City of Fountain
Pure Colorado

CITY COUNCIL AGENDA
NOVEMBER 1, 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:

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 Transit Services Agreement with The Fountain Valley Senior Center.

B. Approve and Award the 2017 Professional Water Engineering Consulting Contract to W. W. Wheeler & Associates, Inc., of Englewood, Colorado, in the contract amount not to exceed $75,000.

C. Annual Professional Services Engineering Contract to Black & Veatch for Water Resources Planning

8) Old Business

None

9) New Business

A. Consideration of Items Removed from the Consent Agenda

10) Correspondence, Comments and Ex-Officio Reports

11) Announcement of Executive Sessions

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 If consent to the closed Executive Session is not given, the items may be discussed in open session or withdrawn from consideration.

12) Adjourn

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

NEXT REGULAR COUNCIL MEETING
NOVEMBER 15, 2016

Posting Date:

Regular City Council Meeting

Consent – 7A

November 1, 2016

Summary Information

Title:
APPROVAL OF TRANSIT SERVICES AGREEMENT WITH THE FOUNTAIN VALLEY SENIOR CENTER.

Initiator : Todd Evans, Deputy City Manager	☒ Council Action
Presenter: Todd Evans, Deputy City Manager	☐ Council Information
Legal Review: ☐ Yes ☒ No	☐ Report to Council

Summary Overview and List of Attachments:
The purpose of this action item is for the Council to approve the attached Transit Services Agreement.

Attachments: Transit Services Agreement

Background Information

The City began partnering with the Fountain Valley Senior Center for the provision of Transit Services in 2012. Under this contractual arrangement, the City owns the buses, handles personnel matters, and finances the operations while the Senior Center oversees operations and dispatching. The proposed Agreement is modeled after the previous three-year agreement, which will terminate at the end of December of this year.

Using a 2% inflator, the Agreement starts at $112,084 for 2017 and escalates up to $114,328 for 2018 and $116,616 for 2019.

Recommendation

The Senior Center has done a very good job operating our Transit system and our recommendation is to continue this relationship with them.

Proposed Motion

A suggestion motion would be "I move to approve the Transit Services Agreement with the Fountain Valley Senior Center."

CM Review

TRANSIT SERVICES AGREEMENT
BETWEEN
CITY OF FOUNTAIN AND EL PASO FOUNTAIN VALLEY SENIOR CITIZEN PROGRAM

THIS AGREEMENT, made and entered into this ____ day of _____, 2016 and effective on January 1, 2017 by and between CITY OF FOUNTAIN, a Home Rule Municipality of the State of Colorado, hereinafter called "CITY", and EL PASO FOUNTAIN VALLEY SENIOR CITIZEN PROGRAM, a Colorado nonprofit corporation hereinafter called "CONTRACTOR".

WITNESSETH:

WHEREAS, CITY has need for transit-related services within the municipal boundaries of the community and extending into neighboring jurisdictions; and,

WHEREAS, CONTRACTOR currently provides limited transit services within Fountain and possesses the necessary experience, staffing, and associated capabilities to provide transit services for CITY; and,

WHEREAS, CITY has determined that CONTRACTOR is qualified and capable of performing the services CITY does hereinafter require, under these terms and conditions as set forth; and,

WHEREAS, CITY has made a determination that CONTRACTOR is a sole-source provider for transit services as required by CITY; and,

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

Section 1 Name of Service

1.1 For purposes of this Agreement, all transit-related services provided on CITY-owned buses shall be known under the name "Fountain Municipal Transit".

Section 2 Scope of Services

2.1 CONTRACTOR will provide transit services for members of the public to include a deviated fixed route as set forth on "Attachment A" on the schedule as indicated on "Attachment B." The route shall utilize two buses that shall generally travel the fixed routes indicated, but may be deviated up to ¾ mile from the primary route in order to meet qualifying ADA trip requests. CITY and CONTRACTOR acknowledge that changes may be needed from time to time relative to the schedule and stop locations and shall work together in making those changes, as determined appropriate by CITY. CITY reserves the right for final approval of any changes or adjustments to the schedule or stop locations.

2.2 CONTRACTOR may also provide paratransit services for severely impaired qualified users within ¾ mile from the deviated fixed route within ¾ mile from the deviated fixed route require door-to-door service.

2.3 "Transit Personnel" are bus operators and any other personnel necessary for CONTRACTOR to perform its services under this Agreement excluding management personnel employed by the CONTRACTOR. A "Transit Personnel employee is an employee of CITY. CONTRACTOR is not responsible for hiring, terminating, or disciplining of the Transit Personnel, which shall be a function of CITY.

2.4 CONTRACTOR is responsible for administration of the transit program, day to day dispatching of deviated fixed route to include administration and recommendations to CITY for evaluation of deviated fixed route, Transit Personnel, dispatching of transit vehicles, representing CITY transit interests in transit-related meetings and/or committees, oversight of grant reporting requirements, applications for grants, provision of a separate phone line for the transit service, providing information and recommendations to CITY on transit-related issues, and other reasonable duties that relate to the effective functioning of a transit program for the community.

2.5 CONTRACTOR is not responsible for hiring, terminating, or disciplining Transit Personnel, which shall be a function of CITY.

2.6 CONTRACTOR shall supply to CITY any documents whether in written or electronic form requested by CITY that relate to the operation of the transit system by the CONTRACTOR and requested by CITY within a reasonable time after such request.

2.7 CONTRACTOR agrees to provide monthly reports to CITY indicating, at a minimum, service mileage, service hours, the total number of riders on a daily basis, total fares collected on a daily basis including ADA rider deviations. Reports should also indicate ridership classification (regular versus ADA qualifying). CONTRACTOR also agrees to prepare and submit any applicable mandated regional, state and federal transit reports including but not limited to agencies such as Pikes Peak Area Council of Governments (PPACG), Colorado Department of Transportation (CDOT), and Federal Transit Administration (FTA).

Section 3 Term and Compensation

In accordance with the Terms and Conditions of this Agreement, the CONTRACTOR shall provide transit services for a set term and compensation, as follows:

3.1 Term. The term of this agreement shall begin on January 1, 2017 and extend through December 31, 2019. It is anticipated by both parties that a successor Agreement will be negotiated by both parties prior to the termination of this Agreement in December 2019.

