closing. All amounts paid by Buyer at Closing including cash at Closing, plus Buyer's closing costs, shall be in funds which comply with all applicable Colorado laws, which include cash, electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds). Buyer represents that Buyer **Does** ~~Does Not~~ have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

4.4 Seller Concession. Seller, at Closing, shall pay or credit, as directed by Buyer, a total amount of \$ N/A to assist with Buyer's closing costs, loan discount points, loan origination fees, prepaid items (including any amounts that Seller agrees to pay because Buyer is not allowed to pay due to FHA, CHFA, VA, etc.) and any other fee, cost, charge, expense or expenditure related to Buyer's New Loan or other allowable Seller concession (collectively, Seller Concession). The Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract. If the amount of Seller Concession exceeds the aggregate of what is allowed, Seller shall not pay or be charged such excess amount.

4.5. New Loan. *INTENTIONALLY DELETED AS INAPPLICABLE.*

4.6. Assumption. *INTENTIONALLY DELETED AS INAPPLICABLE.*

4.7 Seller or Private Financing. *INTENTIONALLY DELETED AS INAPPLICABLE.*

5.0 FINANCING. *INTENTIONALLY DELETED AS INAPPLICABLE.*

6.0 APPRAISAL PROVISIONS. *INTENTIONALLY DELETED AS INAPPLICABLE.*

6.2. Appraisal Condition.

6.2.1 Not Applicable. This § 6.2 shall not apply.

6.3 Cost of Appraisal. Cost of any appraisal to be obtained after the date of this Contract shall be timely paid by **Buyer** ~~Seller~~.

7. EVIDENCE OF TITLE, SURVEY AND CIC DOCUMENTS.

7.1 Evidence of Title. On or before the **Title Deadline** (§ 2.3), Seller shall cause to be furnished to Buyer, at Seller's expense, a current commitment for owner's title insurance policy (Title Commitment) in an amount equal to the Purchase Price, ~~or if this box is checked, **An Abstract** of title certified to a current date.~~ At Seller's expense, Seller shall cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing. If a title insurance commitment is furnished, it **Shall** ~~Shall Not~~ commit to delete or insure over the standard exceptions which relate to:

- (1) parties in possession,
- (2) unrecorded easements,
- (3) survey matters,
- (4) any unrecorded mechanics' liens,

- (5) gap period (effective date of commitment to date deed is recorded), and
- (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing.

Any additional premium expense to obtain this additional coverage shall be paid by Buyer Seller.

Note: The title insurance company may not agree to delete or insure over any or all of the standard exceptions. Buyer shall have the right to review the Title Commitment pursuant to § 8.1.

7.2 Copies of Exceptions. On or before **Title Deadline** (§ 2.3), Seller, at Seller's expense, shall furnish to Buyer and Buyer's counsel, (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (2) if a Title Commitment is required to be furnished, and if this box is checked **Copies of any Other Documents** (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions). Even if the box is not checked, Seller shall have the obligation to furnish these documents pursuant to this section if requested by Buyer any time on or before **Document Request Deadline** (§ 2.3). This requirement shall pertain only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The abstract or Title Commitment, together with any copies or summaries of such documents furnished pursuant to this section, constitute the title documents (Title Documents).

7.3 Survey. On or before **Survey Deadline** (§ 2.3), ~~Seller Buyer~~ shall order and cause Buyer (and the issuer of the Title Commitment or the provider of the opinion of title if an abstract) to receive a current ~~Improvement Survey Plat Improvement Location Certificate _____~~ (the description checked is known as Survey). An amount not to exceed \$_____ for Survey shall be paid by ~~Buyer Seller~~. If the cost exceeds this amount, ~~Buyer Seller~~ shall pay the excess on or before Closing. Buyer shall not be obligated to pay the excess unless Buyer is informed of the cost and delivers to Seller, before Survey is ordered, Buyer's written agreement to pay the required amount to be paid by Buyer.

7.4 Common Interest Community Documents. INTENTIONALLY DELETED AS INAPPLICABLE.

8. TITLE AND SURVEY REVIEW.

8.1. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title, form or content of Title Commitment or of any other unsatisfactory title condition shown by the Title Documents, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Title Objection Deadline** (§ 2.3), or within five calendar days after receipt by Buyer of any change to the Title Documents or endorsement to the Title Commitment together with a copy of the document adding any new Exception to title. If Seller does not receive Buyer's notice by the date specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

8.2. Matters Not Shown by the Public Records. Seller shall deliver to Buyer, on or before **Off-Record Matters Deadline** (§ 2.3), true copies of all leases and surveys in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens (including, without limitation, governmental improvements approved but not yet installed) or other title matters (including, without limitation, rights of first refusal, and options) not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to investigate if any third party has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, boundary line discrepancy or water rights).

Written notice of any unsatisfactory condition disclosed by Seller or revealed by such inspection, notwithstanding § 13, shall be signed by or on behalf of Buyer and delivered to Seller on or before **Off-Record Matters Objection Deadline** (§ 2.3). If Seller does not receive Buyer's notice by said deadline, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has knowledge.

8.3. Survey Review.

■ **8.3.1 Not Applicable.** This § 8.3 shall not apply.

~~☐ **8.3.2 Conditional on Survey.** If the box in this subsection 8.3.2 is checked, Buyer shall have the right to inspect the Survey. If written notice by or on behalf of Buyer of any unsatisfactory condition shown by the Survey, notwithstanding § 8.2 or § 13, is received by Seller on or before **Survey Objection Deadline** (§ 2.3), then such objection shall be deemed an unsatisfactory title condition. If Seller does not receive Buyer's notice by **Survey Objection Deadline** (§ 2.3), Buyer accepts the Survey as satisfactory.~~

8.4 Special Taxing Districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

In the event the Property is located within a special taxing district and Buyer desires to terminate this Contract as a result, if written notice, by or on behalf of Buyer, is received by Seller on or before **Off-Record Matters Objection Deadline** (§ 2.3), this Contract shall terminate. If Seller does not receive Buyer's notice by such deadline, Buyer accepts the effect of the Property's inclusion in such special taxing district and waives the right to terminate for that reason.

8.5 Right to Object, Cure. Buyer's right to object shall include, but not be limited to, those matters listed in § 13. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition or commitment terms as provided in §§ 8.1, 8.2., 8.3, and 8.4, Seller shall use reasonable efforts to correct said items and bear any nominal expense to correct the same prior to Closing. If such unsatisfactory title condition is not corrected to Buyer's satisfaction on or before Closing, this Contract shall terminate; provided, however, Buyer may, by written notice received by Seller on or before Closing, waive objection such items.

8.6 Right of First Refusal or Contract Approval. If there is a right of first refusal on the Property, or a right to approve this Contract, Seller shall promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract shall terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract shall remain in full force and effect. Seller shall promptly notify Buyer of the foregoing. If expiration or waiver of the right of first refusal or Contract approval has not occurred on or before **Right of First Refusal Deadline** (§ 2.3), this Contract shall terminate.

8.7 Title Advisory. The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including without limitation boundary lines and encroachments, area, zoning, unrecorded easements and claims of easements, leases and other unrecorded agreements, and various laws and governmental regulations concerning land use, development and environmental matters. **The surface estate may be owned separately from the underlying mineral estate, and transfer of the surface estate does not necessarily include transfer of the mineral rights or water rights. Third parties may hold interests in oil, gas, other minerals, geothermal energy or water on or under the Property, which interests may give them rights to enter and use the Property.** Such matters may be excluded from or not covered by the title insurance policy. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., **Title Objection Deadline** [§ 2.3] and **Off-Record Matters Objection Deadline** [§ 2.3]).

~~**9. LEAD-BASED PAINT.** Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, this Contract shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate licensees, which must occur prior to the parties signing this Contract. Buyer acknowledges timely receipt of a completed Lead-Based Paint Disclosure (Sales) form signed by Seller and the real estate licensees:~~

10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, BUYER DISCLOSURE, AND SOURCE OF WATER. INTENTIONALLY DELETED AS INAPPLICABLE.

11. METHAMPHETIME TESTING. INTENTIONALLY DELETED AS INAPPLICABLE.

12. CLOSING. Delivery of deed from Seller to Buyer shall be at closing (Closing). Closing shall be on the date specified as the **Closing Date** (§ 2.3) or by mutual agreement at an earlier date. The hour and place of Closing shall be as designated by Buyer.

13. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient *trustee's* deed to Buyer, at Closing, conveying the Property free and clear of all taxes except the general taxes for the year of Closing. Except as provided herein, title shall be conveyed free and clear of all liens, including any governmental liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not. Title shall be conveyed subject to:

13.1 those specific Exceptions described by reference to recorded documents as reflected in the Title Documents accepted by Buyer in accordance with **Title Review** (§ 8.1),

13.2 distribution utility easements (including cable TV),

13.3 those specifically described rights of third parties not shown by the public records of which Buyer has actual knowledge and which were accepted by Buyer in accordance with **Matters Not Shown by the Public Records** (§ 8.2) and **Survey Review** (§ 8.3),

13.4 inclusion of the Property within any special taxing district, and

13.5 other NONE.

14. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before Closing from the proceeds of this transaction or from any other source.

15. CLOSING COSTS, DOCUMENTS AND SERVICES.

15.1 Good Funds. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein.

15.2 Closing Information and Documents. Buyer and Seller will furnish any additional information and documents required by Closing.

15.3 Closing Services Fee. The fee for real estate Closing services shall be paid at Closing by Buyer Seller **One-Half by Buyer and One-Half by Seller** Other _____

15.4 Closing Instructions. The Colorado Real Estate Commission's Closing Instructions **Are** **Are Not** executed with this Contract. Upon execution, Seller Buyer shall deliver such Closing Instructions to the Closing Company.

~~**15.5 Status Letter and Transfer Fees.** Any fees incident to the issuance of Association's statement of assessments (Status Letter) shall be paid by Buyer Seller One-Half by Buyer and One-Half by Seller. Any fees incident to the transfer from Seller to Buyer assessed by the Association (Association's Transfer Fee) shall be paid by Buyer Seller One-Half by Buyer and One-Half by Seller.~~

~~**15.6 Local Transfer Tax.** The Local Transfer Tax _____% of the Purchase Price shall be paid at Closing by Buyer Seller One-Half by Buyer and One-Half by Seller.~~

~~**f. Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction shall be paid when due by Buyer Seller One-Half by Buyer and One-Half by Seller.~~

16. PRORATIONS. The following shall be prorated to **Closing Date** (§ 2.3), except as otherwise provided:

16.1 Taxes. Personal property taxes, if any, and general real estate taxes for the year of Closing, based on **Taxes for the Calendar Year Immediately Preceding Closing** ~~Most Recent Mill Levy and Most Recent Assessed Valuation~~ Other _____.

16.2 Rents. Rents based on **Rents Actually Received** **Accrued.** Security deposits held by Seller shall be credited to Buyer. Seller shall assign all leases to Buyer and Buyer shall assume such leases.

