



**CITY COUNCIL AGENDA**  
**March 14, 2023 6:00 P.M.**  
**116 Main St., Fountain**  
**Register to attend virtually @**  
**[www.fountaincolorado.org](http://www.fountaincolorado.org)**

- 1) **Call to Order**
- 2) **Pledge of Allegiance**
- 3) **Roll Call**
- 4.1) **Presentations**
  - Presentation by VFW Post 6461
  - Women's History Month (Mayor Pro Tem Estes)
- 4.2) **Board/Commission/Committee**
  - Re-Appoint Three Regular Members To The Planning Commission
- 5) **City Council Agenda Requests**

*City Council shall use this time to request any items for future consideration*
- 6) **Public to be Heard**

*Citizens may address the Council on items that are not on the agenda. 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**

*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 February 28, 2023 City Council Meeting Minutes (S. Huffman)
- 8) **Old Business**
  - A. Update On Expenditures (Uses) Of ARPA Funds And Remaining Funds Available To The City (J. Lewis est. 5 min.)
- 9) **New Business**
  - A. Consideration Of Items Removed From The Consent Agenda
  - B. **Public Hearing** and First Reading of Ordinance 1784, An Ordinance Approving the Mesa Ridge Overall Development Plan Amendment No. 5, generally located southeast of the intersection of Mesa Ridge Parkway and Powers Boulevard, and Hereinafter More Specifically Described in Exhibit "A" and Exhibit "B" (K. Martinez est. 20 min.)

C. Resolution No.23-012, A Resolution Authorizing The City Manager To Enter Into A Legal Services Agreement And Authorizing Expenditures For The Legal Services Up To \$285,000. (D. Blankenship est. 10 min.)

**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.

**PURPOSE OF THE EXECUTIVE SESSION:**

- Pursuant to C.R.S. Section 24-6-402(4) for the Purpose of Review, Approval, and Amendment of Executive Session Minutes
- Pursuant to C.R.S. Section 24-6-402(4)(a) to discuss the purchase, acquisition, lease, transfer, or sale of real, personal, or other property interest

**12) Adjourn**

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

**NEXT REGULAR COUNCIL MEETING  
March 28, 2023**



# Regular City Council Meeting

## Appointments-4.2A

March 14, 2023

Appointment of Planning Commission Member

### Summary Information

**Title:** APPOINT THREE REGULAR MEMBERS TO THE PLANNING COMMISSION

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:

The purpose of this action is to re-appoint three existing members to the Planning Commission.

Previous Action by City Council: N/A

Attachment: Application for Christopher Curl, Robert Carland, and Arris Anderson

### Background Information

Planning Commission Member Christopher Curl is currently serving as a regular member of the Planning Commission and has served a full term. Mr. Curl is presently seeking reappointment for a second term. The second term would be for a 4-year term, which would expire on March 14, 2027.

Planning Commission Member Robert Carland is currently serving as a regular member of the Planning Commission and has served a full term. Mr. Carland is presently seeking reappointment for a second term. The second term would be for a 4-year term, which would expire on March 14, 2027.

Planning Commission Member Arris Anderson is currently serving as a regular member of the Planning Commission and has served a full term. Ms. Anderson is presently seeking reappointment for a second term. The second term would be for a 4-year term, which would expire on April 9, 2027.

Please see attached applications.

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.
- Diversify city financial resources and invest.
- Provide reliable access to public safety services.
- Improve the quality and availability of parks and recreation opportunities

### Recommendation

Staff does not provide a recommendation on appointments. If appointed, this term would be for four years.

### Proposed Motion

I move to appoint (Christopher Curl, Robert Carland, and Arris Anderson) as a regular member to the Planning Commission for a four-year term.



# Regular City Council Meeting

**Consent –7A**

Council Meeting Minutes

**March 14, 2023**

## Summary Information

Title:

**APPROVAL OF THE FEBRUARY 28, 2023 CITY COUNCIL MEETING MINUTES**

Initiator : City Clerk Huffman

Presenter: City Clerk Huffman

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 February 28, 2023 City Council Meeting Minutes

Attachments: Above Referenced Meeting Minutes

## Background Information

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.**
- Diversify city financial resources and invest.**
- Provide reliable access to public safety services.**
- Improve the quality and availability of parks and recreation opportunities**

## Recommendation

Staff recommends approval.

## Proposed Motion

Motion to approve shall be included under the consent agenda.

**CITY COUNCIL MEETING**  
**February 28, 2023**

**1) Call to Order**

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

**2) Pledge of Allegiance**

The pledge of Allegiance was recited.

**3) Roll Call**

Roll call found the following members present

Mayor Thompson

Mayor Pro Tem Estes

Council Member Hinton

Council Member Cory

Council Member Rick

Council Member Applegate

Council Member Duncan

**4 (1) Presentations**

- **A Proclamation Recognizing Phillip Thomas As The First Black Mayor Pro-Tempore Of The City Of Fountain.**

Council Member Duncan read the proclamation into the record.

Former Mayor Pro Tem Thomas addressed Council thanking his family and staff for their support over the years. He noted some projects that he and staff had worked on during his tenure and thanked God for his successes.

- **Presentation by CDOT Region 2 Traffic Program Engineer, Jason Nelson**

Mr. Jason Nelson, CDOT reviewed traffic counts, growth, and safety data on roadways throughout the city. He focused on the areas of Fountain Mesa and Mesa Ridge Parkway as well as Highway 85 and Carson Blvd. He presented a preliminary plan for the Carson intersection that included a continuous flow traffic patten.

Mr. Nelson was asked questions regarding estimated completion, issues concerning Mesa Ridge Parkway and Carson and Highway 85. It was also requested that CDOT review the timing of street lights for better traffic flow.

**4 (2) Board/Commission/Committee Appointments**

- **Appointment Three Board Members To The City's Economic Development Commission; Effective March 1, 2023**

Economic Development Director Bailey stated that Phyllis Baez, Dan Osinski, and Mercedes Davis are all seeking reappointment to the Economic Development Commission.

Council Member Cory made a motion to appoint all members as requested, seconded by Mayor Pro Tem Estes. All members voted yes (7-0); the motion carried.

## **5) City Council Agenda Requests**

There were no requests.

Mayor Thompson declared the meeting in recess at 7:20 P.M.  
Mayor Thompson declared the meeting back in session at 7:25 P.M.

## **6) Public to be Heard**

There was no public to be heard.

## **7) Consent Agenda**

- A. Approval Of The February 14, 2023 City Council Meeting Minutes**
- B. Request Of Report Of Changes For A Fermented Malt Beverage (FMB) Liquor License For Walmart Inc.**
- C. Request Of Report Of Changes For A Fermented Malt Beverage (FMB) Liquor License For Safeway Stores 46 Inc.**
- D. Request For A Transfer Of Ownership Of A Tavern Liquor License For Level Up Coffee & Raven Retro Games, LLC, DBA Raven's Corner Pocket, From Fountain Corner Pocket, LLC, DBA Fountain Corner Pocket, Located At 6502 S. Highway 85/87.**

Mayor Pro Tem Estes made a motion to approve the consent agenda, seconded by Council Member Applegate. All members voted yes (7-0); the motion carried.

## **8) Old Business**

- A. Recycle Center Costs, Fee Increase Proposal, and Approval of a part-time Employee.**

Code Compliance Manager Tingley reviewed the proposal to include items that Council had requested to be removed at its last meeting. She presented costs, revenue and proposed increases as well as the option to close the recycle center.

Extensive discussion was held regarding options such as closing, budget, community needs, non-resident fees and lack of employees to work the recycle center.

Council Member Duncan made a motion to close the recycle center by June of 2023 and only accept drop fees, tin, aluminum, metal, and paint, seconded by Council Member Rick.

Council Member Cory asked if Council Member Duncan if she would be willing to amend her motion to allow more time for the closing to notify the public.

Council Member Duncan amended her motion to close the recycle center by August 1, 2023 and only accept drop fees, tin, aluminum, metal, and paint, seconded by Council Member Rick.

Clarifying discussion was had.

Council Member Applegate asked when the public would be notified when we would stop collecting the other materials.

Mayor Pro Tem Estes requested an amendment to the motion to continue to allow accepting all items until April 1, 2023 to allow staff to notify the public of the change. The remaining language of the amended motion remains. Council Member Duncan accepted the amendment to her motion, seconded by Council Member Rick. All members voting yes except Mayor Thompson, (6-1); the motion carried.

Mayor Thompson explained that she would like to explain her no vote. She stated that she is in support of this as she feels it was going in this direction but felt there was a different process, she would have felt more comfortable with.

## **9) New Business**

### **A. Consideration Of Items Removed From The Consent Agenda**

There were no items removed.

### **B. Resolution No. 23-011 A Resolution Amending The Appropriation Of Fiscal Year (FY) 2023 Budgeted Funds**

Finance Director Lewis reviewed the requested changes to the budget to include revenue from grants and development fees as well as new expenditures, some of which were 2 K-9 dogs, mobile radios and cost for cleaning up homeless encampments.