3.2 Compensation. A total of $112,084 shall be payable by CITY to CONTRACTOR, or CONTRACTOR's fiscal agent the first year with a 2% annual increase for each subsequent year of this Agreement, for the contract not including fare box revenue. Payments shall be made in quarterly installments, subject to receipt of Contractor invoice according to the following schedule:

Calendar Year – Quarterly Compensation	Quarter – Payment Schedule
Year 2017 - $28,021	1st Quarter: Payable prior to January 31st
Year 2018 - $28,582	2nd Quarter: Payable prior to April 30th
Year 2019 - $29,154	3rd Quarter: Payable prior to July 31st
	4th Quarter: Payable prior to October 31st

3.3 Fare Revenue: Both parties agree that CONTRACTOR shall have the right to retain all fares collected through the fare box for the transit service, based on a fare schedule as approved and provided by CITY, which may change from time to time. For purposes of this Agreement, fares include any fees that are paid by riders to use the transit, including pre-paid passes. Both parties agree to discuss any changes to fares prior to any CITY

modifications to the fare schedule before implementation of fare schedule changes by CITY. CITY may implement any fare changes determined appropriate by CITY after discussion of the fare changes with CONTRACTOR.

Section 4 CITY's Responsibility Relating to Vehicles, Equipment, and Transit Personnel

4.1 Transit Vehicles. CITY shall provide vehicles to CONTRACTOR adequate to provide transit service and shall provide for all costs associated with maintenance and operation of said vehicles, to include: capital costs, ongoing maintenance/repair costs, oil and fuel, a storage location for vehicles, provision of internal equipment such as fare boxes and radios.

4.2 Transit Personnel. Transit Personnel under this Agreement shall be employees of CITY and shall not be employees of CONTRACTOR. The hiring, terminating, disciplining, supervision, and management of Transit Personnel shall be the responsibility of CITY. Transit Personnel shall be subject to the provisions of the City of Fountain Employee Policies & Procedures Handbook as adopted by Resolution 09-048 and subject to any further amendments adopted by the City Council. Transit Personnel shall be insured by CITY for workers' compensation, liability, health insurance, and shall have all other privileges and obligations as any other employee of CITY. Payroll for the Transit personnel shall be an obligation of CITY.

Except for day-to-day dispatching of Transit Personnel, by CONTRACTOR for CONTRACTOR to carry out its obligations under this Agreement, the management and supervision of the Transit Personnel shall be the obligation of CITY with input from CONTRACTOR.

CONTRACTOR may provide to CITY written or verbal comments concerning the performance or problems with any Transit Personnel. CITY shall review comments concerning a Transit Personnel employee and may meet with CONTRACTOR or the Transit Personnel employee as determined appropriate by CITY or may provide a verbal or written response to the CONTRACTOR and the Transit Personnel employee as CITY determines appropriate. In the event of any dispute by the Transit Personnel employee with CONTRACTOR, the Transit Personnel employee may notify CITY if the dispute is not resolved with CONTRACTOR. A representative of CITY may meet with the Transit Personnel employee and an appropriate representative of CONTRACTOR to resolve the dispute. If such resolution is not successful, the Transit Personnel employee is entitled to avail himself or herself of the provisions of City of Fountain Employee Policies & Procedures Handbook. CONTRACTOR through its representative agrees to participate in hearing or other proceeding upon request of CITY.

CITY shall provide for the fully burdened costs of up to 5 part-time transit bus operators. The bus operators shall have their CDL with passenger endorsement. CITY shall assume all labor-related and testing costs of personnel.

4.3 Insurance. CITY shall insure the buses and equipment owned by CITY and provided under the terms of this Agreement to CONTRACTOR for the replacement cost of the vehicles and equipment. Transit Personnel shall be covered by insurance purchased by CITY to the same extent as is afforded to any other employees of CITY.

4.4 Bus Stops. CITY shall provide all bus stop improvements required by transit service to include signage, benches, and shelters, when possible.

Section 5 Payroll Services

5.1 CONTRACTOR shall supply records in written or electronic form to CITY for CITY to prepare a payroll regarding Transit Personnel. Such records shall include at a minimum the name of the Transit Personnel employee, hours worked during the payroll period, vacation taken, sick days taken, and such other information as CITY may request for CITY to properly compute the payroll.

Section 6 Employment Relationship

6.1 CONTRACTOR shall be considered an independent contractor for the purposes of this Agreement and shall be entitled to no compensation other than the compensation provided for under Section 3 of this Agreement.

Section 7 Insurance Requirements of CONTRACTOR

7.1 CONTRACTOR agrees to procure and maintain, at its own cost, the following policy or policies of insurance. CONTRACTOR shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Agreement by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

7.2 CONTRACTOR shall procure and maintain the minimum insurance coverage's listed below. Such coverage shall be procured and maintained with forms and insurers acceptable to the City. All coverage shall be continuously maintained from the date of commencement of services hereunder. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

7.3 Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee of CONTRACTOR engaged in the performance of work under this Agreement and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS ($500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS ($500,000) disease - each employee.

7.4 Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent CONTRACTOR's, products, and completed operations. The policy shall contain a severability of interests provision.

7.5 Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS ($1,000,000) each occurrence and ONE MILLION DOLLARS ($1,000,000) aggregate with respect to each of CONTRACTOR's owned, hired and/or non-owned vehicles. The policy shall contain a severability of interests provision.

7.6 The policies required above, except for the Workers' Compensation insurance, and Employers' Liability insurance, shall be endorsed to include CITY and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by CITY, its officers, or its employees, shall be excess and not contributory insurance to that provided by CONTRACTOR. The additional

insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. CONTRACTOR shall be solely responsible for any deductible losses under each of the policies required above.

7.7 Certificates of insurance shall be completed by CONTRACTOR's insurance agent as evidence that policies providing the required coverage, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by CITY. Each certificate shall identify the project and shall provide that the coverage afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to CITY. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. CITY reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

7.8 Failure on the part of CONTRACTOR to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of the Agreement upon which CITY may immediately terminate the Agreement, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by CITY shall be repaid by CONTRACTOR to CITY upon demand, or CITY may offset the cost of the premiums against any monies due to CONTRACTOR from the CITY.

7.9 The parties hereto understand and agree that CITY is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently $350,000 per person and $990,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 et seq., 10 C.R.S., as from time to time amended, or otherwise available to CITY its officers, or its employees.

Section 8 Indemnification

CONTRACTOR agrees that CONTRACTOR shall indemnify, defend and hold harmless CITY, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with CONTRACTOR's obligations or actions under this Agreement. In accord with the restrictions of CITY Charter and Colorado Constitution, nothing in this Agreement shall be construed as, or is intended to create, any indemnification or holding harmless of CONTRACTOR by CITY.

Section 9 Contact Information

All notices, bills and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills and payments should be addressed as follows:

FOR CITY: Mr. Scott Trainor, City Manager
City of Fountain
116 South Main Street
Fountain, Colorado 80817

FOR CONTRACTOR: Mr. Dennis Crosser, Executive Director
El Paso Fountain Valley Senior Citizen Program
5745 Southmoor Drive
Fountain, Colorado 80817

Section 10 Illegal Aliens - Public Contracts for Services

10.1. Definitions

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

1. "Department" means the Department of Labor and Employment of the State of Colorado.
2. "Department program" means the employment verification program established pursuant to C.R.S. section 8-17.5-102 (25) (c) by the Colorado Department of Labor and Employment.
3. "E-verify program" means the electronic employment verification program created in Public Law 104-108, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program.
4. "Newly hired for employment" means hired to work in the United States since the effective date of the public contract for services (this Agreement).