~~**16.3 Association Assessments.** Current regular Association assessments and Association dues (Association Assessments) paid in advance shall be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association shall not be credited to Seller except as may be otherwise provided by the Governing Documents. Any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon shall be the obligation of Seller. Any other special assessment assessed prior to **Closing Date** (§ 2.3) by the Association shall be the obligation of Buyer Seller. Seller represents that the Association Assessments are currently payable at \$ _____ per _____ and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except _____. Such assessments are subject to change as provided in the Governing Documents. Seller agrees to promptly request the Association to deliver to Buyer before **Closing Date** (§ 2.3) a current Status Letter.~~

6.4 Other Prorations. Water and sewer charges, interest on continuing loan, and ANY OTHER ASSESSMENTS SHALL BE PRORATED AS OF DAY OF CLOSING.

6.5 Final Settlement. Unless otherwise agreed in writing, these prorations shall be final.

17. POSSESSION. Possession of the Property shall be delivered to Buyer on **Possession Date** at **Possession Time** (§ 2.3), subject to the following leases or tenancies: NONE

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of \$250 per day (or any part of a day) from the **Possession Date** and **Possession Time** (§ 2.3) until possession is delivered.

Buyer ~~Does~~ **Does Not** represent that Buyer will occupy the Property as Buyer's principal residence.

18. ASSIGNABILITY AND INUREMENT. This Contract **Shall** **Shall Not** be assignable by Buyer without Seller's prior written consent. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

~~**19. INSURANCE; CONDITION OF, DAMAGE TO PROPERTY AND INCLUSIONS AND WALK THROUGH.**~~ Except as otherwise provided in this Contract, the Property, Inclusions or both shall be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

~~**19.1 Casualty Insurance.**~~ In the event the Property or Inclusions are damaged by fire or other casualty prior to Closing in an amount of not more than ten percent of the total Purchase Price, Seller shall be obligated to repair the same before **Closing Date** (§ 2.3). In the event such damage is not repaired within said time or if the damages exceed such sum, this Contract may be terminated at the option of Buyer by delivering to Seller written notice of termination on or before Closing. Should Buyer elect to carry out this Contract despite such damage, Buyer shall be entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from such damage to the Property and Inclusions, plus the amount of any deductible provided for in such insurance policy. Such credit shall not exceed the Purchase Price. In the event Seller has not received such insurance proceeds prior to Closing, then Seller shall assign such proceeds at Closing, plus credit Buyer the amount of any deductible provided for in such insurance policy, but not to exceed the total Purchase Price.

~~**19.2 Damage, Inclusions and Services.**~~ Should any Inclusion or service (including systems and components of the Property, e.g., heating, plumbing) fail or be damaged between the date of this Contract and Closing or possession, whichever shall be earlier, then Seller shall be liable for the repair or replacement of such Inclusion or service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion, service or fixture is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. Seller and Buyer are aware of the existence of pre-owned home warranty programs that may be purchased and may cover the repair or replacement of such Inclusions. The risk of loss for damage to growing crops by fire or other casualty shall be borne by the party entitled to the growing crops as provided in § 3.1.7 and such party shall be entitled to such insurance proceeds or benefits for the growing crops.

~~**19.3 Walk Through and Verification of Condition.**~~ Buyer, upon reasonable notice, shall have the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

20. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer and Seller acknowledge that their respective broker has advised that this document has important

legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

21. TIME OF ESSENCE, DEFAULT AND REMEDIES. Time is of the essence hereof. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

21.1 If Buyer is in Default:

~~**2.1.1 Specific Performance.** Seller may elect to treat this Contract as canceled, in which case all Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller and retained by Seller; and Seller may recover such damages as may be proper; or Seller may elect to treat this Contract as being in full force and effect and Seller shall have the right to specific performance or damages, or both.~~

2.1.2 Liquidated Damages. All Earnest Money (whether or not paid by Buyer) shall be forfeited by Buyer, paid to Seller, and retained by Seller. Both parties shall thereafter be released from all obligations hereunder. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES, and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 19, 21.3, 22 and 23), said forfeiture shall be SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

21.2 If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

21.3 Cost and Expenses. INTENTIONALLY DELETED AND REPLACED BY the provisions of Section 25.D.

22. MEDIATION. If a dispute arises relating to this Contract, prior to or after Closing, and is not resolved, the parties shall first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the party's last known address. This section shall not alter any date in this Contract, unless otherwise agreed.

23. EARNEST MONEY DISPUTE. Except as otherwise provided herein, Earnest Money Holder shall release the Earnest Money as directed by written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money (notwithstanding any termination of this Contract), Earnest Money Holder shall not be required to take any action. Earnest Money Holder, at its option and sole discretion, may (1) await any proceeding, (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction and shall recover court costs and reasonable attorney and legal fees, or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller), containing the case number of the lawsuit (Lawsuit) within 120 calendar days of Earnest Money Holder's notice to the parties, Earnest Money Holder shall be

authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder shall disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of **Mediation** (§ 22).

24. TERMINATION. In the event this Contract is terminated, all Earnest Money received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to §§ 10.4, 22 and 23.

25. ADDITIONAL PROVISIONS.

A. The Earnest Money Deposit shall be held by the Title Company until Closing, at which time it shall be paid to Seller as and for the Purchase Price if the Contract is closed and good and marketable title is conveyed to Buyer. Closing shall occur on the earliest to occur of the following: a) September 1, 2017; or b) within thirty (30) days after the Buyer provides written notice to Seller and the Title Company that Buyer accepts the condition of title for conveyance to Buyer. If the Contract is terminated by Buyer due to lack of good and marketable title and closing on or before September 1, 2017, the Earnest Money Deposit shall be automatically returned to Buyer, this Contract shall be terminated and the parties shall have no further responsibility to the other. If the Buyer becomes reasonably convinced that Seller will not be able to obtain and convey good and marketable title to Buyer, Buyer shall be allowed to terminate this Contract at any time prior to September 1, 2017 and receive an automatic refund of the Earnest Money Deposit. In the interim, Seller shall take all necessary steps to obtain title in Seller, The Kennedy Family Trust, created U/D/T dated July 31, 2001 ("Seller" or "Trust") to prepare for sale under this Contract. The Property is currently owned by The William N. Kennedy Estate, so additional probate actions are needed to convey the Property to the Trust and then to prepare for closing and transfer to Buyer.

B. The Property has been developed as a roadway and all fixtures and improvements shall be conveyed with the Property. The Property was developed as part of a platted subdivision and was intended to be conveyed to the City in the past but was never conveyed due to inadvertence. Therefore, the City waives property inspection.

C. This Contract is not a limitation on the authority of the BUYER to amend, modify, or repeal any of the City Code referred to in the Contract nor otherwise limit the authority of the BUYER to change its fees or taxes, nor a limitation upon the BUYER's legislative authority to enact ordinances, resolutions, rules, codes or policies.

D. In the event any claim is litigated related to this Contract, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Contract. No provision of this Contract shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to the BUYER by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq.

E. The Property is being sold from The Kennedy Family Trust, created u/d/t dated July 31, 2001, in an "as is" condition, with no warranties or representations by Seller as to the physical condition

of the Property and inclusions, the physical condition or the remaining useful life of any roads, curbs, drainage features (if any), hardscape or other fixtures located on the Property. Buyer hereby acknowledges and agrees that Buyer has the right to obtain an inspection of the Property at Buyer's expense and that Buyer has been advised to do so by Seller.

F. Buyer and Seller acknowledge and agree that neither of them has retained the services of any real estate broker or agent. No broker's, agent's or finder's fees or commissions of any kind shall be paid by Seller or Buyer. The parties indemnify and hold each other harmless from any claims for brokerage commissions and/or finder's fees in connection with the purchase and sale of the Property to the extent claimed to be due and owing as a result of the acts of, or dealings with, the indemnifying party. This indemnity survives the termination or closing of this Contract.

ATTACHMENTS. The following are a part of this Contract. NONE

Note: The following disclosure forms **are attached** but are **not** a part of this Contract: CLOSING INSTRUCTIONS.

27. GOOD FAITH. Buyer and Seller acknowledge that each party has an obligation to act in good faith, including but not limited to exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations** (§ 5) and **Property Disclosure, Inspection, Indemnity, Insurability, Buyer Disclosure and Source of Water** (§ 10).

28. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL. This agreement constitutes the entire Contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract that, by its terms, is intended to be performed after termination or Closing shall survive the same.

29. FORECLOSURE DISCLOSURE AND PROTECTION. Seller acknowledges that, to Seller's current actual knowledge, the Property ~~Is~~ **Is Not** in foreclosure. In the event this transaction is subject to the provisions of the Colorado Foreclosure Protection Act (the Act) (i.e., generally the Act requires that the Property is residential, in foreclosure, and Buyer does not reside in it for at least one year), a different contract that complies with the provisions of the Act is required, and this Contract shall be void and of no effect unless the Foreclosure Property Addendum is executed by all parties concurrent with the signing of this Contract. The parties are further advised to consult with their own attorney.

30. NOTICE, DELIVERY, AND CHOICE OF LAW.

30.1 Physical Delivery. Except for the notice requesting mediation described in § 22, delivered after Closing, and except as provided in § 30.2, all notices must be in writing. Any notice to Buyer shall be effective when physically received by Buyer, any individual buyer, any representative of Buyer, or Brokerage Firm of Broker working with Buyer. Any notice to Seller shall be effective when physically received by Seller, any individual seller, any representative of Seller, or Brokerage Firm of Broker working with Seller.

30.2 Electronic Delivery. As an alternative to physical delivery, any signed document and written notice may be delivered in electronic form by the following indicated methods only: ~~Faesimile~~ **E-mail** ~~No Electronic Delivery~~. Documents with original signatures shall be provided upon request of any party.

30.3 Choice of Law. This Contract and all disputes arising hereunder shall be governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in this state for property located in Colorado.

31. NOTICE OF ACCEPTANCE, COUNTERPARTS. This proposal shall expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below, and the offering party receives notice of such acceptance pursuant to § 30 on or before **Acceptance Deadline Date** (§ 2.3) and **Acceptance Deadline Time** (§ 2.3). If accepted, this document shall become a contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

Date: _____

Buyer THE CITY OF FOUNTAIN,
A COLORADO MUNICIPAL CORPORATION AND COLORADO HOME RULE CITY

By: _____
Gabriel Ortega, Mayor
116 S. Main Street
Fountain, CO 80817
719.322-2000

Send notices to Duane Greenwood, City Engineer, dgreenwood@fountaincolorado.org
Cc: Lisa Tormoen Hickey, Tormoen Hickey LLC, lisahickey@newlawgroup.com

[NOTE: If this offer is being countered or rejected, do not sign this document. Refer to § 32]

Date: August 24, 2016

Seller THE KENNEDY FAMILY TRUST, CREATED U/D/T DATED JULY 31, 2001, AS AMENDED



Address: 5145 Hearthstone Lane
Colorado Springs, CO 80919-3139
Phone No.: 719.459.0809
Fax No.: n/a
Email Address: msm@mallon2.com

END OF CONTRACT TO BUY AND SELL REAL ESTATE



Regular City Council Meeting

Consent –7C

September 27, 2016

Summary Information

Title:

Resolution 16-030, A Resolution Approving a Plat Change Certificate to Remove a Plat Note Restriction for Lots 3 and 4, Beckett-Bandley Filing No. 1A, Related to Access to Bandley Drive for Property Located at 7710 and 7750 Office Circle.

Initiator: Kristy Martinez, Planning Supervisor

Council Action

Presenter: Kristy Martinez, Planning Supervisor

Council Information

Legal Review: Yes No

Report to Council

Summary Overview and List of Attachments:

A request to remove a plat note restriction related to access to Bandley Drive for two lots.