Questions and answers were discussed regarding training for the dogs and the need for additional dogs and the increase in cost for the homeless abatement.

Council Member Applegate made a motion to approve Resolution 23-011, seconded by Council Member Rick. All members voted yes (7-0); the motion carried.

## **10) Correspondence, Comments and Ex-Officio Reports**

Deputy City Manager Evans reported that the PPRTA survey that was approved by Council will move forward and come in under budget and results are expected in April.

City Attorney Johnson reported on the request of Council Member Rick on how the court decision from Thornton would affect the City of Fountain. He stated that Fountain's charter is similar to Thornton's charter and feels that there is no need to amend the charter to ensure compliance.

Fire Chief Graham reported that there will be an invite to Council to put the new ladder truck in service.

Council Member Rick thanked Risk Manager Tingley for the tour of the homeless encampments stated there are terrible and dangerous.

Mayor Pro Tem Estes reported there is a survey on the city's website for feedback on the Blast Park and encouraged residents to take the survey.

Council Member Duncan congratulated our new Commander Chris Gonzalez. She also asked with rising interest rates and slower vehicle sales how it will impact Fountain.

Mayor Thompson thanked the electric department for the meter change out as it was swift. She also thanked the Police Department and Fire Department for their efforts in laying to rest Officer Becerra. She then reported on her attendance at Ft. Carson to receive the award for the City of Fountain.

**11) Announcement of Executive Sessions**

There were no executive sessions requested.

**12) Adjourn**

There being no further business, Mayor Thompson declared the meeting adjourned at 8:28 P.M.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor





# Regular City Council Meeting

## Old Business- 8A

ARPA Funds Update

### March 14, 2023

#### Summary Information

Title:

**UPDATE ON EXPENDITURES (USES) OF ARPA FUNDS AND REMAINING FUNDS AVAILABLE TO THE CITY**

Initiator : John Lewis, Finance Director

Presenter: John Lewis, Finance Director

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The purpose of this item is to update City Council on ARPA funds expenditures to date. The update includes planned funding as approved by Council in July of 2021, the expenditures made on those commitments and the funds still available for appropriation by Council.

Previous Action by City Council:

On July 27, 2021, the City Council approved the planned uses of ARPA funds for community needs in accordance with Federal stipulations and restrictions on the uses of ARPA funds.

Attachment: Spreadsheet showing Summary of Sources and Uses

#### Background Information

In early June of 2021, City Manager Scott Trainor presented the City Council with information on the American Rescue Plan Act (ARPA) funds and a document providing eligible uses and recommendations. On July 27 of 2021, City Manager Scott Trainor received approval from City Council to move forward with some of the various recommendations for uses of the ARPA funds.

This presentation is an update on the expenditures made since then and the remaining funds available.

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.
- Diversify city financial resources and invest.
- Provide reliable access to public safety services.
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#### Recommendation

There is no staff recommendation on this item but is providing an update to Council

#### Proposed Motion

Not Applicable

## American Recovery Plan Act (ARPA) Summary of Sources & Uses

### Sources of Funds

|  |                     |
|--|---------------------|
| <b>Total ARPA Funds to Receive 2021-2022</b> | <b>\$ 7,725,235</b> |
| 1st Tranche - 2021 - 8/10/21                 | \$ 3,862,618        |
| 2nd Tranche - 2022                           | \$ 3,862,618        |
| Interest earned                              | \$ 111,726          |
| <b>Total ARPA Funds Available</b>            | <b>\$ 7,836,962</b> |

### Uses of Funds

| <u>ARPA Pre-Approved Uses (7/2021)</u> | <u>Tentative Amount</u> | <u>Amount spent</u> |
|--|-------------------------|---------------------|
| 1. Improvements to Meeting Spaces      | \$ 138,000              | \$ 111,754          |
| 2. Lexipol for Fire Policies           | \$ 33,000               | \$ 32,643           |
| 3. 1 Lifepack for Ambulance            | \$ 28,000               | \$ 28,000           |
| 4. 4 Add'l Lifepacks & 3 gurneys       | \$ 236,000              | \$ 249,902          |
| 5. ADA, OEM Prep EPCO Health South     | \$ 70,000               | \$ 29,724           |
| 6. Business Impact Assist. Program     | \$ 250,000              | \$ 169,997          |
| 7. Lighten the Load                    | \$ 54,000               | \$0                 |
| 8. ADA improvements, 101 N. Main       | \$ 80,000               | \$ 90,000           |
| 9. Remodel FH#3 Dorm Space             | TBD                     | \$0                 |
| 10. Parks Building                     | TBD                     | \$0                 |
| 11. Rec Space move to Metcalfe         | \$ 5,000                | \$0                 |
| 12. Premium/Hazard Pay                 | \$ 111,000              | \$ 111,000          |
| 13. Water Infrastructure               | \$ 5,000,000            | \$ 120,871          |
| 14. Darneal Stormwater                 | \$ 800,000              | \$0                 |
| 15. Other Stormwater                   | \$ 116,000              | \$0                 |
| 16. Southmoor Watershed grant match    | \$ 1,000,000            | \$0                 |
| <b>Total</b>                           | <b>\$ 7,921,000</b>     | <b>\$ 943,891</b>   |

|                                |              |
|--------------------------------|--------------|
| Total dollars available above: | \$ 7,836,962 |
| Spent to Date                  | \$ 943,891   |
| ARPA balance should be         | \$ 6,893,071 |

|                                      |              |
|--------------------------------------|--------------|
| Balance in CSAFE at 12/31/22         | \$ 7,340,575 |
| Dollars spent out of operating funds | \$ 447,504   |

|   |                     |
|---|---------------------|
| Remaining amounts to be spent out of ARPA funds | <b>\$ 6,854,129</b> |
|---|---------------------|



# Regular City Council Meeting

## New Business –9A

Items removed from Consent Agenda

March 14, 2023

### Summary Information

Title:

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA

Initiator: City Clerk

Presenter: 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

Previous Action by City Council:

Attachment:

### Background Information

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.
- Diversify city financial resources and invest.
- Provide reliable access to public safety services.
- Improve the quality and availability of parks and recreation opportunities

### Recommendation

Staff recommendations

### Proposed Motion

"I move to approve"



# Regular City Council Meeting

## New Business-9B

Amendment to Overall Development  
Plan

March 14, 2023

### Summary Information

Title:

**PUBLIC HEARING AND FIRST READING OF ORDINANCE 1784, AN ORDINANCE APPROVING THE MESA RIDGE OVERALL DEVELOPMENT PLAN AMENDMENT NO. 5, GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF MESA RIDGE PARKWAY AND POWERS BOULEVARD, AND HEREINAFTER MORE SPECIFICALLY DESCRIBED IN EXHIBIT "A" AND EXHIBIT "B"**

Initiator : Kristy Martinez, AICP Planning Supervisor

Presenter: Kristy Martinez, AICP Planning Supervisor

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

Major Amendment to Overall Development Plan to adjust land use designation of land.

Attachments:

Vicinity Map and Letter of Intent

ODP Review Criteria

Ordinance 1784

### Background Information

This is a request for approval of a major amendment to the Mesa Ridge Overall Development Plan (ODP). This is the fifth amendment to this ODP which proposes adjusting the land use planning areas for residential, multi-family, commercial and the school sites to accommodate design changes and future growth. This is one of many land use approval processes as this area develops over the course of several years.

The Mesa Ridge development is approximately 532 acres and is generally located southeast of the intersection of Powers Boulevard and Mesa Ridge Parkway. The development is bound by Marksheffel Road to the east and C&S Road on the south. Portions of the Mesa Ridge ODP have previously been constructed (Areas A and O) and will not be affected by this proposed amendment.

The original ODP was approved in 2005 and the City has since processed several amendments to adjust land uses, specifically for multi-family areas (Mesa Ridge Apartments). This amendment proposes consolidating land use areas into four categories – Single Family Residential 3-5 dwelling units per acre, Single Family Residential 4-8 dwelling units per acre, Multi-Family 12-20 dwelling units per acre and commercial keeping the maximum number of dwelling units at 2,114. There is also a proposed one acre public safety facility north of C&S Road and 30 acres of land to be dedicated for future school sites to Widefield School District No. 3.

The development proposes approximately 347 acres of single family, 25 acres of multi-family and 20 acres of commercial land. The commercial land use area was previously located in the southeast portion of the future South Powers Boulevard corridor and Mesa Ridge Parkway. Due to terrain constraints and better roadway access, the commercial area is planned to be relocated to the southwest corner of the intersection of Mesa Ridge Parkway and Marksheffel Road to align with proposed commercial land on the east side of Marksheffel Road.