B. CONTRACTOR certifies that CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

C. By entering into the Agreement with CITY, CONTRACTOR represents, warrants, and agrees as set forth in the following paragraphs:

1. CONTRACTOR has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the e-verify program or the department program established by the Colorado Department of Labor and Employment.
2. CONTRACTOR shall not use either the e-verify program or the department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.
3. CONTRACTOR shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment.

If CONTRACTOR fails to comply with any requirement of this provision or C.R.S. §8-17.5-101, et seq., CITY may terminate this Agreement for breach of the Agreement, and CONTRACTOR shall be liable for actual and consequential damages to CITY.

Section 11 General Provisions

11.1 Termination. This Agreement may be terminated, with or without cause, by either party with sixty (60) days written notice or by mutual consent. CONTRACTOR shall have no ownership interest in any vehicles, personal property or equipment provided by CITY for the performance of this Agreement. Upon termination of this Agreement, all vehicles and other personal property or equipment procured in the performance of this Agreement shall remain the property of CITY. Bus stops and other real property structures shall be and remain the property of CITY.

11.2 Liability and Litigation. Should litigation occur between the parties hereto relating any provision of this Agreement, or of any claim of breach of this Agreement, the prevailing party in any such litigation shall be entitled to recover from the other party all expenses incurred therein, including court costs, and a reasonable attorney fees to be set by the Court upon any such trial and upon any appeal therefrom provided that CITY's obligation shall be subject to appropriation of funds by the City Council of CITY. CITY and CONTRACTOR waive any claim against the other for punitive, consequential, special, or incidental damages except as required under Section 10.

11.3 Force Majeure. Neither party shall hold the other responsible for damages or delay in performance cause by acts of God, accidents, or other events beyond control of the other or the other's employees and agents.

11.4 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

11.5 Compliance with local laws. CONTRACTOR shall comply with all federal, state and local laws and ordinances applicable to the services to be provided under this Agreement.

11.6 Assignment. CONTRACTOR shall not assign, sublet, or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of CITY.

11.7 Applicable Law. This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Fountain, Colorado, and a Colorado home rule city. Court venue and jurisdiction shall exclusively be in the Colorado District Court for El Paso County, Colorado.

11.8 Appropriation. Performance of CITY's obligations under this Agreement is expressly subject to appropriation of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of CITY's obligations under this Agreement, then CITY may terminate this Agreement without compensation to CONTRACTOR.

11.9 Audit. CITY reserves that right to audit this agreement upon ten (10) day notice to CONTRACTOR. CONTRACTOR shall provide all documents requested by CITY for the completion of the audit. If an audit determines that CONTRACTOR has been paid in excess of the provisions set forth in this Agreement or has otherwise not complied with the provisions of this Agreement, CONTRACTOR shall pay to CITY sums to which CITY is entitled after completion of the audit by CITY and thirty (30) days after notification by CITY of the amounts due.

11.10 Local Concern. The parties agree and acknowledge that the activities contained in this Agreement are matters of local concern only, and that the Parties have mutually joined together for the performance of matters of local concern, and that nothing in this Agreement shall be construed as making any of the local concerns covered herein matters of mixed concern or statewide concern.

11.11 Entire Agreement. This Agreement, together with all attachments, constitutes the entire Agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

11.12 No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement shall be strictly reserved to the Parties hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third person or entity on such Agreement. It is the express intention of the Parties hereto that any person or entity, other than the Parties to this Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

11.13 Nondiscrimination. CONTRACTOR will not discriminate with regard to age, race, color, sex, national origin, or disability.

11.14 Headings. Headings under this Agreement are for convenience only.

11.15 Counterparts. This Agreement may be signed in counterparts all of whom shall be considered one instrument.

CITY:

_____ _____

City of Fountain, Colorado Date
By: Gabriel P. Ortega, Mayor

ATTEST:

_____

Silvia Mascarenas, City Clerk

CONTRACTOR: EL PASO FOUNTAIN VALLEY SENIOR CITIZEN PROGRAM, a Colorado nonprofit corporation

_____ _____

Norman Wodell, President Date

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO

The forgoing instrument was acknowledged before me this _____day of _____, 2012, by _____as _____of EL PASO FOUNTAIN VALLEY SENIOR CITIZEN PROGRAM, a Colorado nonprofit corporation on behalf of the nonprofit corporation.

WITNESS my hand and official seal

My commission expires:_____

(SEAL) _____

Notary Public

Regular City Council Meeting

Consent – 7B

November 1, 2016

Summary Information

Title:

Approve and Award the 2017 Professional Water Engineering Consulting Contract to W. W. Wheeler & Associates, Inc., of Englewood, Colorado, in the contract amount not to exceed $75,000.

Initiator: Michael Fink, P.E., Water Resource Engineer	☒ Council Action
Presenter: Michael Fink, P.E., Water Resource Engineer	☐ Council Information
Legal Review: ☒ Yes ☐ No	☐ Report to Council

Summary Overview and List of Attachments:

The purpose of this item is for Council to award the 2017 Professional Water Engineering Consulting Contract to W. W. Wheeler & Associates, Inc., of Englewood, Colorado, in the contract amount not to exceed $75,000.

Attachments: Contract for Professional Services (13 pages)

Background Information

W. W. Wheeler and Associates, Inc., has served as a consultant to the Water Department for several years, producing the Water Conservation Plan, assisting the City of Fountain (the City) in the Bureau of Reclamation Storage Contract for the Pueblo Reservoir, and appraising the various opportunities for water rights acquisitions. The general services that the City anticipates to utilize Wheeler's professional services from January 2016 through December 2017 include the following specifically defined tasks:

- General water resources support and attendance at monthly water resources meetings;
- Assistance with well acquisition and water rights acquisitions;
- Protection of Fountain's water rights, including preparation of engineering objections to water rights applications by others;
- Development of augmentation plans and water right changes, including applications for administrative approval of substitute water supply plans; and
- Managing Fountain's surface water rights and exchanges.

As the Water Court case for the Dr. Rogers Ditch moves through the judicial process, Wheeler will be the City's expert witness for that water rights case. The Diversion Rights #4 and #17 on Fountain Creek continue to be negotiated. These two Water Court cases will increase the time that Wheeler will devote to the City of Fountain and will increase the fee from what we regularly see from this consultant. Expenses and fees for these professional services are capitalized and are included in the value of the water rights that the City carries on the asset ledgers; these expenses are not regularly occurring operational expenses.

All services will be directed by the Utilities Staff and invoiced based on the time spent performing these tasks. Therefore, Staff recommends the contract be awarded to W. W. Wheeler and Associates, Inc., in the amount not to exceed $75,000.