Attachment A: Vicinity Map

Attachment B: Resolution 16-030

Background Information

This is a request to amend General Note No. 7 on the Beckett-Bandley Filing No. 1A final plat. The plat note currently restricts direct lot access to Bandley Drive from Lots 3 and 4. The property owners have requested that one shared access be allowed to Bandley Drive. The proposed access would be located on the common lot line of Lots 3 and 4. No other direct lot access to Bandley Drive from either lot is permitted and this request applies only to these two lots.

In 2011, a request to remove the access restriction to Lot 4 was approved by City Council. Since that time, the property is under new ownership and the lot to the north (Lot 3) has submitted a site plan for a Microtel Hotel. As part of the site design for the hotel and in coordination with the property owner of Lot 4, a common access onto Bandley Drive is proposed to serve both properties.

General Note No. 7 on the Beckett 1A final plat states, “Lots 1, 2, 3, 4, 5 and 6 shall not have direct vehicular access to Bandley Drive.” The access restriction was placed on the lots when the subdivision was approved in 2002. Although there are no specific documents in the final plat subdivision file that discuss the reason for the restricted access, it is assumed the access was restricted due to design standards and safety concerns. Bandley Drive is recommended as a *community arterial* on the “Major Thoroughfare Plan” that was adopted in “Traffic Master Plan” in August 2002. When the final plat was reviewed and approved, the *community arterial* design standards would have been used for the review of the subdivision. Since that time, the City has determined that Bandley Drive is no longer needed as a *community arterial*, but instead should be a *community collector* and follow the design standards for an *Industrial/Commercial collector* roadway.

Community arterials require three to five lanes with travel lane widths ranging from 11 feet to 12 feet; does not allow on-street parking; and restricts intersections to a minimum 600 foot separation. Community arterials have full access control, which means limited access from individual lots or parcels is permitted.

Industrial/Commercial collectors, have two to four lanes with travel lane widths of 10 feet to 11 feet and may allow on-street parking.

Based on the change in classification of the roadway, Staff does not object to the plat amendment and modification to the plat note restriction. The applicant has provided an exhibit showing the location of the

proposed driveway and the driveway location meets all access spacing standards as regulated by the Zoning Ordinance.

Public Notice: No public notice was required by the Subdivision Regulations for this plat amendment.

Staff Findings: Staff finds that the plat amendment request is consistent with the approval standards set forth in Section 16.21.100 D. 3. of the Subdivision Regulations, which criteria are outlined below.

1. The change or removal is in accordance with the adopted standards and criteria, and the original conditions of approval, and as a result of actions by the subdivider or changes in the environment such restriction or condition is no longer necessary or applicable;
2. The change or removal is in keeping with the purpose and intent of this Title; and
3. The approval will not adversely affect the public health, safety and welfare.”

Planning Commission Action: On September 7, 2016, the City of Fountain Planning Commission voted 5 to 0 to recommend approval of the request.

Recommendation

Staff recommends approval of Resolution 16-030, subject to the following condition:

1. The shared access shall be the only direct lot access onto Bandley Drive for Lots 3 and 4. No additional direct lot access is permitted.

Proposed Motion

I Motion to Approve Resolution 16-030 subject to the following condition:

1. The shared access shall be the only direct lot access onto Bandley Drive for Lots 3 and 4. No additional direct lot access is permitted.

ST
CM Review



RESOLUTION 16-030

A RESOLUTION APPROVING A PLAT CHANGE CERTIFICATE TO REMOVE A PLAT NOTE RESTRICTION FOR LOTS 3 AND 4, BECKETT-BANDLEY FILING NO. 1A, RELATED TO ACCESS TO BANDLEY DRIVE FOR PROPERTY LOCATED AT 7710 AND 7750 OFFICE CIRCLE.

WHEREAS, the Beckett-Bandley Filing No. 1A final plat was approved by the City Council on July 9, 2002 by Resolution No. 02-020 and recorded under Reception No. 202151467 in the El Paso County Clerk and Recorder's Office; and

WHEREAS, the Beckett-Bandley Filing No. 1A final plat contained a plat restriction in General Note No. 7, restricting direct vehicular access to Bandley Drive from Lots 1, 2, 3, 4, 5 and 6; and

WHEREAS, the International Foundation for Research and Education and Adams Bank & Trust have made application for an amendment to a plat restriction for Beckett-Bandley Filing No. 1A to remove the direct vehicular access to Bandley Drive from Lots 3 and 4; and

WHEREAS, the City Planning Commission reviewed and voted to recommend approval of the amendment to the plat restriction at a regular meeting on September 7, 2016; and

WHEREAS, the City Council finds that the request is generally consistent with the review criteria and approval standards as set forth in section 16.21.100 D.3 of the Fountain Municipal Code; and

WHEREAS, the City Council authorizes the Subdivision Administrator to sign the Plat Change Certificate.

NOW THEREFORE, BE IT RESOLVED that the request by International Foundation for Research and Education and Adams Bank & Trust for approval to remove a plat note restriction for Lots 3 and 4, Beckett-Bandley Filing No. 1A is hereby approved subject to the following condition:

1. The shared access shall be the only direct lot access onto Bandley Drive for Lots 3 and 4. No additional direct lot access is permitted.

Done this _____ day of _____, 2016.

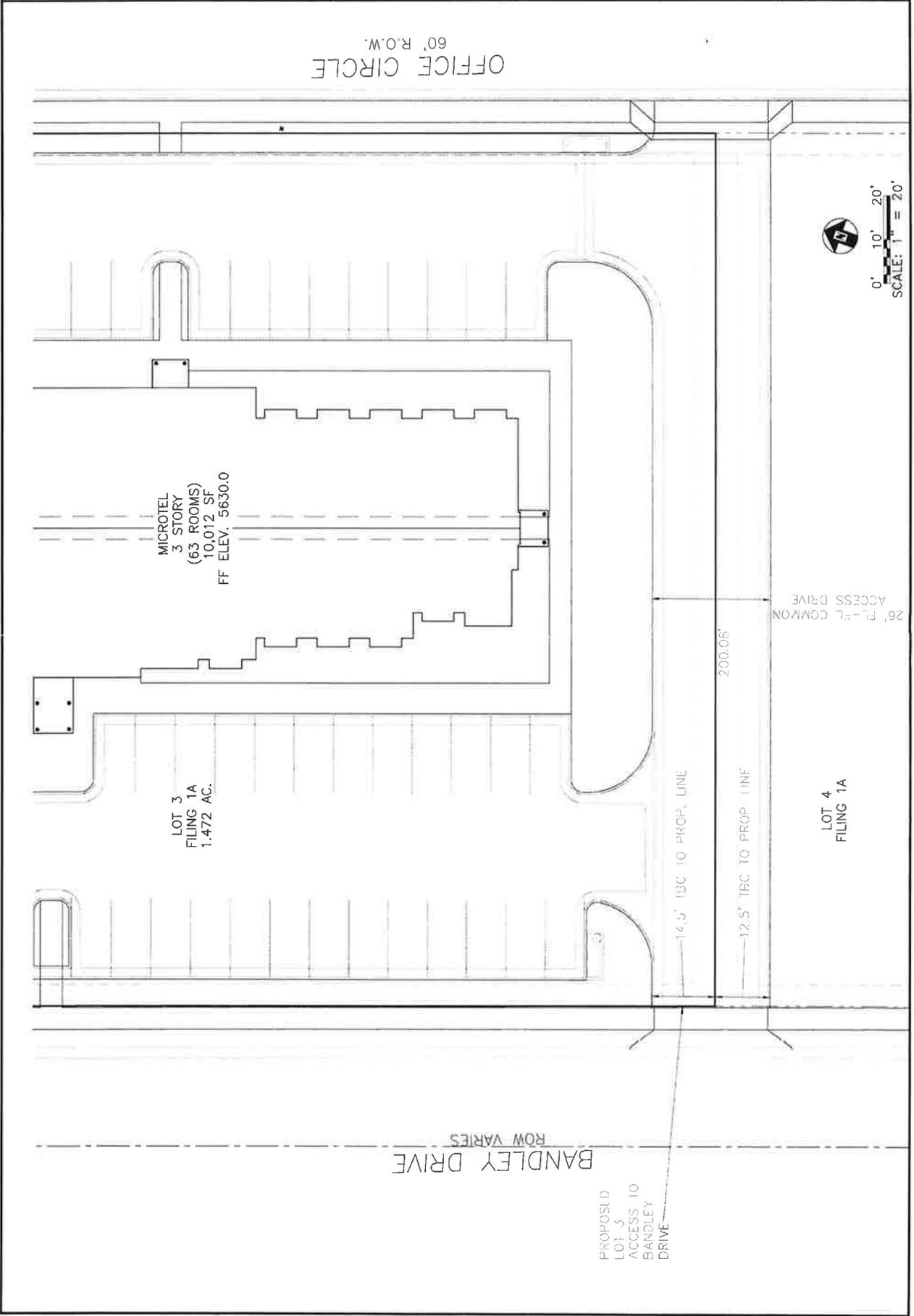
Gabriel P. Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk

VICINITY MAP







Regular City Council Meeting

Old Business-8A

September 27, 2016

Summary Information

Title:

Second 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:

There have been no changes to this ordinance since first reading.

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 second Reading."

ST

CM Review



Regular
City Council Meeting

Old Business-8B

Ordinance 1678

September 27, 2016

Summary Information

Title:

SECOND 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

There have been no changes to this ordinance since first reading.

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 second reading.

ST

CM Review



Regular City Council Meeting

New Business – 9A

Items Removed from Consent

September 27, 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

ST

CM Review



Regular City Council Meeting

New Business– 9B

September 27, 2016

Summary Information

Title: Resolution 16-031, Approving the 2016 El Paso County CDBG Subrecipient Agreement No. 4161409 For The Fontaine Boulevard Extension Improvement Project.

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 Resolution 16-031.

Attachments: Resolution 16-031 including CDBG Subrecipient Agreement No. 4161409 & Site Improvement Map

Background Information

In September 2015 El Paso County requested Community Development Block Grant (CDBG) Program applications for public infrastructure improvements in low to moderate income US Census Tract Block Groups. Staff submitted a grant application in November 2015 for the westerly extension of Fontaine Boulevard between Highway 85 and Southmoor Drive. El Paso County has subsequently awarded the City \$145,500 in CDBG Grant Funds. The City will be committing a minimum of \$79,500 in-kind services/cash match (35.33%) toward project costs. This project will be designed later this Fall/Winter and then advertised for bids with construction anticipated in late Spring/Summer next calendar year. Local match funding will come from 2016 Transportation Sales Tax and Street Department General Fund appropriations to be finalized by City Council later this Fall.

El Paso County staff prepared the attached CDBG Subrecipient Agreement No. 4161409 for City review and approval. City staff subsequently prepared Resolution 16-031 for City Council action.

Recommendation

Staff recommends that City Council approve Resolution 16-031.