Surrounding Land Uses and Zoning:

|       |   |   |
|-------|---|---|
| North | Single Family Residential               | Planned Unit Development (PUD) District (EPC)                                   |
| South | Single Family Residential               | Large Lot Residential (LLR) District<br>Planned Unit Development (PUD) District |
| East  | Single-Family Residential               | Rural Residential (RR-5) (EPC)<br>Planned Unit Development (PUD) District       |
| West  | Open Space<br>Single-Family Residential | Park and Open Space (POS) District<br>Planned Unit Development (PUD) District   |

Access: There are several access points to this development proposed from Mesa Ridge Parkway, Marksheffel Road, C&S Road and the extension of Cross Creek Avenue in addition to the internal roadway connections. Access points are conceptually shown on the ODP and are further defined at later stages of development.

The South Powers Boulevard corridor transects this property. At a future time as this corridor alignment is defined and constructed in coordination with CDOT and local government agencies, this roadway will provide further vehicular access into and through the development.

Park and Open Space Elements: All PUD zoned property must provide a minimum of 25% of land area as open space for residential and 15% land area for commercial. At the time of annexation of this development (2005), this development was part of a larger parcel (Cross Creek) and the trails, open space and parkland will be developed in a logical and comprehensive manner with Cross Creek. As such, all open space requirements have been previously satisfied. As each phase of development is constructed, the need for smaller pocket parks and other common areas will be evaluated and incorporated in the subdivision design. These areas will be owned and maintained by the metropolitan district.

Within this development area, there will be thirty acres of school land dedicated to Widefield School District No. 3 to accommodate an elementary, middle and high school. These schools will be constructed in the future by Widefield School District No. 3 as the District determines a need for additional school sites. Once constructed, these sites will provide additional recreational opportunities for future residents.

Additionally, the Powers Boulevard corridor as it transects the property, may be used for passive open space for City purposes only, until such time that the south Powers Boulevard roadway corridor is constructed.

Drainage: This development is located within the Jimmy Camp Creek drainage basin and would be subject to payment of drainage basin fees with the approval of future final plats. The site generally drains from the northwest to the southeast. As development occurs, full spectrum detention ponds will be constructed as needed throughout the site. There are currently four planned drainage basins in the undeveloped portion of the development.

Floodplain: A portion of this development is located within a designated 100-year floodplain. The area will be contained in a tract and channelized. Channelization will be coordinated with FEMA with the future need for a conditional letter of map revision (CLOMR) and a letter of map revision (LOMR).

Services: City of Fountain will provide electric, fire and police services to the property. The Fountain Sanitation District will provide sanitary sewer service, Widefield Water is the water provider and Black Hills Energy will provide natural gas. The Widefield Water and Sanitation District has the ability to provide water to this development based upon the maximum number of units at 2,114.

**Public Notice:** At least fifteen (15) days prior to the City Council public hearing, the property was posted, property owners of record within four hundred feet (400') were notified and a public notice was published in the Gazette. Staff has not received any feedback from the notices sent for City Council. At the Planning Commission, members of the public expressed concern with the CDOT alignment for future Powers Boulevard and public safety (police response).

**Staff Findings:** Staff finds that the Mesa Ridge Overall Development Plan Amendment No. 5 is generally consistent with the review criteria set forth in Section 17.22.030 of the Fountain Municipal Code.

**Fountain Comprehensive Development Plan:** The Land Use Plan within the Fountain Comprehensive Development Plan, as amended, recommends single family residential, regional commercial, public and multi-family for this area. The request is in general conformance with the Plan. The planned land uses may not geographically align with the 2005 Plan due to development changes that have occurred since the Plan was adopted.

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.**
- Diversify city financial resources and invest.**
- Provide reliable access to public safety services.**
- Improve the quality and availability of parks and recreation opportunities**

### ***Recommendation***

Planning Commission Recommendation: On December 7, 2022 the City Planning Commission voted 5 to 0 to recommend approval of the Mesa Ridge Overall Development Plan Amendment No. 5 subject to condition that all staff and agency comments be fully addressed. All outstanding comments have been addressed.

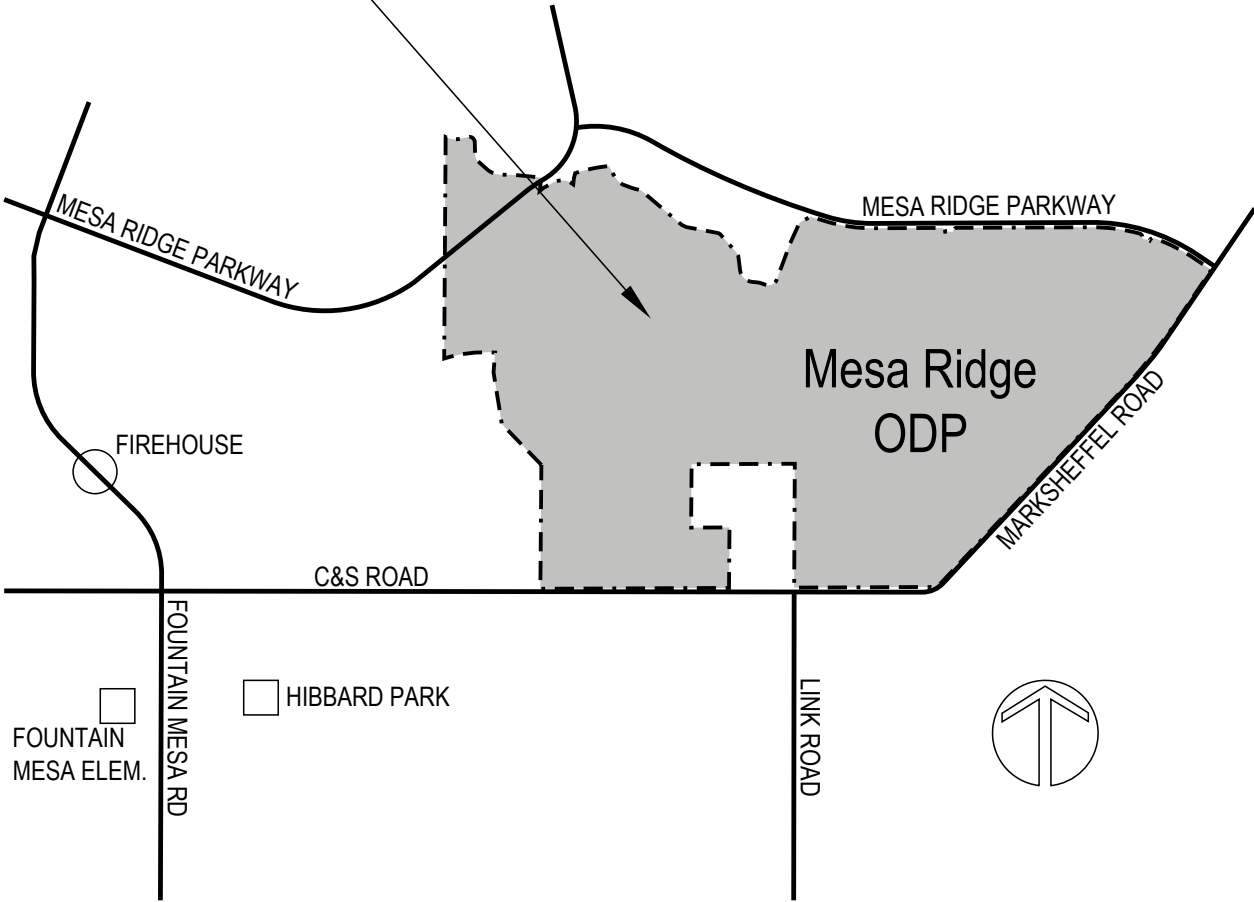
Staff does not oppose the approval of the Mesa Ridge Overall Development Plan Amendment No. 5 and approval of Ordinance No. 1784 on first reading.

### ***Proposed Motion***

Motion to approve Ordinance No. 1784 on first reading subject to the following condition:

1. The applicant/developer and/or property owner may be required to participate in a fair and equitable manner for future intersection or signal improvements at the Mesa Ridge Parkway intersections with Powers Boulevard, Wayfarer Drive, Autumn Glen Avenue, Spring Glen Drive, and Marksheffel Road. The developer's general design, construction and/or financial responsibilities regarding the final intersection or signal improvements shall be determined with final plat approval(s), and County access permits.

Mesa Ridge ODP  
Amendment No. 5



VICINITY MAP

NO SCALE

## LAND USE PROPOSAL

This development request is a major amendment to the Mesa Ridge ODP for a revision to the residential and commercial land uses. The overall acreage of 532 acres has not changed. Interior collector street alignments have been relocated to better serve the future development, but the exterior primary access points to adjacent roadways have not changed. While the residential land use has increased by 17.5 acres due to a reduction in commercial acreage, The overall density cap of residential units remains the same as the 2014 ODP amendment and is set at 2114 units. A chart showing a side-by-side comparison of the changes is also attached to this letter of intent.