Recommendation
Fountain Utilities Staff recommends the award of the 2017 Professional Water Engineering Consulting Contract to W. W. Wheeler & Associates, Inc., of Englewood, Colorado, in the contract amount not to exceed $75,000.
Proposed Motion
"I recommend the award of the 2017 Professional Water Engineering Consulting Contract to W. W. Wheeler & Associates, Inc., of Englewood, Colorado, in the contract amount not to exceed $75,000."

SJ

CM Review

CITY OF FOUNTAIN

ENGINEERING AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below, by and between **THE CITY OF FOUNTAIN, COLORADO**, a municipal corporation, hereinafter referred to as the "City" and W. W. Wheeler and Associates, Inc., hereinafter referred to as the "Engineer."

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF WORK.** The Engineer agrees to provide services and an end product described in "Exhibit A", consisting of 5 pages and incorporated herein by this reference, hereinafter the "Work." The Engineer shall provide other Work and end products as may be agreed upon in writing from time to time by the parties.

2. **STANDARD OF CARE.** The Engineer agrees that the performance of Work pursuant to the requirements of this Agreement shall conform to accepted standards of care.

3. **WORK SCHEDULE.** The work shall be substantially complete on or before December 31, 2017.

4. **TIME OF COMMENCEMENT AND COMPLETION OF WORK.** The Work to be performed pursuant to this Agreement shall be initiated within ten (10) days following execution of this Agreement. Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.

5. **EARLY TERMINATION BY CITY.** Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Engineer. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.

All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

If Engineer:

Gary B. Thompson, P.E.
W. W. Wheeler and Associates, Inc.
3700 South Inca Street
Englewood, CO 80110

If City:

Michael Fink, P.E.
Water Resources Engineer
City of Fountain
116 S. Main Street
Fountain, CO 80817

In the event of any such early termination by the City, the Engineer shall be paid for Work rendered prior to the date of termination, subject only to the satisfactory performance of the Engineer's obligations under this Agreement. Such payment shall be the Engineer's sole right and remedy for such termination.

6. **DESIGN, PROJECT, INDEMNITY AND INSURANCE RESPONSIBILITY.** The Engineer shall be responsible for the Engineer quality, technical accuracy, timely completion and the coordination of all Work rendered by the Engineer, including but not limited to designs, plans, reports, specifications, and drawings and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies. The Engineer shall indemnify, save and hold harmless the City, its officers and employees in accordance with Colorado law, from all damages to the extent such claims, losses, damages, or expenses are caused by negligent acts, errors, or omissions of the Engineer. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Engineer and City, they shall be borne by each party in proportion to its own negligence. The Engineer shall maintain insurance in the kinds and amounts set forth in "Exhibit B".

7. **COMPENSATION.** In consideration of the Work, as described in "Exhibit A" to be performed pursuant to this Agreement, the City agrees to pay Engineer a not to exceed amount of $75,000.00. Monthly partial payments are permissible. The Engineer shall bill its charges to the City periodically, but no more frequently than once each month. The itemized invoices from the Engineer shall include a summary of work performed in the billing period, estimates of work performed for each of the tasks listed in "Exhibit A" (on a percentage complete basis), and a summary of work anticipated to be performed in the next billing period.

The amounts of all partial payments shall be based upon the City's verification of progress (percent complete) in completing the Work to be performed pursuant hereto. The City shall make final payment following acceptance of the Work. Upon final payment, all designs, plans, reports, specifications, drawings, and other Work rendered by the Engineer shall become the sole property of the City.

8. **CITY REPRESENTATIVE.** The City designates Michael Fink, Water Resources Engineer its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the City Representative.

9. **ENGINEER REPRESENTATIVE.** The Engineer designates Gary Thompson, as its project director to manage and supervise the performance of this Agreement on behalf of the Engineer. Associated with the project manager shall be staff members whose experience and qualifications are appropriate for this project.

10. **PROJECT DOCUMENTS.** Upon conclusion of the project and before final payment, the Engineer shall provide to the City one (1) hard copy and one (1) electronic copy of all deliverables. Upon final payment, all Project notes, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other final Project products developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Engineer shall not provide copies of any material prepared hereunder to any other party without the prior written consent of the City.

11. **PROGRESS REPORT.** Engineer shall provide monthly progress reports and progress meetings. Failure to provide any required monthly report or conduct the required progress meetings may, at the option of the City, suspend the processing of any partial payment request.

12. **INDEPENDENT CONTRACTOR.** The Work to be performed by Engineer is those of an independent contractor and not of an employee of the City of Fountain. The City shall not be responsible for withholding any portion of Engineer's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

13. **INSPECTION.** The City, through its authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

14. **CHANGES.** The City may, from time to time, require changes in the scope of the work to be performed hereunder. In the event such changes cause an increase or decrease in the work to be performed by the Engineer or the time for such performance, the compensation to be paid to the Engineer and time of performance shall be equitably adjusted.

a. In giving instructions, the Project Manager shall have authority to make changes in the Project, which are not inconsistent with the purpose of the Project, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order by the Project Manager and no claim for an addition to the Contract sum shall be valid unless so ordered.

b. The value of any such extra work or change shall be determined in one or more of the following ways: (1) extra work lump sum; (2) time and materials; or (3) according to established hourly billing rate upon the agreement of the parties.

15. **DELAYS AND EXTENSION OF TIME.** If the Engineer is delayed at any time in the progress of the Project by any act or neglect of the City or of its employees or by any other contractor employed by the City, or by changes ordered in the Project, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Engineer's control, or by any cause which the Project Manager decides shall justify the delay, then the time of the completion of the Project shall be extended for such reasonable time as the Project Manager may decide.

No such Extension of time shall be made retroactive of the date a delay has been established by the Project Manager. In the case of continuing cause of delay, only one claim is necessary for Extension of Time.

16. **SUSPENSION.** Without terminating this Agreement or breaching the obligations hereunder, the City may, at its pleasure, suspend the Work of the Engineer hereunder. Such suspension may be accomplished by giving the Engineer written notice, which shall set forth the reasons for the suspension, seven (7) days in advance of the suspension date. Upon receipt of such notice, the Engineer shall cease its work in as efficient a manner as possible in order to keep its total charges to the City for Work under the Agreement to a minimum. In the event that the period of suspension exceeds ninety- (90) days, the terms of the Agreement shall be subject to renegotiation, and either party may terminate the Project on the suspended portion of the Project.

17. **PERSONAL WORK.** It is understood that the City enters into this Agreement based on the special abilities of the Engineer and that this Agreement shall be considered as an Agreement for personal Work. Accordingly, the Engineer shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

18. **ACCEPTANCE NOT WAIVER.** The City's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the quality or technical

accuracy of the Work. The City's approval or acceptance of, or payment for, any of the Work shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement.