Proposed Motion

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


CM Review



RESOLUTION 16-031

A RESOLUTION APPROVING THE 2016 EL PASO COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT SUBRECIPIENT AGREEMENT NO. 4161409 FOR FONTAINE BOULEVARD EXTENSION IMPROVEMENTS

WHEREAS, last year El Paso County Economic Development Division requested 2016 Community Development Block Grant (CDBG) Program applications for public infrastructure improvements in low to moderate income US Census Tract Block Groups; and

WHEREAS, the City of Fountain applied for and has been awarded a \$145,500 grant for the westerly extension of Fontaine Boulevard between Highway 85 and Southmoor Drive including curb, gutter, pavement and corner ADA curb ramp improvements; and

WHEREAS, this project will likely be designed by the Engineering Department in late Fall/Winter 2016 and then constructed in Spring/Summer 2017; and

WHEREAS, the City of Fountain application committed matching construction funds estimated at \$79,500 of in-kind Street Department services and/or cash match payments of which will come from Transportation Sales Tax and 2017 Street Public Works General Fund appropriations; and

WHEREAS, the City of Fountain must execute a CDBG Subrecipient Agreement with El Paso County prior to expending funds towards this 2016 CDBG Grant Project; and

WHEREAS, El Paso County recently submitted a CDBG Subrecipient Agreement, attached as "Exhibit A", that is very similar to agreements approved by City Council for prior City of Fountain CDBG Projects.

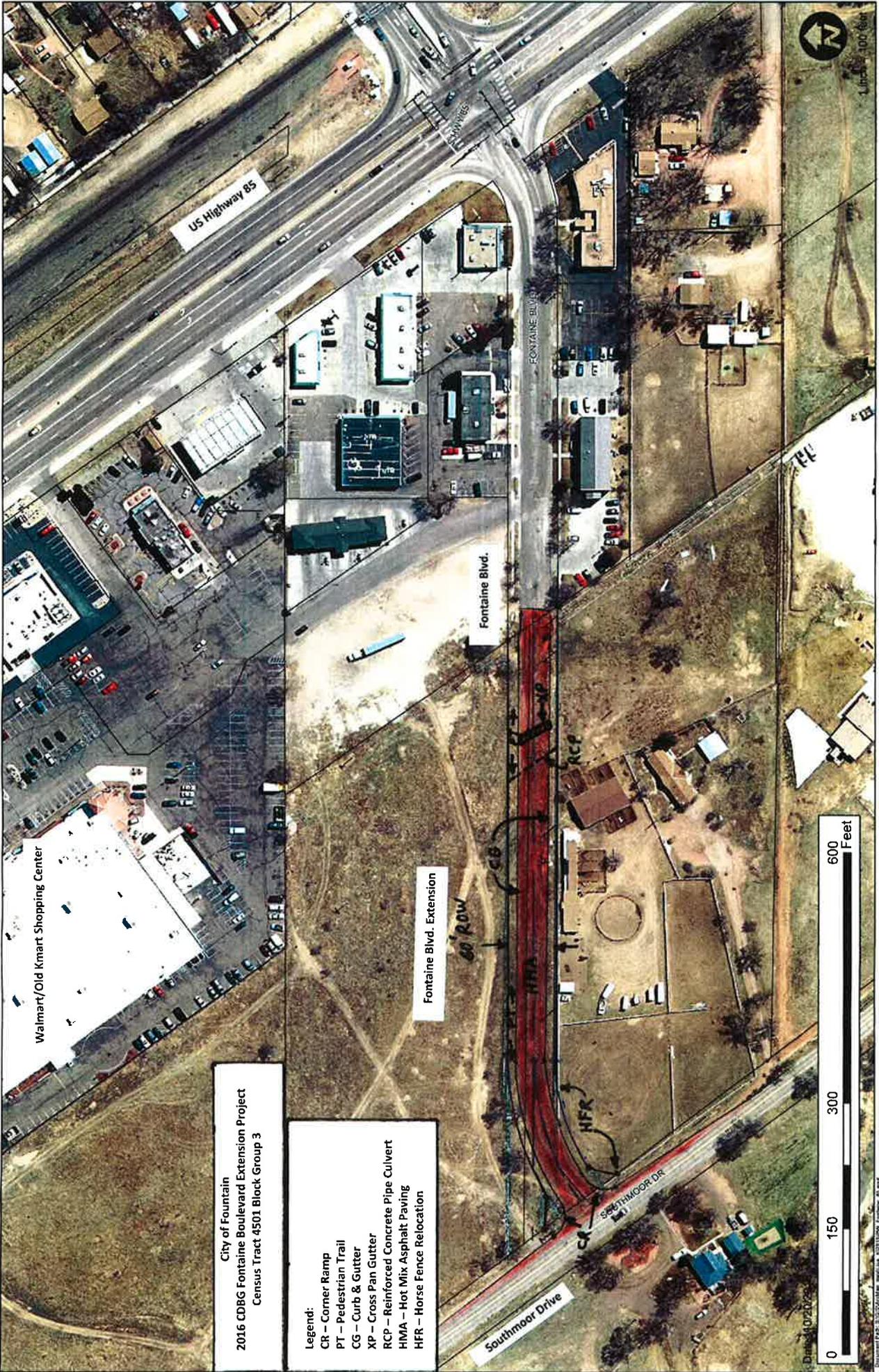
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fountain that the 2016 El Paso County Community Development Block Grant Subrecipient Agreement No. 4161409 for Fontaine Boulevard Extension Improvement is hereby officially approved.

Done this 27th day of September 2016.

Gabriel P. Ortega, Mayor

ATTEST:

Silvia Huffman, City Clerk



City of Fountain
 2016 CDBG Fontaine Boulevard Extension Project
 Census Tract 4501 Block Group 3

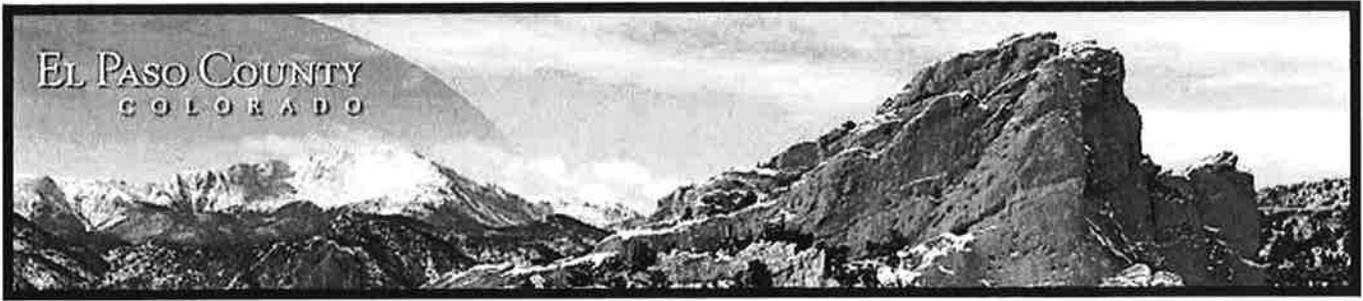
- Legend:
- CR – Corner Ramp
 - PT – Pedestrian Trail
 - CG – Curb & Gutter
 - XP – Cross Pan Gutter
 - RCP – Reinforced Concrete Pipe Culvert
 - HMA – Hot Mix Asphalt Paving
 - HFR – Horse Fence Relocation



1 Inch = 100 Feet

Date: 10/20/20

Document Path: S:\GIS\Projects\Fontaine_20161109V_7.mxd, © 2016



El Paso County, Colorado Subrecipient Agreement

Program Year: 2016

**City of Fountain
Fontaine Boulevard Improvements
4161409**

EL PASO COUNTY

SUBRECIPIENT AGREEMENT

AGREEMENT BETWEEN EL PASO COUNTY, COLORADO AND City of Fountain FOR

THE EL PASO COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

THIS AGREEMENT #4161409 entered this _____ DAY of the MONTH of _____, 2016, by and between El Paso County (herein called the "Grantee" and/or "County") and SUBRECIPIENT (herein called the "Subrecipient").

WHEREAS, the Grantee has applied for and received Community Development Block Grant (CDBG) funds from the U.S. Department of Housing and Urban Development (HUD), under Title 1 of the Housing and Community Development Act of 1974, as amended (HCD Act), Public Law 93-383; and

WHEREAS, the Grantee wishes to engage the Subrecipient to assist the Grantee in utilizing such funds;
NOW, THEREFORE, it is agreed between the parties hereto that;

ARTICLE 1- PROJECT

SECTION 1: SCOPE OF SERVICE

A. General Provisions

1. Statement of Services

The Subrecipient will expand ADA compliant infrastructure along Fontaine Boulevard in the City of Fountain, to include construction of a roadway, ADA ramps, curbs and gutters, drainage mitigation, street lights and a pedestrian trail.

2. Activities

- | | |
|-------------|---|
| Activity #1 | Construction planning and project management to include: compliance with the Davis Bacon Act |
| Activity #2 | Prep work of the site to include: proper permitting and use of licensed, insured contractors |
| Activity #3 | Construct a 40-foot wide roadway in the southern portion of currently undeveloped Southmoor Ridge subdivision |
| Activity #4 | Construction of two (2) new ADA curb ramps |
| Activity #5 | Construction of new gutters and a cross street drainage culvert |
| Activity #6 | Installation of street lights and a pedestrian trail |

B. National Objectives

All activities funded with CDBG funds must meet one of the CDBG program's National Objectives: benefit low- and moderate-income persons; aid in the prevention or elimination of slums or blight; or meet community development needs having a particular urgency, as defined in 24 CFR 570.208.

The Subrecipient certifies that the activity/activities carried out under this Agreement will meet the National Objective of **benefiting low- and moderate-income area benefit, LMA.**

C. Income Benefit Goals

It is anticipated that approximately one thousand five hundred three (1,503) unduplicated low- to moderate-income residents will be served over the course of this twelve (12) month Agreement. The goal is to serve Census Tracts 45.01 Block Group 3 and 45.08 Block Group 1, which of the 2,168 persons living within the areas, there are one thousand five hundred three (1,503) persons at the 0-80% area median income (AMI) level (very low to moderate-income), which is approximately 69.3% of the total population.

D. Monitoring

The County will monitor the performance of the Subrecipient against activities, goals and performance standards as stated above. In-house report monitoring and on-site monitoring will be conducted. Substandard performance as determined by the County will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the County, suspension or termination procedures will be initiated.

SECTION 2: CDBG PROJECT DESCRIPTION

Type of Project: Public Facilities and Infrastructure Improvements- Street Improvements

Matrix Code: 03K

Basic Eligibility Citation: 570.201(c)

Amount Funded: \$145,500

SECTION 3: TERM OF AGREEMENT

The term of this Agreement will be for a twelve (12) month period from the date of execution and approval by the El Paso County Chairman of the Board of County Commissioners. The timely use of funds is critical. The term of this Agreement may be extended should additional time for auditing this project be required, in accordance with law; this Agreement shall be deemed automatically extended until such time as the said audit shall be completed. The provisions herein shall be extended to cover any additional time period during which the Subrecipient remains in control of CDBG funds or other CDBG assets, including program income.

Additionally, the Subrecipient must comply with a "Continuing Use" requirement, which assures that capital investments will provide long-term, continuous benefits to low- and moderate-income persons or areas. Any projects or capital improvement cost paid with more than \$20,000 and up to \$50,000 in CDBG funds must be able to provide benefits to low- and moderate-income persons or areas for a minimum of five (5) years at the project site. For projects exceeding \$50,000 and up to \$100,000 in CDBG funds, the minimum continuing use is ten (10) years. Projects that exceed \$100,000 to \$150,000 in CDBG funds must be held in the same use for at least fifteen (15) years. Projects that are over \$150,000 to \$200,000 in CDBG funds must be held in the same use for twenty (20) years. Projects that have \$200,000 or more in CDBG funds must continue to serve the low- to moderate-income population for a minimum of twenty-five (25) years.