The project is zoned PUD and the setbacks and building heights have been specified per land use type. The ODP is largely in conformance with the originally approved PUD.

## LAND USE CHANGES PROPOSED

A side-by-side comparison chart is provided at the end of this letter for reference to the following summary of changes. The changes to the ODP were to consolidate the number of residential use types into fewer categories with slight decreases in commercial property and realignment of interior collector corridors.

- The multi-family residential land use has increased from 28.3 acres to 36.4 acres. This increases the total number of multi-family units estimated from 395 to 481. 120 of those units already exist within the Mesa Ridge Apartment complex that was constructed in 2017.
- The duplex/attached category has been removed and those acres absorbed into other residential land uses.
- The single-family residential density ranges of 4-8 du/ac and 4-6 du/ac have been combined. These two areas overlap each other in density and combining them reduces the overall number of density ranges. Keeping in mind that the total density cap for the development remains at 2114, the 4-8 du/acre category increases to 158 acres and 842 estimated units, but also includes 169 existing units within Mesa Ridge Subdivision Filings 11, 12, and 13.
- The single-family residential property at a density of 3-5 du/ac has been increased from 103.2 acres and 413 estimated units to 191.1 acres and 671 estimated units.
- The residential land use at a density of 2-3 du/ac has been eliminated since it can be achieved in other residential categories.
- The residential land use of 1.0 acre and a density of 1 du/ac was a parcel of land owned by a separate individual who has since sold the property to Norwood. That 1-acre parcel is being absorbed into the adjacent multi-family land use.
- A 1-acre public safety facility site was requested by the City of Fountain and added to the plans.
- Commercial acreage has been reduced from 35 acres to 20 acres and has been relocated from a very steep site with limited access south of the intersection of Powers Boulevard and Mesa Ridge Parkway to a much more developable parcel with direct access to Mesa Ridge Parkway at the intersection with Marksheffel Road.
- Park/open space acreage has been increased from 19.4 acres to 57.6 acres. A portion of this increase is due to the future Powers Boulevard corridor being used as an open space corridor until such time as the road is funded for construction by CDOT.
- The 30-acre school site shown in the eastern portion of the ODP will remain in the same area. However, the School District requested that those sites be split by a roadway into a 10-acre elementary site and a 20-acre middle/high school site. The plans now specify these school uses. With this change, an additional limited movement access location has been added to Mesa Ridge Parkway. The Traffic study shows that limited movement at the location is acceptable. Refinements to the study and further determination on the type of intersection will be completed with future development.





# NORWOOD

## **SITE LOCATION**

The parcel of land is located southeast of Sneffels Drive and Mesa Ridge Parkway and is bordered on the north by Mesa Ridge Parkway, on the east by Marksheffel Road, on the south by C&S Road, and on the west by the Cross Creek Regional Park.

## **NATURAL FEATURES**

The property to be developed is a parcel of land generally exhibiting slopes ranging in steepness from 2% to 8%. Steeper slopes occur along the northcentral area of the ODP along the future Powers Boulevard corridor. The property is vegetated entirely with native grasses and scrub elm species along the drainages. The property's natural drainage is to the southeast. An updated master drainage report accompanies this amendment. Stormwater drainage will be provided in several full-spectrum detention facilities. Portions of the property located along Marksheffel Road are currently within a 100-year floodplain until such time as channel and pond improvements are constructed minimizing the floodplain area in this location.

## **VEHICULAR CIRCULATION**

This project will be served by the existing extension of Cross Creek Avenue on the west boundary. The site will have four access points along the northern boundary along Mesa Ridge Parkway at Wayfarer Drive, Autumn Glen Avenue, Spring Glen Drive and a limited movement residential roadway between Autumn Glen Avenue and Spring Glen Drive. This limited movement intersection is designed to provide school access. Vehicular access along Marksheffel Road and C&S Road will be at Bonnie Cap Lane, Link Road, and a yet to be named street access nearer the western edge of the property.

## **PARKS AND OPEN SPACE**

Parks and open space acreage has been increased from 19.4 acres to 57.6 acres. A portion of this increase is due to the future Powers Boulevard corridor being used as open space until such time as the Colorado Department of Transportation chooses to fund this improvement. Per the annexation agreement and City Code, a per-unit fee will also be collected for parks.

## **MAJOR UTILITIES**

The subdivision will be served water from Widefield Water and Sanitation District. The City of Fountain will provide sanitary sewer and electric. Gas service will be provided by Black Hills Energy. A Utility Report with general utility locations has been provided.

## **PHASING**

Phasing for development will begin in the southwest portion of the ODP with the multi-family development and continue both north and east. Notes related to phasing have been included as part of the ODP.



# NORWOOD

Mesa Ridge ODP Amendment NO. 4 (As Approved)

## LAND USE CHART

|                                | ACRES        | UNITS / AC RANGE | ESTIMATED UNITS | % OF TOTAL ACRES |
|--------------------------------|--------------|------------------|-----------------|------------------|
| <b>MULTIFAMILY</b>             |              |                  |                 |                  |
| E                              | 17.2         | 12-20            | 275             | 3.2%             |
| T                              | 11.1         | 10.8             | 120             | 2.1%             |
| <b>SUBTOTAL</b>                | <b>28.3</b>  |                  | <b>395</b>      | <b>5.3%</b>      |
| <b>DUPLEX / ATTACHED</b>       |              |                  |                 |                  |
| K                              | 15.0         | 8-12             | 150             | 2.8%             |
| R                              | 27.8         | 8-12             | 235             | 5.2%             |
| <b>SUBTOTAL</b>                | <b>42.8</b>  |                  | <b>385</b>      | <b>8.0%</b>      |
| <b>SINGLE FAMILY</b>           |              |                  |                 |                  |
| A                              | 32.2         | 4-8              | 139             | 6.1%             |
| F                              | 15.0         | 4-8              | 90              | 2.8%             |
| <b>SUBTOTAL</b>                | <b>47.2</b>  |                  | <b>229</b>      | <b>8.9%</b>      |
| <b>SINGLE FAMILY</b>           |              |                  |                 |                  |
| B                              | 26.8         | 4-6              | 127             | 5.0%             |
| G                              | 27.5         | 4-6              | 138             | 5.2%             |
| H                              | 14.5         | 4-6              | 73              | 2.7%             |
| M                              | 10.1         | 4-6              | 51              | 1.9%             |
| O                              | 10.5         | 4-6              | 53              | 2.0%             |
| Q                              | 25.4         | 4-6              | 127             | 4.8%             |
| S                              | 16.5         | 4-6              | 83              | 3.1%             |
| <b>SUBTOTAL</b>                | <b>131.3</b> |                  | <b>652</b>      | <b>24.7%</b>     |
| <b>SINGLE FAMILY</b>           |              |                  |                 |                  |
| D                              | 20.3         | 3-5              | 81              | 3.8%             |
| I                              | 23.5         | 3-5              | 94              | 4.4%             |
| J                              | 35.4         | 3-5              | 142             | 6.7%             |
| N                              | 24.0         | 3-5              | 96              | 4.5%             |
| <b>SUBTOTAL</b>                | <b>103.2</b> |                  | <b>413</b>      | <b>19.4%</b>     |
| <b>SINGLE FAMILY</b>           |              |                  |                 |                  |
| P                              | 15.5         | 2-3              | 39              | 2.9%             |
| <b>SUBTOTAL</b>                | <b>15.5</b>  |                  | <b>39</b>       | <b>2.9%</b>      |
| <b>SINGLE FAMILY</b>           |              |                  |                 |                  |
| U                              | 1.0          | 1                | 1               | 0.2%             |
| <b>SUBTOTAL</b>                | <b>1.0</b>   |                  | <b>1</b>        | <b>0.2%</b>      |
| <b>RESIDENTIAL SUBTOTAL</b>    | <b>369.3</b> |                  | <b>2114</b>     | <b>69.4%</b>     |
| <b>COMMERCIAL</b>              |              |                  |                 |                  |
| C                              | 35.9         |                  |                 | 6.7%             |
| <b>COMMERCIAL SUBTOTAL</b>     | <b>35.9</b>  |                  |                 | <b>6.7%</b>      |
| <b>PUBLIC USE</b>              |              |                  |                 |                  |
| PARKS / OPEN SPACE / DETENTION | 19.4         |                  |                 | 3.7%             |
| SCHOOL                         | 30.0         |                  |                 | 5.6%             |
| ROAD ROW                       | 38.1         |                  |                 | 7.2%             |
| POWERS ROW & BUFFER            | 39.6         |                  |                 | 7.4%             |
| <b>PUBLIC USE SUBTOTAL</b>     | <b>127.1</b> |                  |                 | <b>23.9%</b>     |
| <b>TOTAL</b>                   | <b>532.3</b> |                  |                 | <b>100.0%</b>    |