19. **DEFAULT.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

20. **REMEDIES.** In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) calendar days from the date of the notice of default to cure or to submit a plan for cure acceptable to the other party. In the event the default remains uncorrected, the party declaring default may elect to terminate the Agreement and seek damages.

21. **BINDING EFFECT.** This writing, together with the exhibits hereto, constitutes the entire Agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

22. **APPROPRIATION OF FUNDS BY THE CITY COUNCIL.** Payment by the City under the provisions of this Agreement after calendar year 2017 is subject to appropriation of funds by the City Council.

23. **LAW/SEVERABILITY.** The laws of the State of Colorado, Charter and ordinances of the City of Fountain, and the Fountain Municipal Code shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

24. **Exhibit A, Scope of Services.** The obligations of the City for each task set forth in Exhibit A shall not exceed the amount budgeted for each task without the written approval of the Utilities director or his representative.

THE CITY OF FOUNTAIN, COLORADO

BY: _____
Gabe Ortega, Mayor

DATE: _____

ATTEST:

_____
City Clerk

W. W. WHEELER AND ASSOCIATES, INC.

.

BY: _____

TITLE:_____

DATE: _____

EXHIBIT "A"

City of Fountain
Pure Colorado

This is an Addendum to the "ENGINEERING AGREEMENT" which was assigned to W. W. Wheeler and Associates, Inc. (the "Engineer").

The Paragraph 1 listing of Exhibit "A" is amended to include, but not be limited to the following document (attached hereto):

- October 10, 2016 Letter defining the Professional Scope of Services (4 pages)

The Contract Price (Paragraph 7) is based on the Scope of Design Professional's Service, not to exceed $75,000.00 in Fee and Reimbursable Expenses. Total Compensation under this Contract is not to exceed $75,000.00.

Date:_____ November, 2016

City of Fountain_____

By:_____

Printed Name and Title:_____

The above person's signature verifies his/her authority to execute this Contract Addendum on behalf of the City.

Engineer:

By:_____

Printed Name and Title:_____

The above person's signature verifies his/her authority to execute this Contract Addendum on behalf of the Engineer.

W. W. WHEELER
& ASSOCIATES, INC.
Water Resources Engineers

WWW.WWWHEELER.COM

October 10, 2016

Michael Fink
Water Resource Engineer
City of Fountain
116 South Main Street
Fountain, CO 80817

Re: #603 - City of Fountain
Proposal for Water Resources Engineering Services

Dear Mike:

W. W. Wheeler & Associates, Inc. is pleased to submit this proposal for water resources engineering services during the upcoming year. As you know, Wheeler has provided services to the City of Fountain on an ongoing basis, related to a wide variety of matters, including engineering support in the following general areas:

1. Development of plans for augmentation and changes of water rights, including applications for administrative approval of substitute water supply plans.
2. Acquisition of additional wells, including the use of wells in the Widefield Aquifer and in the alluvial aquifer of Fountain Creek.
3. Appraisal and acquisition of additional water rights.
4. Assistance with obtaining administrative approval of well permits.
5. Protection of the City's water rights, including engineering support in objections to water rights applications by others.
6. Assistance with contract matters related to Excess Capacity storage contracts in Pueblo Reservoir. Assistance with Fountain's participation in the Southern Delivery System project.
7. Daily water rights accounting.
8. Participation in the water supply planning group conference calls.
9. General water supply planning.

3700 S. INCA STREET | ENGLEWOOD, CO 80110-3405
303-761-4130 | FAX 303-761-2802

In order to estimate future engineering costs for similar work in the future, I have reviewed our files concerning our prior billings. Billings averaged approximately $72,000 per year during the past two years.

I expect that billings would be similar during 2017. Therefore, I estimate that Wheeler's billings during the next 12-month period will be approximately **$75,000**. Such engineering costs will cover the wide variety of ongoing water supply matters that are currently underway, as generally summarized in the list above. As always, we strive to hold engineering costs down to the extent possible, consistent with the need to provide the quality, timely, and comprehensive services that are required to meet Fountain's growing water supply needs.

A copy of our standard rate schedule is attached. Thank you for continuing to consider Wheeler for your ongoing water resources engineering needs.

Very truly yours,

W. W. Wheeler and Associates, Inc.

Gary B Thompson

Gary B. Thompson, P.E.

Encl

W. W. WHEELER
& ASSOCIATES, INC.
Water Resources Engineers

WWW.WWWHEELER.COM

STANDARD RATE SCHEDULE

EFFECTIVE MARCH 1, 2016

CLASSIFICATION	RATE/HOUR
Chief Engineer	$174.00
Senior Water Resources Engineer	$159.00
Senior Project Engineer	$148.00
Project Engineer	$143.00
Senior Engineer	$128.00
Staff Engineer	$116.00
Associate Engineer	$104.00
Assistant Engineer	$ 95.00
Junior Engineer	$ 85.00
Cadd/Draftsman	$ 74.00
Administrative Assistant	$ 65.00
Technician III	$ 73.00
Technician II	$ 67.00
Technician I	$ 48.00

In addition to the above Rate Schedule, the following expense items will be reimbursed to W. W. Wheeler and Associates, Inc. at cost or as indicated:

- Fees by sub-consultants, surveyors, laboratories, etc. will include a five percent mark-up
- Prints, photos, and reproductions by others
- Special supplies and equipment
- Out-of-town living expenses at cost or per-diem
- In-house reproductions:
  - Black & White $0.15/page
  - Color Letter $1.00/page
  - Color Ledger $2.00/page
- In-house plots:
  - Black & White $1.00/sq-ft
  - Color or Mylar $2.50/sq-ft
- Two-wheel-drive vehicle $0.65/mile
- Four-wheel-drive vehicle $0.80/mile

3700 S. INCA STREET | ENGLEWOOD, CO 80110-3405
303-761-4130 | FAX 303-761-2802

W. W. WHEELER
& ASSOCIATES, INC.
Water Resources Engineers
WWW.WWWHEELER.COM

STANDARD RATE SCHEDULE
EFFECTIVE APRIL 1, 2017

CLASSIFICATION	RATE/HOUR
Chief Engineer	$178.00
Senior Water Resource Engineer	$163.00
Senior Project Engineer	$151.00
Senior Engineer	$146.00
Project Engineer	$131.00
Staff Engineer	$119.00
Associate Engineer	$106.00
Assistant Engineer	$97.00
Junior Engineer	$87.00
CADD Drafter	$76.00
Administrative Assistant	$71.00
Technician III	$74.00
Technician II	$61.00
Technician I	$49.00

In addition to the above Rate Schedule, the following expense items will be reimbursed to W. W. Wheeler and Associates, Inc. at cost or as indicated:

- Fees by subconsultants, surveyors, laboratories, etc. will include a five percent mark-up
- Prints, photos, and reproductions by others
- Special supplies and equipment
- Out-of-town living expense at cost or per-diem
- In-house reproductions:
  - Black & White $0.15/page
  - Color Letter $1.00/page
  - Color Ledger $2.00/page
- Two-wheel-drive vehicle $0.65/mile
- Four-wheel-drive vehicle $0.80/mile

3700 S. INCA STREET | ENGLEWOOD, CO 80110-3405
303-761-4130 | FAX 303-761-2802

EXHIBIT "B"

INSURANCE

1. **INSURANCE INSTRUCTIONS.** Engineer shall not commence work under this contract until all insurance required under this section has been obtained and such insurance has been approved by the City, nor shall the Engineer allow any subconsultant to commence work on a subcontract until all similar insurance required of this subconsultant has been so obtained. The City shall be included as an additional insured on all insurance coverages except for professional liability insurance.