SECTION 4: PROGRAM REPORTING

The Subrecipient shall submit such reports as required by the County to meet its local obligations and its obligations to HUD. The County will prescribe the report format, as well as the time and location for submission of such reports. Required reports include, but are not limited to the following:

- A. Quarterly reports which shall include the progress made to date, or justification for lack of progress, in providing the services specified in Article 1, Section 1: Scope of Services, of this Agreement.

- A. Upon written request by the Subrecipient, the County shall make or arrange for payments to the Subrecipient of allowable reimbursable costs not covered by previous payments;
- B. Disposition of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee);
- C. The Subrecipient shall submit within thirty (30) days after the date of expiration of this Agreement, all financial, performance and other reports required by this Agreement, and in addition, will cooperate in a program audit by the County or its designee; and
- D. Closeout of funds will not occur unless all requirements of 24 CFR 92.507 are met and all outstanding issues with the Subrecipient have been resolved to the satisfaction of the County.

The Subrecipient's obligation to the Grantee shall not end until all closeout requirements are completed. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

SECTION 2: DOCUMENTATION OF COSTS AND OTHER FINANCIAL REPORTING

All costs shall be supported by properly executed payrolls, time records, invoices, vouchers or other official documentation, as evidence of the nature and propriety of the charges. All accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible, and upon reasonable notice, the County and HUD shall have the right to audit the records of the Subrecipient as they relate to the Agreement and the activities and services described herein.

The Subrecipient shall also:

- A. Maintain an effective system of internal fiscal control and accountability for all CDBG funds and property acquired or improved with CDBG funds, and make sure the same are used solely for authorized purposes.
- B. Keep a continuing record of all disbursements by date, check number, amount, vendor, description of items purchased and line item from which the money was expended, as reflected in the Subrecipient's accounting records.
- C. Maintain payroll, financial, and expense reimbursement records for a period of five (5) years after receipt of final payment under this Agreement.
- D. Permit inspection and audit of its records with respect to all matters authorized by this Agreement by representatives of the County or HUD at any time during normal business hours and as often as necessary.
- E. Inform the County concerning any funds allocated to the Subrecipient, that the Subrecipient anticipates will not be expended during the term of this Agreement, and permit the reassignment of the same by the County to other Subrecipients.
- F. Repay the County any funds in its possession at the time of the termination of this Agreement that may be due to the County or HUD.
- G. Maintain complete records concerning the receipt and use of all program income. Program income shall be reported on a monthly basis, or otherwise prescribed by the County, on forms provided by the County.

SECTION 3: REIMBURSEMENT

The County shall reimburse the Subrecipient only for actual incurred costs upon presentation of properly executed reimbursement forms as provided and approved by the County. Only those allowable costs directly related to this Agreement shall be paid. The amount of each request must be limited to the amount needed for payment of eligible costs.

In the event that the County or HUD determines that any funds were expended by the Subrecipient for unauthorized or ineligible purposes or the expenditures constitute disallowed costs in any other way, the

County or HUD may order repayment of the same. The Subrecipient shall remit the disallowed amount to the County within thirty (30) days of written notice of the disallowance.

- A. The Subrecipient agrees that funds determined by the County to be surplus upon completion of the Agreement will be subject to cancellation by the County.
- B. The Subrecipient agrees that upon expiration of this Agreement, the Subrecipient shall transfer to the County any CDBG funds on hand at the time of the expiration and any accounts receivable attributable to the use of CDBG funds.
- C. The County shall be relieved of any obligation for payments if funds allocated to the County cease to be available for any cause other than misfeasance of the County itself.
- D. The County reserves the right to withhold payments pending timely delivery of program reports or documents as may be required under this agreement.

SECTION 4: PROGRAM INCOME

The Subrecipient shall report monthly on all program income (as defined at 24 CFR 570.500(a)) generated by activities carried out with CDBG funds made available under this Agreement. The use of program income by the Subrecipient shall comply with the requirements set forth at 24 CFR 570.504. By way of further limitations, the Subrecipient may use such income only during the term of this Agreement and only for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program income balances on hand. All unexpended program income shall be returned to the County at the completion of the Agreement. Any interest earned on cash advances from the U.S. Treasury and from funds held in a revolving fund account is not program income and shall be remitted promptly to the Grantee.

ARTICLE 3- GENERAL CONDITIONS AND REQUIREMENTS

SECTION 1: NOTICES

Notices required by this Agreement shall be in writing and delivered via mail (postage prepaid), commercial courier, personal delivery or sent by facsimile or other electronic means. Any notice delivered or sent as aforesaid shall be effective on the date of delivery or sending. All notices and other written communications under this Agreement shall be addressed to the individuals in the capacities indicated below, unless otherwise modified by subsequent written notice.

Grantee/County

El Paso County
Budget and Economic Development
200 S. Cascade, Suite 150
Colorado Springs, CO 80903
719-520-6484
crystallatier@elpasoco.com

Subrecipient

City of Fountain
116 S. Main Street
Fountain, Colorado 80817

SECTION 2: GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart J and subpart K of these regulations, except that (1) the Subrecipient does not assume the County's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the County's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this Agreement. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

The Subrecipient shall comply with all applicable Federal laws, regulations, and requirements and all provisions of this Agreement, which include compliance with the provisions of the HCD Act and all rules, regulations, guidelines, and circulars promulgated by the various Federal departments, agencies, administrations, and commissions relating to the CDBG Program. The applicable laws and regulations include, but are not limited to:

- 24 CFR Part 570;
- 24 CFR Parts 84 and 85;
- 2 CFR Part 200 (hereinafter "OMB Omni Circular")
- The Davis-Bacon Fair Labor Standards Act;
- The Contract Work Hours and Safety Standards Act of 1962;
- Copeland "Anti-Kickback" Act of 1934;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA);
- Title VI of the Civil Rights Act of 1964; (Public Law 88-352 implemented in 24 CFR Part 1)
- Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (Public Law 90-234 and Executive Order 11063 as amended by Executive Order 12259 (implemented in 24 CFR Part 107);
- Sections 104(b) and 109 of the Housing and Community Development Act of 1974;
- Section 3 of the Housing and Urban Development Act of 1968;
- Equal employment opportunity and minority business enterprise regulations established in 24 CFR part 570.904;
- Non-discrimination in employment, established by Executive Order 11246 (as amended by Executive Orders 11375 and 12086);
- Section 504 of the Rehabilitation Act of 1973 Uniform Federal Accessibility Standards;
- The Architectural Barriers Act of 1968;
- The Americans With Disabilities Act (ADA) of 1990;
- The Age Discrimination Act of 1975, as amended;
- National Environmental Policy of 1969 (42 USC 4321 et seq.), as amended;
- Lead Based paint regulations established in 24 CFR Parts 35, 570.608, and 24 CFR 982.401;
- Asbestos guidelines established in CPD Notice 90-44;
- HUD Environmental Criteria and Standards (24 CFR Part 51);
- The Energy Policy and Conservation Act (Public Law 94-163) and 24 CFR Part 39;
- Historic Preservation Act of 1966, as amended, and related laws and Executive Orders;
- Executive Order 11988, Floodplain Management, 1977 (42 FR 26951 et seq.);
- Flood Disaster Protection Act of 1973.
- Colorado House Bill 06-1023 and 06-1043

B. "Independent Contractor"

Nothing contained in this Agreement is intended, or shall be construed in any manner to create or establish the relationship of employer/employee between the Grantee and the Subrecipient. The Subrecipient shall at all times remain an "independent contractor" with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, as the Subrecipient is an independent contractor.

C. Hold Harmless

The Subrecipient agrees to hold harmless, defend and indemnify the County and its appointed and elected officers and employees from and against any and all liability, loss, costs, damage and expense, including costs and attorney fees in defense thereof because of any actions, claims, lawsuits, damages, charges and judgments whatsoever that arise out of the Subrecipient's performance or nonperformance of the services or subject matter called for in this Agreement.

D. Workers' Compensation

To the extent permitted by law, The Subrecipient shall provide Workers' Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

E. Insurance & Bonding

The Subrecipient shall carry sufficient insurance coverage to protect Agreement assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond covering all employees in an amount equal to cash advances from the Grantee. The Subrecipient shall comply with the bonding and insurance requirements of 24 CFR 84.31 and 84.48.

The certificates of insurance shall be provided to the County by the Subrecipient's insurance agent or carrier as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. Insurance limits must be on each Certificate of Insurance. Each Certificate of Insurance shall be reviewed and approved by the County prior to commencement of this Agreement. No other form of certificate shall be used.

The Subrecipient will not be relieved of any liability, claims, demands, or other obligations assumed by its failure to procure or maintain insurance, or its failure to procure or maintain insurance in sufficient amounts, durations, or types.

Failure on the part of the Subrecipient to procure or maintain policies providing the required coverages, conditions and minimum limits will constitute a material breach of this Agreement, upon which the County may immediately terminate this contract.

F. Licensing

The Subrecipient agrees to comply with and obtain at its own expense, if necessary, all applicable Federal, State, County or Municipal standards for licensing, certifications and operation of facilities and programs, and accreditation and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

In the event of an investigation or suspension regarding any Subrecipient license related to the services for which the County is providing funding under this Agreement, the County may terminate this Agreement and withhold further Agreement funds. In addition, monies already received under this Agreement may be owed back to the County.

G. Amendments

The parties may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of each organization, and approved by the Grantee's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Grantee or Subrecipient from its obligations under this Agreement. The Grantee may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies or available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both Grantee and Subrecipient.

H. Failure to Perform

In the event of a failure by the Subrecipient to comply with any terms or conditions of this Agreement or to provide in any manner activities or other performance as agreed herein, the County reserves the right to temporarily withhold all or any part of payment pending correction of the deficiency, suspend all or part of the Agreement, or prohibit the Subrecipient from incurring additional obligation of funds until the County is satisfied that corrective action has been taken or completed. The option to withhold funds is in addition to, and not in lieu of the County's right to suspend or terminate this Agreement. The County may consider performance under this Agreement when considering future awards.

I. Suspension or Termination

The Grantee may pursue such remedies as are available to it in accordance with 24 CFR 85.43, including but not limited to suspension or termination of this Agreement, if the Subrecipient materially fails to comply with any terms or conditions of this Agreement, which include, but are not limited to, the following:

- A. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become applicable at any time;
- B. Failure, for any reason, of the Subrecipient to fulfill in a timely and proper manner its obligations under this Agreement;
- C. Ineffective or improper use of funds provided under this Agreement;
- D. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect; or
- E. Failure to take satisfactory corrective action as directed by the County.

In accordance with 24 CFR 85.44, this Agreement may also be terminated for convenience by either the Grantee or the Subrecipient, in whole or in part, by setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. If, in the case of a partial termination, however, the Grantee determines that the remaining portion of the award will not accomplish the purpose for which the award was made, the Grantee may terminate the award in its entirety.

In the event that funding from the Federal government is withdrawn, reduced or limited in any way after the effective date of this Agreement but prior to its normal completion, the County may summarily terminate this Agreement as to the funds reduced or limited, notwithstanding any other termination provisions of this agreement. Termination under this Section shall be effective upon receipt of written notice. In the case of a suspension or termination, monies already received under this Agreement may be owed back to the County and the County may also declare the Subrecipient ineligible for further participation in the CDBG program.