Mesa Ridge ODP Amendment NO. 5 (As Proposed)

## LAND USE CHART

|  | ACRES        | UNITS / AC RANGE | ESTIMATED UNITS | % OF TOTAL ACRES |
|--|--------------|------------------|-----------------|------------------|
| <b>MULTIFAMILY</b>                         |              |                  |                 |                  |
| M  | 25.3         | 12-20            | 481             | 4.8%             |
| *O   | 11.1         | 10.8             | 120             | 2.1%             |
| <b>SUBTOTAL</b>                            | <b>36.4</b>  |                  | <b>601</b>      | <b>6.9%</b>      |
| <b>SINGLE FAMILY 4-8 DU/Ac</b>             |              |                  |                 |                  |
| *A   | 39.0         | 4-8              | 169             | 7.3%             |
| B  | 27.1         | 4-8              | 141             | 5.1%             |
| C  | 31.6         | 4-8              | 161             | 5.9%             |
| H  | 15.6         | 4-8              | 94              | 2.9%             |
| I  | 14.7         | 4-8              | 106             | 2.8%             |
| L  | 30.0         | 4-8              | 171             | 5.6%             |
| <b>SUBTOTAL</b>                            | <b>158.0</b> |                  | <b>842</b>      | <b>29.6%</b>     |
| <b>SINGLE FAMILY 3-5 DU/Ac</b>             |              |                  |                 |                  |
| D  | 40.6         | 3-5              | 162             | 7.6%             |
| E  | 15.2         | 3-5              | 63              | 2.9%             |
| J  | 48.3         | 3-5              | 172             | 9.1%             |
| K  | 78.5         | 3-5              | 240             | 14.7%            |
| P  | 8.5          | 3-5              | 34              | 1.6%             |
| <b>SUBTOTAL</b>                            | <b>191.1</b> |                  | <b>671</b>      | <b>35.9%</b>     |
| <b>RESIDENTIAL SUBTOTAL</b>                | <b>386.8</b> |                  | <b>2,114</b>    | <b>72.4%</b>     |
| <b>EXISTING UNITS (IN AREAS O &amp; A)</b> |              |                  | <b>254</b>      |                  |
| <b>PLANNED UNITS</b>                       |              |                  | <b>1,860</b>    |                  |
| <b>COMMERCIAL</b>                          |              |                  |                 |                  |
| G  | 20.0         |                  |                 | 3.8%             |
| <b>COMMERCIAL SUBTOTAL</b>                 | <b>20.0</b>  |                  |                 | <b>3.8%</b>      |
| <b>PUBLIC USE</b>                          |              |                  |                 |                  |
| PARKS / OPEN SPACE / DETENTION             | 29.3         |                  |                 | 5.5%             |
| SCHOOL (F)                                 | 30.0         |                  |                 | 5.6%             |
| PUBLIC SAFETY FACILITY (N)                 | 1.0          |                  |                 | 0.2%             |
| ROAD ROW                                   | 37.9         |                  |                 | 7.2%             |
| FUTURE POWERS BLVD. ROW                    | 28.3         |                  |                 | 5.3%             |
| <b>PUBLIC USE SUBTOTAL</b>                 | <b>126.5</b> |                  |                 | <b>23.8%</b>     |
| <b>TOTAL</b>                               | <b>532.3</b> |                  | <b>2,114</b>    | <b>100.0%</b>    |

\*DEVELOPMENT COMPLETE



### **REVIEW CRITERIA FOR APPROVING OVERALL DEVELOPMENT PLANS:**

Pursuant to Section 17.22.030 of the Fountain Municipal Code, Overall Development Plans shall be reviewed for substantial conformance to the applicable review criteria below.

1. The PUD is consistent with the Fountain Comprehensive Development Plan and other adopted plans.
2. The PUD achieves the stated objectives of the Planned Unit Development District, by allowing for the mixture of uses and greater diversity of building types, promoting environmental protection, limiting sprawl, improving design quality and a higher-quality living environment, encouraging innovation of design and a variety of housing types, and managing the increase in demand for public amenities.
3. The PUD design achieves the stated development concept.
4. The proposed land uses are compatible with other land uses in the development and with surrounding land uses in the area.
5. The type, density, and location of proposed land uses are appropriate based on the findings of any required report or analysis.
6. The street design and circulation system are adequate to support the anticipated traffic and the proposed land uses do not generate traffic volumes, which exceed the capacity of existing transportation systems, or that adequate measures have been developed to effectively mitigate such impacts.
7. The PUD adequately mitigates off-site impacts to public utilities and facilities.
8. The fiscal impacts have been satisfactorily addressed and the City will be able to provide adequate levels of service for police and fire protection, street maintenance, snow removal and other public services, or that adequate measures have been developed to effectively mitigate such impacts.
9. Higher levels of amenities, including open spaces, parks, recreational areas, trails and school sites will be provided to serve the projected population.
10. The PUD preserves significant natural features and incorporates these features into parks and open space areas.
11. There are special physical conditions or objectives of development that the proposal will satisfy to warrant a departure from the standard regulation requirements.
12. The adjacent and nearby developments will not be detrimentally affected by the proposed PUD and approval period.
13. The applicant adequately demonstrates that the proposal is feasible.

**ORDINANCE NO. 1784**

**AN ORDINANCE APPROVING THE MESA RIDGE OVERALL DEVELOPMENT PLAN AMENDMENT NO. 5, GENERALLY LOCATED SOUTHEAST OF THE INTERSECTION OF MESA RIDGE PARKWAY AND POWERS BOULEVARD, AND HEREINAFTER MORE SPECIFICALLY DESCRIBED IN EXHIBIT "A" AND EXHIBIT "B"**

WHEREAS, David Jenkins, Carolyn Jenkins, Chris, Marc, Chad, LLC, and CSJ No. 9 LLC are titleholders of the real property described in Exhibit A attached hereto, for property known as Mesa Ridge Overall Development Plan Amendment No. 5, has made application for approval of an amendment to an overall development plan for certain property as more specifically described in Exhibit B attached hereto (Property); and

WHEREAS, a previously approved Overall Development known as Mesa Ridge Overall Development Plan Amendment No. 4 was approved in 2014 for the same property;

WHEREAS, the Mesa Ridge Overall Development Plan Amendment No. 5 and supplemental documents are on file with the City Clerk's office;

WHEREAS, at a regular meeting on December 7, 2022, the City Planning Commission reviewed and voted 5 to 0 to recommend approval of the Mesa Ridge Overall Development Plan Amendment No. 5; and

WHEREAS, the City Council of the City of Fountain, Colorado finds that the request is generally consistent with the review criteria set forth in Section 17.22.030 of the Fountain Municipal Code.

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

Section 1. The previously approved Mesa Ridge Overall Development Plan Amendment No. 4 is hereby deemed obsolete.

Section 2. The Mesa Ridge Overall Development Plan Amendment No. 5 is hereby approved subject to the following condition:

1. The applicant/developer and/or property owner may be required to participate in a fair and equitable manner for future intersection or signal improvements at the Mesa Ridge Parkway intersections with Powers Boulevard, Wayfarer Drive, Autumn Glen Avenue, Spring Glen Drive, and Marksheffel Road. The developer's general design, construction and/or financial responsibilities regarding the final intersection or signal improvements shall be determined with final plat approval(s), and County access permits.

Section 3. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read by title and passed this 14<sup>th</sup> day of March, 2023, by the City Council, City of Fountain, Colorado, 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 Gazette, a newspaper of general circulation in the City of Fountain.

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Sharon Thompson, Mayor

ATTEST:

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Silvia Huffman, City Clerk

Introduced, read by title, and passed on second and final reading on the \_\_\_\_\_ day of \_\_\_\_\_, 2023, and ordered published by title in the Gazette, a newspaper of general circulation in the City of Fountain, Colorado, in accordance with the City Charter.