2. **WORKER'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER LIABILITY INSURANCE.** The Engineer shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable state covering all employees, and in the case of any work sublet, the Engineer shall require the subconsultant similarly to provide statutory Worker's Compensation Insurance for the latter's employees. The Engineer shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of $100,000 with an insurance company authorized to write such insurance in all states where the Engineer will have employees located in the performance of this contract and the Engineer shall require such subconsultant similarly to maintain Employer's Liability Insurance on its employees.

3. **COMMERCIAL LIABILITY INSURANCE.** The Engineer shall maintain during the life of this contract such Public Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and property damage, which may arise from operations under this contract whether such operations be by self or by any subconsultant or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows:

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

   B. The Public Liability Insurance required by the preceding subparagraph shall include the following extensions of coverage:

   C. Coverage shall be provided under a Commercial General Liability form of policy or similar thereto.

   D. X.C.U. Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as X.C.U. property damage liability coverage with limits of $1,000,000 each occurrence.

   E. The property damage coverage shall include a Broad form Property Damage Endorsement.

   F. Contractual Liability coverage shall be included.

   G. Protective Liability coverage shall be included to protect the Engineer against claims arising out of operations performed by subconsultant.

   H. Products Liability and/or Completed Operations coverage shall be included.

   I. Completed Operations coverage shall be provided for two years following substantial completion of the work.

4. **AUTOMOBILE LIABILITY INSURANCE.** The Engineer shall take out and maintain during the life of

the contract such comprehensive Automobile Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and (2) property damage, which may arise from the operations of any owned, hired, or non-owned automobiles used by or for work in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such comprehensive Automobile Liability Insurance shall be as follows:

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

5. **PROFESSIONAL LIABILITY INSURANCE.** This insurance shall be in force for the duration of the contract by the Engineer. The policy shall provide a liability limit of not less than $1,000,000.00 and shall insure against damages and liabilities for injury or death of persons, or damage to property, to the extent caused by engineer's negligent acts or omissions in connection with operations performed under the terms of this agreement.

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

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

Insurance Coverage Limits

A. Worker's Compensation ..... Statutory

B. Employer's Liability ..... $100,000 each person

C. Commercial General Liability

Bodily Injury ..... $500,000 each occurrence

Property Damage ..... $500,000 each occurrence

D. Commercial Automobile Liability

Bodily Injury ..... $500,000 each occurrence

Property Damage ..... $500,000 each occurrence

E. Excess Liability Policy $1,000,000
Required X

F. City's Protective Liability Insurance $1,000,000

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

Regular City Council Meeting

Consent – 7C

November 1, 2016

Summary Information

Title:
Approve and award the 2017 Professional Engineering Consulting Services Contract to Black & Veatch Corporation in the contract amount not to exceed $48,400.

Initiator:	Michael Fink, P.E., Water Resource Engineer	☒ Council Action
Presenter:	Michael Fink, P.E., Water Resource Engineer	☐ Council Information
Legal Review:	☒ Yes ☐ No	☐ Report to Council

Summary Overview and List of Attachments:
The purpose of this item is for the Council to award the 2017 Professional Engineering Consulting Services Contract to Black & Veatch Corporation in the contract amount not to exceed $48,400.

Attachments:
- Contract for Professional Services (10 pages)

Background Information

Black & Veatch Corporation has served as a consultant to the Water Department for several years, producing the Water System Master Plan and reports and designs addressing specific water resources topics. The general services that the City of Fountain anticipates to utilize Black & Veatch's professional services from January 2017 through December 2017 include the following specifically defined tasks:

- General water resources support and attendance at monthly water resources meetings;
- Assistance with regulatory changes and well acquisitions;
- Investigations of regional solutions;
- Development reviews; and
- Preparation of public education materials.

All services will be directed by the Utilities Staff and invoiced based on the time spent performing these tasks.

Staff recommends the contract be awarded to Black & Veatch Corporation in the amount not to exceed $48,400.

Recommendation

Fountain Utilities staff recommends the 2017 Professional Engineering Consulting Services Contract be awarded to Black & Veatch Corporation in the contract amount not to exceed $48,400.

Proposed Motion

"I recommend the award of the 2017 Professional Engineering Consulting Services Contract to Black & Veatch Corporation in the contract amount not to exceed $48,400."

ST
CM Review

CITY OF FOUNTAIN

ENGINEERING AGREEMENT

THIS AGREEMENT made and entered into the day and year set forth below, by and between **THE CITY OF FOUNTAIN, COLORADO**, a municipal corporation, hereinafter referred to as the "City" and Black & Veatch Corporation, hereinafter referred to as the "Engineer".

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. SCOPE OF WORK. The Engineer agrees to provide services and an end product described in "Exhibit A", consisting of 2 pages and incorporated herein by this reference, hereinafter the "Work." The Engineer shall provide other Work and end products as may be agreed upon in writing from time to time by the parties.

2. STANDARD OF CARE. The Engineer agrees that the performance of Work pursuant to the requirements of this Agreement shall conform to accepted standards of care.

3. WORK SCHEDULE. The work shall be substantially complete on or before December 31, 2017.

4. TIME OF COMMENCEMENT AND COMPLETION OF WORK. The Work to be performed pursuant to this Agreement shall be initiated within ten (10) days following execution of this Agreement. Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.

5. EARLY TERMINATION BY CITY. Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Engineer. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.

   All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

   If Engineer:

   Dan Kugler, P.E.
   Project Manager
   Black & Veatch Corporation
   4600 South Syracuse Street, Suite 800
   Denver, CO 80237

If City:

Michael Fink, P.E.
Water Resources Engineer
City of Fountain
116 S. Main Street
Fountain, CO 80817

In the event of any such early termination by the City, the Engineer shall be paid for Work rendered prior to the date of termination, subject only to the satisfactory performance of the Engineer's obligations under this Agreement. Such payment shall be the Engineer's sole right and remedy for such termination.