SECTION 3: ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

2. Cost Principles

The Subrecipient shall administer its program in conformance with Omni Circular. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis.

B. Documentation and Record Keeping

1. Records to be Maintained

The Subrecipient shall maintain all records required by the Federal regulations specified in 24 CFR 570.506 that are pertinent to the activities to be funded under this Agreement. Such records shall include, but are not be limited to:

- Records providing a full description of each activity undertaken;
- Records demonstrating that each activity undertaken meets one of the National Objectives of the CDBG program;
- Records demonstrating the boundaries of the service area, if applicable;
- Records required to determine the eligibility of activities as well as the eligibility of beneficiaries;
- Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with CDBG assistance;

- Records documenting compliance with the fair housing and equal opportunity components of the CDBG program;
- Financial records as required by 24 CFR 570.502, and 24 CFR 84.21–28; and
- Other records necessary to document compliance with Subpart K of 24 CFR Part 570.

2. Retention

The Subrecipient shall retain all financial records, supporting documents, statistical records, and all other records pertinent to the Agreement for a period of five (5) years. The retention period begins on the date of the submission of the Grantee's annual performance and evaluation report to HUD in which the activities assisted under the Agreement are reported on for the final time. Notwithstanding the above, if there are litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five year period, whichever occurs later.

3. Client Data

The Subrecipient shall maintain client data demonstrating client eligibility for services provided, as applicable. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, demographic information and description of service provided. Such information shall be made available to Grantee monitors or their designees for review upon request.

4. Disclosure

The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the Grantee's or Subrecipient's responsibilities with respect to services provided under this Agreement, is prohibited unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian.

5. Audits & Inspections

All Subrecipient records with respect to any matters covered by this Agreement shall be made available to the Grantee, HUD, and the Comptroller General of the United States or any of their authorized representatives at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the Subrecipient within thirty (30) days after receipt by the Subrecipient. Failure of the Subrecipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Subrecipient hereby agrees to have an annual agency audit conducted in accordance with current Grantee policy concerning subrecipient audits and OMB Omni Circular.

C. Citizen Participation

The Subrecipient will have processes in place (satisfaction surveys, board representation, grievance procedures, etc.) which receive, document and utilize the input from low-income persons potentially benefiting or affected by the program or project covered under this Agreement.

D. Procurement

1. Compliance

The Subrecipient shall comply with current Grantee policy concerning the purchase of equipment and shall maintain inventory records of all non-expendable personal property as defined by such policy as may be procured with funds provided herein. All program assets (unexpended program income, property, equipment, etc.) shall revert to the Grantee upon termination of this Agreement.

2. OMB Standards

Unless specified otherwise within this agreement, the Subrecipient shall procure all materials, property, or services in accordance with the requirements of 24 CFR 84.40-48.

E. Travel

The Subrecipient shall obtain written approval from the Grantee for any travel outside the metropolitan area with funds provided under this Agreement.

F. Use and Reversion of Assets

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 24 CFR Part 84 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

- The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
- Real property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$20,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until five (5) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate]. If the Subrecipient fails to use CDBG assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period [or such longer period of time as the Grantee deems appropriate].
- In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (1) transferred to the Grantee for the CDBG program or (2) retained after compensating the Grantee in an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment.

SECTION 4: RELOCATION, REAL PROPERTY ACQUISITION AND ONE-FOR-ONE HOUSING REPLACEMENT

The Subrecipient agrees to comply with (1) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), and implementing regulations at 49 CFR Part 24 and 24 CFR 570.606(b); (2) the requirements of 24 CFR 570.606(c) governing the Residential Anti-displacement and Relocation Assistance Plan under section 104(d) of the HCD Act; and (3) the requirements in 24 CFR 570.606(d) governing optional relocation policies. The Grantee may, however, preempt the optional policies. The Subrecipient shall provide relocation assistance to displaced persons as defined by 24 CFR 570.606(b)(2) that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-assisted project. The Subrecipient also agrees to comply with applicable Grantee ordinances, resolutions and policies concerning the displacement of persons from their residences.

Displacement of persons (including families, individuals, businesses, non-profit organizations and farms) as a result of activities assisted with CDBG funds is generally discouraged.

SECTION 5: PERSONNEL AND BENEFICIARY CONDITIONS

A. Civil Rights

1. General Compliance

The Subrecipient agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and Executive Order 11246 as amended by Executive Orders 11375, 11478, 12107 and 12086.

2. Nondiscrimination

The Subrecipient agrees to comply with the nondiscrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable nondiscrimination provisions in Section 109 of the HCDA are still applicable, which stipulates that no person in the United States shall on the grounds of race, color, national origin or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part pursuant to agreement.

Additionally, the Subrecipient shall not, on the grounds of race, color, sex/gender, sexual orientation, familial status, religion, national origin, creed, ancestry, marital status, age or disability or handicap:

- Deny a qualified individual any facilities, financial aid, services or other benefits provided under this Agreement;
- Provide any facilities, financial aid, services or other benefits which are different, or are provided in a different manner, from those provided to others under this Agreement;
- Subject an individual to segregated or separate treatment in any facility, or in any matter if process related to receipt of any service or benefit under this Agreement;
- Restrict an individual's access to or enjoyment of any advantage or privilege enjoyed by others in connection with any service or benefit under this Agreement;
- Treat anyone differently from others in determining if they satisfy any admission, enrollment, eligibility, membership or other requirement or condition which the individual must meet to be provided a service or a benefit under this Agreement.
- Deny anyone an opportunity to participate in any program or activity as an employee who is different from that afforded others under this agreement.

If assignment and/or subcontracting has been authorized in writing, said assignment or subcontract shall include appropriate safeguards against discrimination in client services binding upon each contractor or subcontractor. The Subrecipient shall take such actions as may be required to ensure full compliance with the provisions, including sanction for noncompliance.

3. Land Covenants

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not discriminate.

4. Section 504

The Subrecipient agrees to comply with all Federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination against the individuals with disabilities or handicaps in any Federally assisted program. The Grantee shall provide the Subrecipient with any guidelines necessary for compliance with that portion of the regulations in force during the term of this Agreement.

5. Architectural Barriers Act/Americans with Disabilities Act

The Subrecipient shall meet the requirements, where applicable, of the Architectural Barriers Act and the Americans with Disabilities Act, as set forth in 24 CFR 570.614. A building or facility designed, constructed, or altered with funds allocated or reallocated under CDBG program after December 11, 1995 and that meets the definition of a "residential structure" as defined in 24 CFR Part 40.2 or the definition of a "building" as defined in 41 CFR Part 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 USC 4151-4157) and shall comply with the Uniform Federal Accessibility Standards. The Americans with Disabilities Act ("ADA") (42 USC 12131; 47 USC 155, 210, 218, and 255) requires that the design and construction of facilities for first occupancy after January 26, 1993 must include measures to make them readily accessible and usable by individuals with disabilities. The ADA further requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

B. Affirmative Action

1. Approved Plan

The Subrecipient agrees that it shall be committed to carry out pursuant to the Grantee's specifications an Affirmative Action Program, in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1966.

2. Women- and Minority-Owned Businesses (W/MBE)

The Subrecipient will use its best efforts to afford small businesses, minority business enterprises, and women's business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the terms "small business" means a business that meets the criteria set forth in section 3(a) of the Small Business Act, as amended (15 U.S.C. 632), and "minority and women's business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are Afro-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The Subrecipient may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

3. Access to Records

The Subrecipient shall furnish and cause each of its own subrecipients or subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by the Grantee, HUD or its agent, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

4. Notifications

The Subrecipient will send to each labor union or representative of workers with which It has a collective bargaining agreement or other contract or understanding a notice, to be provided by the agency contracting officer, advising the labor union or worker's representative of the Subrecipient's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement

The Subrecipient will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity and Affirmative Action employer.

The Subrecipient shall comply with Executive Order 11246 as amended by Executive Order 12086 and the regulations issued pursuant thereto (41 CFR Chapter 60), and will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The Subrecipient will take affirmative action to ensure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

The Subrecipient agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

6. Subcontract Provisions

The Subrecipient will include the provisions of Section 5. A, Civil Rights, and B, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own subrecipients or subcontractors.

C. Employment Restrictions

1. Prohibited Activity

The Subrecipient is prohibited from using funds provided herein or personnel employed in the administration of the program for: political activities; inherently religious activities; lobbying; political patronage; and nepotism activities.

2. Labor Standards

The Subrecipient agrees to comply with the requirements of the Secretary of Labor in accordance with the Davis-Bacon Act as amended, the provisions of Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) and all other applicable Federal, state and local laws and regulations pertaining to labor standards insofar as those acts apply to the performance of this Agreement. The Subrecipient agrees to comply with the Copeland Anti-Kick Back Act (18 U.S.C. 874 et seq.) and its implementing regulations of the U.S. Department of Labor at 29 CFR Part 5. The Subrecipient shall maintain documentation that demonstrates compliance with hour and wage requirements of this part. Such documentation shall be made available to the Grantee for review upon request.

The Subrecipient agrees that, except with respect to the rehabilitation or construction of residential property containing less than eight (8) units, all contractors engaged under contracts in excess of \$2,000.00 for construction, renovation or repair work financed in whole or in part with assistance provided under this contract, shall comply with Federal requirements adopted by the Grantee pertaining to such contracts and with the applicable requirements of the regulations of the Department of Labor, under 29 CFR Parts 1, 3, 5 and 7 governing the payment of wages and ratio of apprentices and trainees to journey workers; provided that, if wage rates higher than those required under the regulations are imposed by state or local law, nothing hereunder is intended to relieve the Subrecipient of its obligation, if any, to require payment of the higher wage. The Subrecipient shall cause or require to be inserted in full, in all such contracts subject to such regulations, provisions meeting the requirements of this paragraph.

3. Drug-Free Workplace

The Subrecipient will or will continue to provide a drug-free workplace by:

- Maintaining a Zero Tolerance Drug Policy;
- Posting in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in

the Subrecipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

- Stating in all solicitations or advertisements for employees or subcontractors placed by or on behalf of the Subrecipient that the Subrecipient maintains a drug-free workplace;
- Establishing an ongoing drug-free awareness program to inform employees about:
 - The dangers of drug abuse in the workplace;
 - The Subrecipient's policy of maintaining a drug-free workplace;
 - Any available drug counseling, rehabilitation, and employee assistance programs; and
 - The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- Including the provisions of the foregoing clauses in all third party contracts, subcontracts, and purchase orders that exceed ten thousand dollars (\$10,000.00), so that the provisions will be binding upon each subcontractor or vendor.

4. "Section 3" Clause

a. Compliance

Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued there under prior to the execution of this contract, shall be a condition of the Federal financial assistance provided under this contract and binding upon the Subrecipient and any of the Subrecipient's subrecipients and subcontractors. Failure to fulfill these requirements shall subject the Subrecipient and any of the Subrecipient's subrecipients and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The Subrecipient certifies and agrees that no contractual or other disability exists that would prevent compliance with these requirements.