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Sharon Thompson, Mayor

ATTEST:

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Silvia Huffman, City Clerk



LEGAL DESCRIPTION:

That portion of Sections 27, 28, and 29, Township 15 South, Range 65 West of the 6th P.M., and of Tracts 1 and 2, in SUBDIVISION NO. 1 OF THE FOUNTAIN SUBURBAN HOMES CORPORATION, El Paso County, Colorado, according to the plat thereof as recorded in Plat Book L at Page 44, El Paso County, Colorado, being more particularly described as follows:

Commencing at the Southeast corner of said Section 29; thence  $N00^{\circ}28'06''E$  on the East line of the Southeast quarter of said Section, the basis of bearings used herein, a distance of 30.00 feet to a point thirty (30.00) feet North of the South line of the Southwest quarter (SW1/4) of said Section 28, as measured perpendicular thereto and the POINT OF BEGINNING; thence  $N00^{\circ}28'06''E$  on said East line, a distance of 1290.14 feet to a point on the North line of the South half of the Southwest quarter of said Section 28; thence  $N44^{\circ}05'32''W$  a distance of 252.65 feet; thence  $N44^{\circ}06'10''W$  a distance of 338.98 feet; thence  $N09^{\circ}07'50''W$  a distance of 546.02 feet; thence  $N04^{\circ}31'14''E$  a distance of 206.93 feet to a point on a curve; thence on a curve to the left having a central angle of  $21^{\circ}04'17''$ , a radius of 1460.00 feet for an arc distance of 536.93 feet, whose chord bears  $S83^{\circ}19'07''W$  to a point on the Easterly line of the City of Fountain, El Paso County, Colorado as shown on the Annexation Plat of North Fountain Addition No. 15 as recorded in Plat Book D-4 at Page 62 of the records of said El Paso County; thence  $N00^{\circ}22'19''E$  on said Easterly line, a distance of 210.96 feet; thence  $N00^{\circ}22'20''E$  on said Easterly line, a distance of 2095.96 feet to a point on a curve on the Southerly boundary line of the Main Canal of the Fountain Mutual Irrigation Company as described in Book 5506 at Page 1290 of the records of said El Paso County; the following twelve (12) courses are on said Southerly boundary line; thence: 1) on a curve to the left having a central angle of  $38^{\circ}50'05''$ , a radius of 220.00 feet for an arc distance of 149.11 feet, whose chord bears  $S82^{\circ}40'31''E$ ; 2)  $N77^{\circ}54'26''E$  a distance of 93.79 feet to a point of curve; 3) on a curve to the right having a central angle of  $100^{\circ}24'22''$ , a radius of 55.00 feet for an arc distance of 96.38 feet, whose chord bears  $S51^{\circ}53'23''E$ ; 4)  $S01^{\circ}41'12''E$  a distance of 137.18 feet to a point of curve; 5) on a curve to the left having a central angle of  $46^{\circ}29'23''$ , a radius of 88.00 feet for an arc distance of 71.40 feet, whose chord bears  $S24^{\circ}55'53''E$ ; 6)  $S48^{\circ}10'35''E$  a distance of 126.77 feet to a point of curve; 7) on a curve to the left having a central angle of  $40^{\circ}56'06''$ , a radius of 220.00 feet for an arc distance of 157.18 feet, whose chord bears  $S68^{\circ}38'38''E$ ; 8)  $S89^{\circ}06'41''E$  a distance of 124.09 feet to a point of curve; 9) on a curve to the right having a central angle of  $04^{\circ}53'33''$ , a radius of 460.00 feet for an arc distance of 39.28 feet, whose chord bears  $S86^{\circ}39'54''E$ ; 10)  $S84^{\circ}13'08''E$  a distance of 236.92 feet to a point of curve; 11) on a curve to the right having a central angle of  $90^{\circ}54'00''$ , a radius of 23.00 feet for an arc distance of 36.49 feet, whose chord bears  $S38^{\circ}46'08''E$ ; 12)  $S06^{\circ}40'52''W$  a distance of 116.20 feet; thence  $N51^{\circ}03'46''E$  a distance of 46.41 feet; thence  $N60^{\circ}23'46''E$  a distance of 110.51 feet to a point of curve; thence on a curve to the right having a central angle of  $67^{\circ}18'34''$ , a radius of 195.87 feet for an arc distance of 230.10 feet, whose chord bears  $S85^{\circ}56'57''E$  to a point on the Southerly boundary line of the Main Canal of the Fountain Mutual Irrigation Company as described in Book 5992 Page 1279 of the records of said El Paso County, the following two (2) courses are on said Southerly boundary line; thence: 1)  $N06^{\circ}26'08''E$  a distance of 66.34 feet; 2)  $N14^{\circ}22'23''E$  a distance of 52.05 feet to a point on a curve; thence on a curve to the right having a central angle of  $13^{\circ}37'05''$ , a radius of 1520.00 feet for an arc distance of 361.27 feet, whose chord bears  $N78^{\circ}12'47''E$  to a point on the Southerly boundary line of the Main Canal of the Fountain Mutual Irrigation Company as described in Book 5992 Page 1279 of the records of said El Paso County, the following twenty-two (22) courses are on said Southerly boundary line; thence: 1)  $S27^{\circ}47'09''E$  a distance of 133.07 feet; 2)  $S41^{\circ}09'52''E$  a distance of 48.94 feet to a point of curve; 3) on a curve to the left having a central angle of  $28^{\circ}52'45''$ , a radius of 153.00 feet for an arc distance of 77.12 feet, whose chord bears  $S55^{\circ}36'15''E$ ; 4)  $S70^{\circ}02'37''E$  a distance of 94.36 feet; 5)  $S74^{\circ}54'11''E$  a distance of 80.06 feet to a point of curve; 6) on a curve to the right having a central angle of  $25^{\circ}13'15''$ , a radius of 51.00 feet for an arc distance of 22.45 feet, whose chord bears  $S62^{\circ}17'33''E$ ; 7)  $S49^{\circ}40'56''E$  a distance of 523.46 feet to a point of curve; 8) on a curve to the left having a central angle of  $29^{\circ}38'12''$ , a radius of 175.00 feet for an arc

distance of 90.52 feet, whose chord bears S64°30'02"E; 9) S79°19'08"E a distance of 312.08 feet to point of a curve; 10) on a curve to the right having a central angle of 37°39'42", a radius of 58.00 feet for an arc distance of 38.12 feet, whose chord bears S60°29'17"E; 11) S41°39'26"E a distance of 256.99 feet to a point of curve; 12) on a curve to the right having a central angle of 34°30'25", a radius of 55.00 feet for an arc distance of 33.12 feet, whose chord bears S24°24'14"E; 13) S07°09'01"E a distance of 147.36 feet to a point of curve; 14) on a curve to the left having a central angle of 77°34'32", a radius of 142.00 feet for an arc distance of 192.26 feet, whose chord bears S45°56'17"E; 15) S84°43'33"E a distance of 42.45 feet to a point of curve; 16) on a curve to the right having a central angle of 14°06'03", a radius of 233.00 feet for an arc distance of 57.34 feet, whose chord bears S77°40'32"E; 17) S70°37'30"E a distance of 42.79 feet to a point of curve; 18) on a curve to the left having a central angle of 89°02'05", a radius of 91.00 feet for an arc distance of 141.41 feet, whose chord bears N64°51'27"E; 19) N20°20'25"E a distance of 404.62 feet; 20) N24°23'23"E a distance of 214.77 feet to a point of curve; 21) on a curve to the right having a central angle of 40°00'00", a radius of 75.00 feet for an arc distance of 52.36 feet, whose chord bears N44°23'23"E; 22) N64°23'23"E a distance of 99.89 feet; thence S72°59'09"E a distance of 157.08 feet to a point of curve; thence on a curve to the left having a central angle of 17°16'12", a radius of 1680.00 feet for an arc distance of 506.38 feet, whose chord bears S81°37'15"E; thence N89°44'40"E a distance of 710.67 feet to a point of curve; thence on a curve to the right having a central angle of 90°00'00", a radius of 40.00 feet for an arc distance of 62.83 feet, whose chord bears S45°15'20"E; thence N89°44'40"E a distance of 80.00 feet to a point on a curve; thence on a curve to the right having a central angle of 90°00'00", a radius of 40.00 feet for an arc distance of 62.83 feet, whose chord bears N44°44'40"E; thence N89°44'40"E a distance of 1397.46 feet to a point of curve; thence on a curve to the right having a central angle of 15°18'05", a radius of 1920.00 feet for an arc distance of 512.75 feet, whose chord bears S82°36'18"E to a point of compound curve; thence on a curve to the right having a central angle of 92°26'20", a radius of 40.00 feet for an arc distance of 64.53 feet, whose chord bears S28°44'06"E; thence S72°30'56"E a distance of 80.00 feet to a point on a curve; thence on a curve to the right having a central angle of 92°26'20", a radius of 40.00 feet for an arc distance of 64.53 feet, whose chord bears N63°42'14"E to a point of compound curve; thence on a curve to the right having a central angle of 14°01'20", a radius of 1920.00 feet for an arc distance of 469.89 feet, whose chord bears S63°03'56"E; thence S56°03'15"E a distance of 209.04 feet to a point on the Northwesterly right-of-way line of Marksheffel Road; the following three (3) courses are on said Northwesterly right-of-way line; thence: 1) S33°56'45"W a distance of 664.27 feet to a point of a curve; 2) on a curve to the right having a central angle of 09°16'28", a radius of 5699.98 feet for an arc distance of 922.65 feet, whose chord bears S38°34'59"W; 3) S43°13'13"W a distance of 2787.86 feet to the Northerly right-of-way line of C & S Road; thence S89°44'27"W on said Northerly right-of-way line, a distance of 1490.44 feet; thence N00°18'33"E a distance of 1290.05 feet to the Northeast corner of Tract 1 of said Subdivision No. 1 of The Fountain Suburban Homes Corporation, said point also being on the North line of the South half of the Southwest quarter of said Section 28; thence S89°44'31"W on said North line a distance of 1075.05 feet to a point on a line being 1565.00 feet East of the West line of said Section 28, as measured perpendicular to thereto; thence S00°28'06"W parallel with said West line, a distance of 660.11 feet to the Northwest corner of the tract of land recorded at Reception No. 205041118 of the records of said El Paso County, the following two (2) courses are on the Northerly and Easterly boundary line of said tract of land; thence: 1) N89°44'27"E a distance of 400.00 feet; 2) S00°28'06"W a distance of 630.00 feet to the Northerly right-of-way line of C & S Road; thence S89°44'27"W on said Northerly right-of-way line, a distance of 1965.00 feet to the POINT OF BEGINNING and containing 532.28 acres of land, more or less.