6. DESIGN, PROJECT, INDEMNITY AND INSURANCE RESPONSIBILITY. The Engineer shall be responsible for the Engineer quality, technical accuracy, timely completion and the coordination of all Work rendered by the Engineer, including but not limited to designs, plans, reports, specifications, and drawings and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies. The Engineer shall indemnify, save and hold harmless the City, its officers and employees in accordance with Colorado law, from all damages to the extent such claims, losses, damages, or expenses are caused by negligent acts, errors, or omissions of the Engineer. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Engineer and City, they shall be borne by each party in proportion to its own negligence. The Engineer shall maintain insurance in the kinds and amounts set forth in "Exhibit B".

7. COMPENSATION. In consideration of the Work to be performed pursuant to this Agreement, the City agrees to pay Engineer the fees set forth in "Exhibit A" plus reimbursable direct costs. Monthly partial payments based upon the Engineer's billings and itemized statements are permissible. The Engineer shall bill its charges to the City periodically, but no more frequently than once each month. The itemized invoices from the Engineer shall include:

   a. A list of the Engineer's employees who worked on the Project during the billing period, the amount of time each worked, and the associated billing rate of each employee; and

   b. An itemized list of reimbursable expenses and, where applicable, copies of invoices for outside work or materials.

   The amounts of all such partial payments shall be based upon the Engineer's City-verified progress in completing the Work to be performed pursuant hereto and upon the City's approval of the Engineer's actual reimbursable expenses. The City shall make final payment following acceptance of the Work. Upon final payment, all designs, plans, reports, specifications, drawings, and other Work rendered by the Engineer shall become the sole property of the City.

8. CITY REPRESENTATIVE. The City designates Michael Fink, Water Resources Engineer, as its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the City Representative.

9. ENGINEER REPRESENTATIVE. The Engineer designates Dan Kugler, as its project manager to manage and supervise the performance of this Agreement on behalf of the Engineer. Associated with the project manager shall be staff members whose experience and qualifications are appropriate for this project.

10. PROJECT DOCUMENTS. Upon conclusion of the project and before final payment, the Engineer shall provide to the City one (1) hard copy and one (1) electronic copy of all deliverables. Upon final payment, all Project notes, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other final Project products developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Engineer shall not provide copies of any material prepared hereunder to any other party without the prior written consent of the City.

11. PROGRESS REPORT. Engineer shall provide monthly progress reports and progress meetings. Failure to provide any required monthly report or conduct the required progress meetings may, at the option of the City, suspend the processing of any partial payment request.

12. INDEPENDENT CONTRACTOR. The Work to be performed by Engineer are those of an independent contractor and not of an employee of the City of Fountain. The City shall not be responsible for withholding any portion of Engineer's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.

13. INSPECTION. The City, through its authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.

14. CHANGES. The City may, from time to time, require changes in the scope of the work to be performed hereunder. In the event such changes cause an increase or decrease in the work to be performed by the Engineer or the time for such performance, the compensation to be paid to the Engineer and time of performance shall be equitably adjusted.

    a. In giving instructions, the Project Manager shall have authority to make changes in the Project, which are not inconsistent with the purpose of the Project, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order by the Project Manager and no claim for an addition to the Contract sum shall be valid unless

so ordered.

b. The value of any such extra work or change shall be determined in one or more of the following ways: (1) extra work lump sum; (2) time and materials; or (3) according to established hourly billing rate upon the agreement of the parties.

15. DELAYS AND EXTENSION OF TIME. If the Engineer is delayed at any time in the progress of the Project by any act or neglect of the City or of its employees or by any other contractor employed by the City, or by changes ordered in the Project, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Engineer's control, or by any cause which the Project Manager decides shall justify the delay, then the time of the completion of the Project shall be extended for such reasonable time as the Project Manager may decide.

No such Extension of time shall be made retroactive of the date a delay has been established by the Project Manager. In the case of continuing cause of delay, only one claim is necessary for Extension of Time.

16. SUSPENSION. Without terminating this Agreement or breaching the obligations hereunder, the City may, at its pleasure, suspend the Work of the Engineer hereunder. Such suspension may be accomplished by giving the Engineer written notice, which shall set forth the reasons for the suspension, seven (7) days in advance of the suspension date. Upon receipt of such notice, the Engineer shall cease its work in as efficient a manner as possible in order to keep its total charges to the City for Work under the Agreement to a minimum. In the event that the period of suspension exceeds ninety (90) days, the terms of the Agreement shall be subject to renegotiation, and either party may terminate the Project on the suspended portion of the Project.

17. PERSONAL WORK. It is understood that the City enters into this Agreement based on the special abilities of the Engineer and that this Agreement shall be considered as an Agreement for personal Work. Accordingly, the Engineer shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

18. ACCEPTANCE NOT WAIVER. The City's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Engineer of responsibility for the quality or technical accuracy of the Work. The City's approval or acceptance of, or payment for, any of the Work shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement.

19. DEFAULT. Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.

20. REMEDIES. In the event a party has been declared in default, such defaulting party shall be allowed a period of fifteen (15) calendar days from the date of the notice of default to cure or to submit a plan for cure acceptable to the other party. In the event the default remains uncorrected, the party declaring default may elect to terminate the Agreement and seek damages.

21. BINDING EFFECT. This writing, together with the exhibits hereto, constitutes the entire Agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.

22. APPROPRIATION OF FUNDS BY THE CITY COUNCIL. Payment by the City under the provisions of this Agreement after calendar year 2017 is subject to appropriation of funds by the City Council.

23. LAW/SEVERABILITY. The laws of the State of Colorado, Charter and ordinances of the City of Fountain, and the Fountain Municipal Code shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

24. EXHIBIT A, SCOPE OF SERVICES. The obligations of the City for each task set forth in Exhibit A shall not exceed the amount budgeted for each task without the written approval of the Utilities director or his representative.

THE CITY OF FOUNTAIN, COLORADO

BY:_____
Gabriel Ortega, Mayor

DATE:_____

ATTEST:

_____
City Clerk

BLACK & VEATCH CORPORATON

BY:_____
Peter Cohlmia, Vice President

DATE:_____

"Exhibit A"

SCOPE OF WORK

Engineer shall provide the following services for the City:

Task 100: General Support & Attendance at Monthly Meetings. The City occasionally holds meetings to monitor the progress and make key decisions regarding the City's water and future water supplies. At the City's discretion, Engineer is asked to participate in these meetings. This scope allocates $9,760 for up to two of Engineer's professionals to prepare for and attend (via conference call at City's discretion) these meetings to be held in 2017. Up to 52 total hours of budget has been allocated to cover these meetings as well as minor water resources related action items that arise.

Task 200: Assistance with Regulatory Changes & Well Acquisitions. Engineer is available to assist the City in the interpretation of new regulations as they are issued by the State and identify approaches for the City to remain in compliance (including issues related to perfluorinated organic compounds (PFC's)). City may also be acquiring new wells in 2017 or outfitting previously acquired wells for potable and non-potable use. Engineer will assist the City in performing due diligence on these acquisitions and to review how new wells work within the City's long-term water plan. Up to $21,200 has been allocated for assistance in this area.