The Subrecipient further agrees to comply with these "Section 3" requirements and to include the following language in all subcontracts executed under this Agreement:

"The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

The Subrecipient further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs. The Subrecipient further agrees to award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project to business concerns that provide economic opportunities for low- and very low-income

persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns that provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

The Subrecipient certifies and agrees that no contractual or other legal incapacity exists that would prevent compliance with these requirements.

b. Notifications

The Subrecipient agrees to send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising said labor organization or worker's representative of its commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

c. Subcontracts

The Subrecipient will include this Section 3 clause in every subcontract and will take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not subcontract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

D. Conduct

1. Assignability

The Subrecipient shall not assign or transfer any interest in this Agreement without the prior written consent of the Grantee; provided, however, that claims for money due or to become due to the Subrecipient from the Grantee under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Grantee. All terms and conditions of this Agreement shall apply to any approved subcontract or assignment related to the Agreement.

2. Subcontracts

a. Approvals

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this Agreement without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content

The Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

d. Selection Process

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with

applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Hatch Act

The Subrecipient agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

4. Illegal Aliens

The Subrecipient shall comply with C.R.S. § 8-17.5-101, et seq., regarding Illegal Aliens - Public Contracts for Services, applicable to this Agreement. By execution of this Agreement, the Subrecipient certifies that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Subrecipient will participate in either the federal E-Verify Program (which is jointly administered by the U.S. Department of Homeland Security and the U.S. Social Security Administration) (the "E-Verify Program") or the Colorado Department of Labor and Employment, Employment Verification Program established pursuant to C.R.S. § 8-17.5-102(5)(c) (the "Department Program"), in order to confirm the eligibility of all employees who are newly hired for employment to perform work under this Agreement.

The Subrecipient shall not:

- Knowingly employ or contract with an illegal alien to perform work under this Agreement; or
- Enter into a contract with a contractor that fails to certify to the Subrecipient that the contractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

The Subrecipient hereby certifies that it 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.

In accordance with the 2008 amendments to C.R.S. § 8-17.5-102(5)(c)(II), within twenty (20) days after hiring an employee who is newly hired for employment to perform work under this Agreement, the Subrecipient shall affirm to the County that the Subrecipient has examined the legal work status of such employee, retained copies of the documents required by 8 U.S.C. § 1324a, and not altered or falsified the identification documents for such employees. The Subrecipient shall provide a written, notarized copy of the affirmation to the County. Such written, notarized affirmation shall identify each of the specific CDBG Subrecipient Agreement(s) on which such newly hired employee of the Subrecipient is performing, or will perform, work.

The Subrecipient shall not use either the E-Verify Program or Department Program to undertake pre-employment screening of job applicants while this Agreement is in effect.

If the Subrecipient obtains actual knowledge that a contractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Subrecipient shall:

- Notify the contractor and the County within three (3) days that the Subrecipient has actual knowledge that the contractor is employing or contracting with an illegal alien; and
- Terminate the contract with the contractor if within three (3) days of receiving the notice required pursuant to the preceding sub-subparagraph of this subparagraph, the contractor does not stop employing or contracting with the illegal alien; except that the Subrecipient shall not terminate the contract with the contractor if during such three (3) days the contractor provides information to establish that the contractor has not knowingly employed or contracted with an illegal alien.

The Subrecipient shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).

If the Subrecipient violates this provision of this Agreement, the County may terminate the Agreement for a breach of contract. If the Agreement is so terminated, the Subrecipient shall be liable for actual and consequential damages to the County as required by law. The County will notify the Office of the Secretary of State if the Subrecipient violates this provision of this Agreement and terminate the Agreement for such breach.

The Subrecipient must verify and document the lawful presence of its end user beneficiary clients in accordance with the provisions of C.R.S. § 24-76.5-103 whenever its end user beneficiary client:

- Is eighteen years of age or older; and
- Is receiving a direct monetary benefit from CDBG funds allocated; and
- Has submitted a written application to the Subrecipient to receive benefits that are funded in whole or in part by CDBG funds.

If the conditions above are met, and if none of the statutory exemptions apply, then in accordance with C.R.S. §§ 24-76.5-103(4)(a)(I) and 24-76.5(103)(4)(b), At the time of application the Subrecipient's end user beneficiary client receives benefits funded in whole or in part by CDBG Funds, the Subrecipient must require that the end user beneficiary both:

- Produce a valid Identification Document as listed in the statute; and
- Sign an Affidavit as required by the statute.

Each time the end user beneficiary produces the Identification Document and signs the Affidavit, the Subrecipient shall: (1) photocopy the Identification Document (2) retain the dated photocopy in its records; (3) retain the Affidavit in its records; and (4) make such records available for inspection by the County or HUD or any other governmental agency for a period of ten (10) years.

5. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include, but are not limited to the following:

- The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- No employee, officer or agent of the Subrecipient shall participate in the selection, the award or the administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

6. Lobbying

The Subrecipient hereby certifies that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension,

continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and

It will require that the language of paragraph (d) of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all Subrecipients shall certify and disclose accordingly:

Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

7. Grantee Recognition

The Subrecipient shall ensure recognition of the role of the County in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to the funding source. In addition, the Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

8. Copyright

If this Agreement results in any copyrightable material or inventions, the Grantee reserves the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the work or materials for governmental purposes.

9. Religious Activities

The Subrecipient agrees that funds provided under this Agreement will not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

In addition to, and not in substitution for, other provisions of this Agreement regarding the provisions of services utilizing CDBG funds the Subrecipient agrees that, in connection with such services:

- It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;
- It will not discriminate against any person applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion;
- It will provide no mandatory religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such services.

10. Other Program Requirements

The Subrecipient shall carry out each activity in compliance with all Federal laws and regulations described in 24 CFR 570 Subpart K, regardless if the law is specifically stated in this Agreement, except that:

- The Subrecipient does not assume the County's environmental responsibilities described in Section 570.604; and
- The Subrecipient does not assume the County's responsibility for initiating the review process under Executive Order 12372.

SECTION 6: ENVIRONMENTAL

A. General Provisions

CDBG regulations require the preparation of a project Environmental Review Record (ERR) and environmental clearance before funds are expended or costs incurred. The overall governing legislation is the National Environmental Policy Act (NEPA).

County staff will complete the ERR. The time required for completion of the ERR can vary from a week to a few months. If the initial Environmental Assessment determines that an Environmental Impact Statement (EIS) or a Biological Assessment (BA) is necessary, the Subrecipient will be required to make appropriate budget modifications to assure the costs of the EIS or BA are paid for from project funds. After completing the ERR, the County may publish a notice of a Finding of No Significant Environmental Impact (FONSI) in a local newspaper declaring the intent to request release of project funds from HUD. After the release of the funds by HUD, the County will send the Subrecipient a written notice to begin the project. Subrecipients shall not implement any project activities or incur any project costs until receipt of the notice to proceed.

The County must also determine whether the project meets other applicable statutory and regulatory requirements which include by are not limited to the following:

B. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, et seq.;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

C. Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

D. Lead-Based Paint

The Subrecipient agrees that any construction or rehabilitation of residential structures with assistance provided under this Agreement shall be subject to HUD Lead-Based Paint Regulations at 24 CFR 570.608, and 24 CFR Part 35, Subpart B. Such regulations pertain to all CDBG-assisted housing and require that all owners, prospective owners, and tenants of properties constructed prior to 1978 be properly notified that such properties may include lead-based paint. Such notification shall point out the hazards of lead-based paint and explain the symptoms, treatment and precautions that should be taken when dealing with lead-based paint poisoning and the advisability and availability of blood lead level screening for children under seven. The notice should also point out that if lead-based paint is found on the property, abatement measures may be undertaken. The regulations further require that, depending on the amount of Federal funds applied to a property, paint testing, risk assessment, treatment and/or abatement may be conducted.

E. Historic Preservation

The Subrecipient agrees to comply with the Historic Preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the procedures set forth in 36 CFR Part 800, Advisory Council on Historic Preservation Procedures for Protection of Historic Properties, insofar as they apply to the performance of this Agreement. In general, this requires concurrence from the State Historic Preservation Officer for all rehabilitation and demolition of historic properties that are fifty years old or older or that are included on a Federal, state, or local historic property list.

SECTION 7: HANDBOOK RECEIPT CERTIFICATION

The Subrecipient certifies that it has received the HUD published *"Playing by the Rules- A Handbook for CDBG Subrecipients on Administrative Systems"* in either print or electronic format from the County. The Subrecipient further certifies and agrees that it is the Subrecipient's obligation as a part of this Agreement to read and understand the Handbook.

SECTION 8: SEVERABILITY

It is understood and agreed by the parties that if any part, term, or provision of this Agreement is held by the courts to be invalid, illegal or in conflict with any law, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.

SECTION 9: SECTION HEADINGS AND SUBHEADINGS

The section headings and subheadings contained in this Agreement are included for convenience only and shall not limit or otherwise affect the terms of this Agreement.

SECTION 10: WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

SECTION 11: SUCCESSORS

This Agreement shall be binding upon each of the parties, their assigns, purchasers, trustees, and successors.

SECTION 12: ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

SECTION 13: NO THIRD-PARTY BENEFICIARIES

Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause or action or other right.

SECTION 14: GOVERNING LAW AND JURISDICTION

This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date of the most recent signatory.

Grantee:
El Paso County, Colorado

Date _____

By _____
Chair, Board of County Commissioners

Attest:

COUNTY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

Federal I. D. # 84-6000764

[ASSISTANT] COUNTY ATTORNEY

Subrecipient:
City of Fountain

Date _____

By _____

Federal I. D. # _____

Title: _____

Secondary signature:

By _____

Title: _____



Regular City Council Meeting

GID2- Item #1

September 27, 2016

Summary Information

Title: First Reading Of Ordinance 1679GID2 An Ordinance Of The Fountain General Improvement District No. 2, City Of Fountain, Colorado, For Inclusion Of Certain Property Sometimes Known As Eagleside Filing #2 Into The Fountain General Improvement District No. 2, City Of Fountain, Colorado

Initiator: City Clerk

Presenter: City Clerk

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The attached Ordinance authorizes the inclusion of property owned by COLA that has petitioned to join Fountain General Improvement District No. 2, City of Fountain, Colorado.

Attachments: Ordinance No.1679GID2
Petition for Inclusion of Property

Background Information

In August, 2012, the City Council approved Ordinance No. 1577 organizing the Fountain General Improvement District No. 2, City of Fountain, Colorado. The purpose of the district is to provide an alternate financing mechanism for the funding of certain improvements and funding of certain services benefiting the properties included within the boundaries of the district that would otherwise be funded through the collection of impact fees by the City. The City Council serves as the ex officio board of directors of the district. In conjunction with the creation of district, the Council enacted Ordinance No. 1579 which provides for the exemption of property with the boundaries of the district from the service expansion fee, exemption from the plat plan review fee, exemption from residential construction evaluation surcharge, and a reduction of the water tap fee. In November, 2012, a TABOR election was held by the district which authorized the imposition of a 10 mill levy on property located within the district. The tax resulting from this mill levy will be paid by the property owners located within the boundaries of the district to the district. When the district was formed, it was contemplated that other property owners may desire to join the district. This Ordinance amends the boundaries of the district to include the Petitioner's property within the district. The property will be subject to the district's 10 mill levy starting in 2014.