Prepared by:  
John L. Bailey PLS #19586  
for and on behalf of  
Rockwell Consulting, Inc.  
November 29, 2021







# MESA RIDGE - OVERALL DEVELOPMENT PLAN

## AMENDMENT NO. 5 (MAJOR AMENDMENT)

CITY OF FOUNTAIN, COLORADO  
DEVELOPMENT STANDARDS

### LAND USE CHART

- Residential Low Density - 3.5 Dwelling Units Per Acre**
- Permitted Uses: Single-family residential (detached), mail kiosks, trails, development signage, parks, open space, utilities, drainage facilities\*
  - Lot Size Minimum: 5,000 square feet
  - Lot Width Minimum: 45-feet/55-feet for corner lots
  - Minimum Setback Requirements:
    - Front Setback: 15-feet
    - Rear Setback: 18-feet from face of garage
    - Side Setback: 20-feet
    - Maximum lot coverage: 50%
    - Maximum Height: 35-feet
  - Maximum lot coverage: 50%
  - Maximum Height: 35-feet
  - A minimum of 4-foot front yard building setback is required between adjacent units
  - Setback Encroachments: Uncovered patios, decks, porches, stoops, accessory structures, and fireplaces shall not be closer than 10' from the rear property line. Covered or enclosed patios, decks, porches, stoops, and accessory structures are not allowed in setbacks.
  - Encroachments do not override easements.
  - The Zoning administrator reviews and approves minor amendments and shall not represent more than a 15% change in the location, height, yard, lot and other development standards. Section 17.22.40 B.

- Residential Medium Density - 4.8 Dwelling Units Per Acre**
- Permitted uses: single-family residential (attached and detached), mail kiosks, development signage, trails, parks, open space, utilities, drainage facilities\*

- Residential Front Loaded Units: 3800 square feet
  - Lot Size Minimum: 1000 square feet
  - Lot Width Minimum: 45-feet/55-feet for corner lots
  - Minimum Setback Requirements:
    - Front Setback: 10-feet with driveway
    - Rear Setback: 18-feet from face of garage
    - Side Setback: 5-feet without driveway
    - Maximum lot coverage: 50%
    - Maximum Height: 35-feet
  - A minimum of 4-foot front yard building setback is required between adjacent units.
  - Setback Encroachments: Uncovered patios, decks, porches, stoops, accessory structures, and fireplaces shall not be closer than 10' from rear property line. Covered or enclosed patios, decks, porches, stoops and accessory structures are not allowed in setbacks. Encroachments do not override easements.

**Residential Alley Loaded Units:**

- Lot Size Minimum: 3800 square feet
  - Lot area for individual lots when platting along a common wall of attached units 1000 square feet
  - Lot Width Minimum: 45-feet/55-feet for corner lots
    - Front Setback: 5-feet to house when adjacent to the street
    - Rear Setback: 5-feet to house when adjacent to a tract or greenway
    - Side Setback: 10-feet from face of garage
    - Maximum lot coverage: 50%
    - Maximum Height: 35-feet
  - Setback Encroachments: Uncovered patios, decks, porches, stoops, accessory structures, and fireplaces shall not be closer than 10' from rear property line. Covered or enclosed patios, decks, porches, stoops and accessory structures are not allowed in setbacks. Encroachments do not override easements.

\*ALL ACCESSORY AND ADDITIONAL USES ARE THOSE PER CITY CODE SECTION 17.04.030

**Multi Family - 12-20 Dwelling Units Per Acre**

- Permitted Uses: Multi-family apartments, mail kiosks, trails, development signage, parks, open space, utilities, drainage facilities, fencing, parks and park related equipment, swimming pool, community clubhouse
- Lot Size Minimum: 1000 square feet when platting along the common wall of attached units
- Minimum Periphery Setback Requirements: 20-feet
- Maximum lot coverage: none
- Maximum Height: 45-feet
- Minimum Lot Width: 75-feet

**Commercial**

- Permitted Uses: All uses permitted in the Regional Commercial (RC) zone per the City Zoning Code.
- Lot Size: no minimum
- Minimum Front, Side, Rear Setback Requirements: 20-feet
- Maximum lot coverage: 80%
- Maximum Height: 40-feet

|  | ACRES        | UNITS / AC RANGE | ESTIMATED UNITS | % OF TOTAL ACRES |
|--|--------------|------------------|-----------------|------------------|
| <b>MULTIFAMILY</b>                         |              |                  |                 |                  |
| M  | 26.3         | 12-20            | 481             | 4.8%             |
| *O   | 11.1         | 10.8             | 120             | 2.1%             |
| SUBTOTAL                                   | 36.4         |                  | 601             | 6.9%             |
| <b>SINGLE FAMILY 4-8 DU/Ac</b>             |              |                  |                 |                  |
| *A   | 39.0         | 4-8              | 169             | 7.3%             |
| B  | 27.1         | 4-8              | 141             | 5.1%             |
| C  | 31.6         | 4-8              | 161             | 5.9%             |
| H  | 15.6         | 4-8              | 94              | 2.9%             |
| I  | 14.7         | 4-8              | 106             | 2.8%             |
| L  | 30.0         | 4-8              | 171             | 5.6%             |
| SUBTOTAL                                   | 158.0        |                  | 842             | 29.6%            |
| <b>SINGLE FAMILY 3-5 DU/Ac</b>             |              |                  |                 |                  |
| D  | 40.6         | 3-5              | 162             | 7.6%             |
| E  | 16.2         | 3-5              | 63              | 2.9%             |
| J  | 48.3         | 3-5              | 172             | 9.1%             |
| K  | 78.5         | 3-5              | 240             | 14.7%            |
| P  | 8.5          | 3-5              | 34              | 1.6%             |
| SUBTOTAL                                   | 191.1        |                  | 671             | 35.9%            |
| <b>RESIDENTIAL SUBTOTAL</b>                | <b>386.8</b> |                  | <b>2,114</b>    | <b>72.4%</b>     |
| <b>EXISTING UNITS (IN AREAS O &amp; A)</b> |              |                  | <b>254</b>      |                  |
| <b>PLANNED UNITS</b>                       |              |                  | <b>1,860</b>    |                  |
| <b>COMMERCIAL</b>                          |              |                  |                 |                  |
| G  | 20.0         |                  |                 | 3.8%             |
| <b>COMMERCIAL SUBTOTAL</b>                 | <b>20.0</b>  |                  |                 | <b>3.8%</b>      |
| <b>PUBLIC USE</b>                          |              |                  |                 |                  |
| PARKS / OPEN SPACE / DETENTION             | 29.3         |                  |                 | 5.5%             |
| SCHOOL (F)                                 | 30.0         |                  |                 | 5.6%             |
| PUBLIC SAFETY FACILITY (N)                 | 1.0          |                  |                 | 0.2%             |
| ROAD ROW                                   | 37.9         |                  |                 | 7.2%             |
| FUTURE POWERS BLVD. ROW                    | 28.3         |                  |                 | 5.3%             |
| <b>PUBLIC USE SUBTOTAL</b>                 | <b>126.5</b> |                  |                 | <b>23.8%</b>     |
| <b>TOTAL</b>                               | <b>532.3</b> |                  | <b>2,114</b>    | <b>100.0%</b>    |

\*DEVELOPMENT COMPLETE

| REVISIONS   | DATE     |
|---|----------|
| REVISIONS PER PLANNING DIVISION COMMENTS IN LETTER DATED DEC. 4, 2013 | 12-12-13 |
| MAJOR AMENDMENT #5  | 12-02-21 |
|   |          |
|   |          |