Task 300: Investigation of New Water Supplies and/or Regional Solutions. The City is regularly presented with new water supply options and/or opportunities to partner in regional infrastructure. Engineer is available to assist the City in investigating the potential benefits of such proposals. Investigations of this nature typically include, but are not be limited to: 1) assistance in identifying water supply solutions with neighboring purveyors, 2) assistance in evaluating and providing Southern Delivery System related information, 3) assistance in review of water supply concepts developed by other water purveyors/brokers, 4) evaluation of potential water supplies from other regional stakeholders for suitability of City participation, and 4) assistance with the review of how water from the other systems could be used in the Fountain system. This scope allocates up to $10,000 for these items in 2017.

Task 400: Development Reviews. The City regularly receives plans from developers showing proposed connections to the City's water system for new developments. Engineer is available to review these plans and make recommendations so that the level of service required by the City is provided to the new customers. Engineer will also review the proposed plans for consistency with the City's long-term water system plan. Development reviews will be performed on a task order basis and a separate scope, budget and schedule will be developed and approved for each task.

Task 500: Preparation of Public Education Materials. Providing accurate and useful information regarding the City' Water Plan is a principle objective of the City. Engineer is available to develop material as required to assist in informing City Council Members, citizens, and businesses on key aspects of the City's water plan. This scope allocates up to $7,440 for these items in 2017.

Tasks 600-800: Reserved for Additional Tasks. These tasks are reserved for additional services at the sole discretion of the City. No budget has been allocated to these tasks.

At the City's request, Engineer will develop a scope, budget and schedule for such additional services. This information will be submitted to the City for review and approval. Upon mutual acceptance of the terms, an addendum to this Agreement will be prepared for formal execution by both parties.

BUDGET

A breakdown of the allocated budgets for each of the above defined services is provided below:

City of Fountain
Budget Estimate for 2017 General Services Agreement
Submitted by Black & Veatch
Date 10/24/2016

Project Personnel Billing Rates (2017)	Project Manager D. Kugler $190	Engineer Level 6 K. Burgi $210	Engineer Level 6 C. Tadanier $210	Staff Engineer Varies $130	Admin Varies $90	Hours	Labor	Total (1)
Task 100: General Support Meeting Attendance	12	12	12	12	4	52	$9,240	$9,760
Task 200: Assistance with Regulatory Changes / Well Assistance	16		80		4	100	$20,200	$21,200
Task 300: Investigation of New Water Supplies and/or Regional Solutions	12	20		20	4	56	$9,440	$10,000
Task 400: Development Reviews						0	$0	$0
Task 500: Preperation of public education materials.	8	8	8	8	12	44	$7,000	$7,440
Tasks 600 to 800: Reserved for additional tasks.						0	$0	$0
Total	**48**	**40**	**100**	**40**	**24**	**252**	**$45,880**	**$48,400**

(1) Includes $10/hr to cover all general expenses except any potential subconsultant charges.

"Exhibit B"

INSURANCE

1. INSURANCE INSTRUCTIONS. Engineer shall not commence work under this contract until all insurance required under this section has been obtained and such insurance has been approved by the City, nor shall the Engineer allow any subconsultant to commence work on a subcontract until all similar insurance required of this subconsultant has been so obtained. The City shall be included as an additional insured on all insurance coverages except for professional liability insurance.

2. WORKER'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER LIABILITY INSURANCE. The Engineer shall take out and maintain during the life of this contract the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable state covering all employees, and in the case of any work sublet, the Engineer shall require the subconsultant similarly to provide statutory Worker's Compensation Insurance for the latter's employees. The Engineer shall take out and maintain during the life of this contract, Employer's Liability Insurance with a limit of $100,000 with an insurance company authorized to write such insurance in all states where the Engineer will have employees located in the performance of this contract and the Engineer shall require such subconsultant similarly to maintain Employer's Liability Insurance on its employees.

3. COMMERCIAL LIABILITY INSURANCE. The Engineer shall maintain during the life of this contract such Public Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and property damage, which may arise from operations under this contract whether such operations be by self or by any subconsultant or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided by such Public Liability Insurance shall be as follows:

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

   B. The Public Liability Insurance required by the preceding subparagraph shall include the following extensions of coverage:

   C. Coverage shall be provided under a Commercial General Liability form of policy or similar thereto.

   D. X.C.U. Coverage - If the contract requires any work procedures involving blasting, excavating, tunneling, or other underground work, the liability coverage shall include Standard Blasting or Explosion Coverage, Standard Collapse Coverage and Standard Underground Coverage, commonly referred to as X.C.U. property damage liability coverage with limits of $1,000,000 each occurrence.

   E. The property damage coverage shall include a Broad form Property Damage Endorsement.

F. Contractual Liability coverage shall be included.

G. Protective Liability coverage shall be included to protect the Engineer against claims arising out of operations performed by subconsultant.

H. Products Liability and/or Completed Operations coverage shall be included.

I. Completed Operations coverage shall be provided for two years following substantial completion of the work.

4. AUTOMOBILE LIABILITY INSURANCE. The Engineer shall take out and maintain during the life of the contract such comprehensive Automobile Liability Insurance as shall protect against claims for damages resulting from (1) bodily injury, including wrongful death, and (2) property damage, which may arise from the operations of any owned, hired, or non-owned automobiles used by or for work in any capacity in connection with the carrying out of this contract. The minimum acceptable limits of liability to be provided by such comprehensive Automobile Liability Insurance shall be as follows:

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

5. PROFESSIONAL LIABILITY INSURANCE. This insurance shall be in force for the duration of the contract by the Engineer. The policy shall provide a liability limit of not less than $1,000,000 and shall insure against damages and liabilities for injury or death of persons, or damage to property, to the extent caused by Engineer's negligence or omissions in connection with operations performed under the terms of this agreement.

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

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

Insurance Coverage Limits

A. Worker's Compensation .....Statutory

B. Employer's Liability .....$100,000 each person

C. Commercial General Liability

Bodily Injury .....$500,000 each occurrence

Property Damage .....$500,000 each occurrence

D. Commercial Automobile Liability

Bodily Injury.....$500,000 each occurrence

Property Damage .....$500,000 each occurrence

E. Excess Liability Policy.....$1,000,000

F. City's Protective Liability Insurance $1,000,000

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

Regular City Council Meeting

New Business – 9A

Items Removed from Consent

November 1, 2016

Summary Information

Title:
Consideration of Items Removed from the Consent Agenda

Initiator : City Clerk Huffman	☒ Council Action
Presenter: Silvia Huffman, City Clerk	☐ Council Information
Legal Review: ☐ Yes ☒ No	☐ 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

SH

CM Review