Recommendation

Approve Ordinance No. 1679GID2

Proposed Motion

"I recommend the approval of Ordinance No. 1679GID2 on first reading"

ORDINANCE NO. 1679GID2

**AN ORDINANCE OF THE FOUNTAIN GENERAL IMPROVEMENT DISTRICT NO. 2,
CITY OF FOUNTAIN, COLORADO, FOR INCLUSION OF CERTAIN PROPERTY
SOMETIMES KNOWN AS EAGELSIDE FILING #2 INTO THE FOUNTAIN
GENERAL IMPROVEMENT
DISTRICT NO. 2, CITY OF FOUNTAIN, COLORADO**

WHEREAS, the City Council, in its capacity as the ex officio Board of Directors of the Fountain General Improvement District No. 2 City of Fountain, Colorado (the "District") as more particularly set forth in the Petition executed by COLA (the "Owner") filed pursuant to Section 31-25-618, C.R.S. seeking the inclusion of certain property sometimes known as Lots 1-48, Eagleside View Filing #2 into the District as more particularly set forth in the Petition for Inclusion attached hereto as Exhibit 1 (the "Petition"); and

WHEREAS, public notice of the filing of the Petition and the public hearing to be held thereon has been given and published in accordance with Sections 31-25-618 and 31-25-602; and

WHEREAS, the public hearing was properly noticed and conducted on Tuesday, September 27, 2016; and

WHEREAS, the Board has held and concluded such public hearing in accordance with law, at which hearing no persons having objections to the inclusion of the property described in the Petition appeared; and

WHEREAS, the area sought to be included into the District is located entirely within the City of Fountain.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE FOUNTAIN GENERAL IMPROVEMENT DISTRICT NO. 2, CITY OF FOUNTAIN, COLORADO:

Section 1. The Board, being fully informed, hereby finds and determines that it has jurisdiction in this matter pursuant to Section 31-25-618, C.R.S.

Section 2. The Board, being fully informed, hereby finds and determines that the change in boundaries of the District as proposed in the Petition does not adversely affect the District.

Section 3. Pursuant to Section 31-25-618, C.R.S., the Board hereby grants the Petition and orders the inclusion of the land described in the Petition (the "Property") into the boundaries of the District effective upon the recordation of a certified copy of this Ordinance with the Clerk and Recorder of El Paso County Colorado. The Property is more fully and accurately described as set forth in Exhibit 2 (legal description).

Section 4. Pursuant to Section 31-25-619, C.R.S., the Property shall be subject to the levy of taxes for the payment of its proportionate share of any indebtedness of the District existing as of the date this Ordinance is recorded with the Clerk and Recorder of El Paso County, Colorado.

Section 5. The City Clerk, acting in his or her ex officio capacity as Secretary of the District, is hereby directed to file a certified copy of this Ordinance with the Clerk and Recorder of El Paso County, Colorado within thirty (30) days following the date on which this Ordinance becomes effective.

Introduced, read by title, and passed this _____ day of _____, 2016, by the City Council, City of Fountain, Colorado, acting in its ex officio capacity as the Board of Directors of the Fountain General Improvement District No. 2, signed by the Mayor, and ordered 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, Colorado.

Mayor and Ex Officio Presiding Officer of
the District

ATTEST:

City Clerk and Ex Officio
Secretary of the District

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

Mayor and Ex Officio Presiding Officer of
the District

ATTEST:

City Clerk and Ex Officio
Secretary of the District

EXHIBIT 2

PETITIONER'S PROPERTY

Lots 1-48, Eagleside View Filing #2, City of Fountain, El Paso County, Colorado

**NOTICE PROPOSED INCLUSION OF CERTAIN LANDS INTO THE FOUNTAIN GENERAL
IMPROVEMENT DISTRICT NO. 2**

NOTICE IS HEREBY GIVEN THAT THERE HAS BEEN FILED WITH THE Board of Directors of the FOUNTAIN GENERAL IMPROVEMENT DISTRICT NO. 2, City of Fountain, Colorado (the "District"), a petition praying for the inclusion of certain lands into the District.

1. The names of the petitioner and the description of the property mentioned in such petition are as follows:

Owners: Kevin Hart, COLA

Legal

Description: Lots 1-48, Eagleside View Filing #2 City of Fountain, El Paso County, Colorado

2. The prayer of the petition is that the above property be included within the boundaries of the District.

Accordingly, notice is hereby given to all persons having objections to the proposed inclusion to appear at the public hearing of the City Council (acting in its ex officio capacity as the Board of Directors of the District) of the City of Fountain, Colorado, in the City Council Chambers of City Hall, 116 S. Main Street, Fountain, Colorado, on Tuesday September 27, 2016, at 6:00 p.m. and show cause why such petition should not be granted. The failure of any person interested to show cause shall be deemed taken as an assent on his or her part to the inclusion of such property as requested for in said petition and as described in this notice.

The petition of inclusion is on file at the City Clerk's office, 116 S. Main Street, Fountain, Colorado and is available for inspection during normal business hours.

FOUNTAIN GENERAL IMPROVEMENT
DISTRICT NO. 2

By: City Clerk Silvia Huffman
Ex Officio Secretary of the Board

Published in the Fountain Valley News on:

September 7, 2016
September 14, 2016
September 21, 2016

PETITION FOR INCLUSION OF PROPERTY
Into
FOUNTAIN GENERAL IMPROVEMENT DISTRICT NO. 2, CITY OF FOUNTAIN,
COLORADO

TO: Board of Directors of the Fountain General Improvement District No. 2, City of Fountain, Colorado (the "Board") (the City Council of the City of Fountain, Colorado, acting in its ex officio capacity Pursuant to Section 31-25-609, C.R.S.)

The undersigned Petitioner, the owner of one hundred percent (100%) of the property hereinafter described, hereby respectfully petitions the Board pursuant to Section 31-25-618, C.R.S. for the inclusion of the following described property into the boundaries of the Fountain General Improvement District No. 2, City of Fountain, Colorado (the "District"):

See Exhibit A Pages 1 and 2 attached hereto and incorporated herein by reference (the "Subject Property").

The undersigned hereby requests that the Subject Property be included into the boundaries of the District and that an ordinance be adopted by the Board including the Subject Property into the District, and that from and after the recording of such ordinance in the real property records of the Clerk and Recorder of El Paso County, Colorado, the Subject Property shall be liable for property taxes, assessments and other obligations of the District.

The undersigned represents to the Board that it is the owner of the Subject Property and that no other persons or entities own an interest therein.

This Petition is accompanied by a deposit of Three Hundred Dollars (\$300.00), to pay the costs of the inclusion proceedings, in accordance with Section 31-25-618 (1), C.R.S. If this amount deposited is insufficient to pay for the publication of the notice of hearing for inclusion proceedings, the Petitioner agrees to pay any additional sums necessary for such publication. This is a verified petition.

PETITIONER:

By: COLA (name property owner)
[Signature], MANAGER
(Signature on behalf of Petitioner) (Title)

ACKNOWLEDGMENT

TRACT 37 IN THE FOUNTAIN VALLEY LAND AND IRRIGATION CO.'S SUBDIVISION NO. 1, AS RECORDED IN PLAT BOOK L AT PAGE 42 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, BEING A PART OF SECTIONS 3, 4, 5, 9 AND 10 IN TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE 6TH P.M., AND A PART OF SECTIONS 33 AND 34 IN TOWNSHIP 15 SOUTH, RANGE 65 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, EXCEPT THAT PORTION CONVEYED IN DEED RECORDED SEPTEMBER 23, 2005 UNDER RECEPTION NO. 205149776 AND EXCEPT THAT PORTION CONVEYED IN DEED RECORDED FEBRUARY 14, 2007 UNDER RECEPTION NO. 207021427 AND EXCEPT THAT PORTION PLATTED AS EAGLESIDE VIEW SUBDIVISION FILING NO. 1 RECORDED FEBRUARY 27, 2015 UNDER RECEPTION NO. 215713585, ALL OF SAID COUNTY RECORDS.

AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF EAGLESIDE VIEW SUBDIVISION FILING NO. 1, SAID POINT ALSO BEING THE NORTHEAST CORNER OF THAT FORTY FOOT (40') WIDE ADDITIONAL RIGHT-OF-WAY AS DEDICATED TO THE CITY OF FOUNTAIN IN SAID PLAT OF EAGLESIDE VIEW SUBDIVISION FILING NO. 1, AS RECORDED UNDER RECEPTION NO. 215713585 OF THE RECORDS OF THE EL PASO COUNTY CLERK AND RECORDER, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF CUMBERLAND GREEN FILING NO. 3, AS RECORDED UNDER RECEPTION NO. 207712611 OF SAID COUNTY RECORDS, AS MONUMENTED BY A REBAR AND ORANGE CAP (BROKEN) FROM WHICH THE NORTHWEST CORNER OF SAID EAGLESIDE VIEW SUBDIVISION FILING NO. 1, SAID POINT ALSO BEING AN ANGLE POINT ON THE SOUTH LINE OF SAID CUMBERLAND GREEN FILING NO. 3, AS MONUMENTED BY A REBAR AND ORANGE CAP STAMPED "RAMPART PLS 26965" BEARS S89°49'36"W (PER THE PLAT OF SAID CUMBERLAND GREEN FILING NO. 3), A DISTANCE OF 1287.31 FEET (OF RECORD) AND IS THE BASIS OF BEARINGS USED HEREIN;

THENCE S00°10'23"E ALONG THE EAST LINE OF SAID EAGLESIDE VIEW SUBDIVISION FILING NO. 1, SAID LINE ALSO BEING THE WEST RIGHT-OF-WAY LINE OF LINK ROAD, A DISTANCE OF 204.32 FEET TO THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED;

THENCE S00°10'23"E CONTINUING ALONG SAID WEST RIGHT-OF-WAY LINE AND ALONG THE EAST LINE OF THAT TRACT OF LAND AS DESCRIBED UNDER RECEPTION NO. 214058194 OF SAID COUNTY RECORDS, A DISTANCE OF 470.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT OF LAND, SAID POINT ALSO BEING THE NORTHEAST CORNER OF WATCHMEN ROAD, AS DESCRIBED IN DEED RECORDER UNDER RECEPTION NO. 216002213 OF SAID COUNTY RECORDS;

THENCE S89°51'51"W ALONG THAT LINE COMMON TO SAID TRACT OF LAND AND SAID WATCHMEN ROAD, A DISTANCE OF 997.44 FEET TO THE SOUTHEAST CORNER OF LOT 42 OF SAID EAGLESIDE VIEW SUBDIVISION FILING NO. 1;

THENCE ALONG THE EAST AND SOUTH LINES OF SAID EAGLESIDE VIEW SUBDIVISION FILING NO. 1, THE FOLLOWING EIGHT (8) COURSES:

- 1.) THENCE N00°10'24"W, A DISTANCE OF 288.61 FEET;
- 2.) THENCE S89°49'36"W, A DISTANCE OF 6.40 FEET;
- 3.) THENCE N00°10'24"W, A DISTANCE OF 110.00 FEET;
- 4.) THENCE N89°49'36"E, A DISTANCE OF 110.00 FEET;
- 5.) THENCE N00°10'24"W, A DISTANCE OF 2.60 FEET;
- 6.) THENCE N89°49'36"E, A DISTANCE OF 611.40 FEET;
- 7.) THENCE N00°10'24"W, A DISTANCE OF 68.42 FEET;
- 8.) THENCE N89°51'51"E, A DISTANCE OF 282.45 FEET TO THE POINT OF BEGINNING.

SAID TRACT CONTAINS 9.85 ACRES OF LAND, MORE OR LESS.