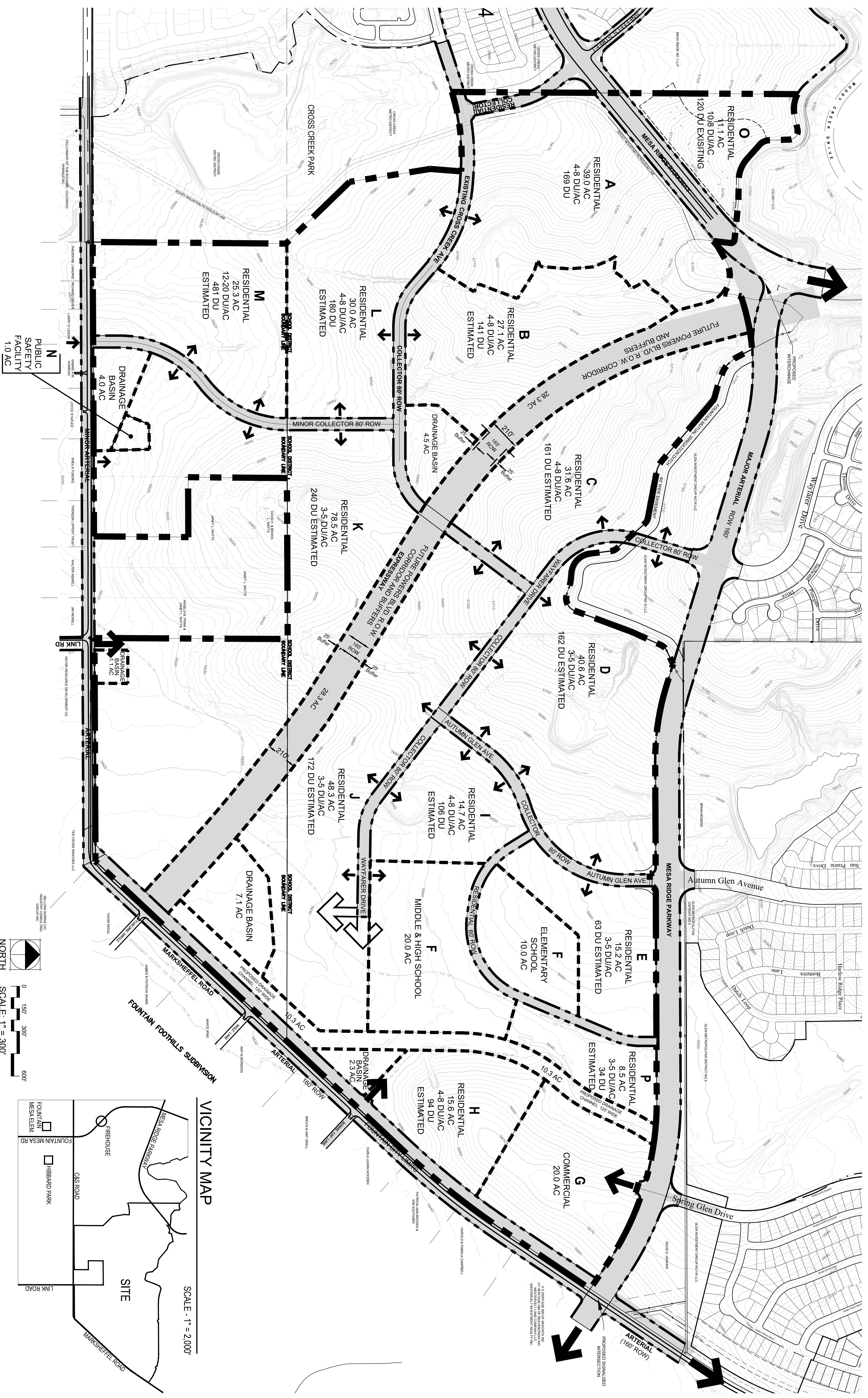
NASS DESIGN ASSOCIATES  
LAND PLANNING • LANDSCAPE ARCHITECTURE  
PO Box 6038, Colorado Springs, CO 80934 (719) 475-2406

MESA RIDGE  
OVERALL DEVELOPMENT PLAN  
FOUNTAIN, COLORADO

AMENDMENT NO. 5 (MAJOR AMENDMENT)

# MESA RIDGE

## OVERALL DEVELOPMENT PLAN AMENDMENT #5 CITY OF FOUNTAIN, COLORADO



PREPARED: 08-09-22

MESA RIDGE  
OVERALL DEVELOPMENT PLAN  
FOUNTAIN, COLORADO  
AMENDMENT NO. 5 (MAJOR AMENDMENT)

| REVISIONS | DATE |
|-----------|------|
|           |      |
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PO Box 6038, Colorado Springs, CO 80934 (719) 475-2406



# Regular City Council Meeting

## New Business-9C

Fountain Reservoir P3 Legal Services

### March 14, 2023

#### Summary Information

**Title: RESOLUTION NO. 23-012, A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEGAL SERVICES AGREEMENT AND AUTHORIZING EXPENDITURES FOR THE LEGAL SERVICES UP TO \$285,000.**

Initiator: Dan Blankenship, Utilities Director

Presenter: Dan Blankenship, Utilities Director

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments: The purpose of this report is to request Council's authorization to enter into a Legal Services Agreement with Hawkins, Delafield & Wood for the preparation and negotiation of a Public Private Partnership (P3) project agreement for the funding and construction of the proposed Fountain reservoir project. The proposed Fountain reservoir project includes diversion and conveyance of raw water from Fountain Creek into a raw water storage reservoir, raw water treatment to drinking water standards, and conveyance of drinking water to existing drinking water storage tank.

Attachments:

Final **draft** Legal Services Agreement with Workplan and Estimated Legal Budget (11 pages)

#### Background Information

After soliciting requests for information (RFI) from any entity or entities interested in partnering with the City for the financing and construction of the proposed Fountain reservoir project, staff began seeking legal assistance and guidance from a firm that is experienced with alternative delivery/P3 water projects. Given the complexity of the project and the desire to use an atypical or alternative delivery method for the project, staff sought out the most reputable and experienced legal firm in the nation to provide guidance and legal advice throughout the creation and negotiation of the P3 agreement.

Hawkins, Delafield & Wood was selected because they are a recognized national leader and have a distinguished specialty practice in advising public agencies on the delivery of major public works on an alternative project delivery and public-private partnership basis. Hawkins has successfully guided their municipal clients through many award winning and industry first water projects. More information about the firm's specific experience with alternative delivery projects can be found at: <https://www.hawkins.com/services/practices/alternative-project-delivery>.

A legal services agreement and work plan has been negotiated with Hawkins. Funding for the legal services was appropriated by the Council as part of the first supplemental to the 2023 adopted budget.

Strategic Plan Priority (if applicable):

- Facilitate responsible development, building reasonable capacity to meet future community needs.**
- Diversify city financial resources and invest.**
- Provide reliable access to public safety services.**
- Improve the quality and availability of parks and recreation opportunities**

***Recommendation***

Staff recommends that the Council approve Resolution No. 23-012, authorizing the City Manager to enter into a Legal Services Agreement with Hawkins, Delafield & Wood for the preparation and negotiation of a Public Private Partnership project agreement for the funding and construction of the proposed Fountain reservoir project and authorizing expenditures for the legal services up to \$285,000.

***Proposed Motion***

"I move to approve Resolution 23- 012 and authorize the City Manager to enter into a Legal Services Agreement with Hawkins, Delafield & Wood, with expenditures up to \$285,000.



## RESOLUTON 23-012

### **A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A LEGAL SERVICES AGREEMENT AND AUTHORIZING EXPENDITURES FOR THE LEGAL SERVICES UP TO \$285,000.**

**WHEREAS**, the City of Fountain Water Master Plan 2021 has identified the need to expand the City's water system to accommodate continued growth of the community; and

**WHEREAS**, the City purchased (water fund) the former gravel pits property where the Utilities Operations Center (UOC) is located for the purpose of creating raw water storage reservoir(s); and

**WHEREAS**, the UOC property is an ideal location to add a water treatment plant necessary to increase the City treated water capacity; and

**WHEREAS**, the City desires to expand the water system to accommodate continued growth of the community without placing any of the financial burden on the existing utility customers.

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

1. The City Manager is hereby authorized to enter into a legal services agreement with Hawkins, Delafield & Wood for the preparation and negotiation of a Public Private Partnership project agreement for the funding and construction of the proposed Fountain reservoir project, and to expend up to \$285,000 for the legal services.

Done this 14<sup>th</sup> day of March 2023.

---

Sharon Thompson, Mayor

ATTEST:

---

Silvia Huffman, City Clerk

LEGAL SERVICES AGREEMENT

THIS LEGAL SERVICES AGREEMENT is made and entered into as of ~~January~~February \_\_, 2023, by and between the the City of Fountain in El Paso County, Colorado (the “**City**”), and Hawkins Delafield & Wood LLP (“**Special Counsel**”).

WITNESSETH:

WHEREAS, the City has conducted a procurement process to explore alternative delivery options for the development, design, construction, financing, funding, operation and maintenance of new water infrastructure, primarily consisting of a series of reservoirs and treatment facilities, in order to increase the overall capacity for City and to serve growing development in the City (the “Project”);

WHEREAS, based on the results of its procurement process the City now seeks to negotiate and enter into appropriate agreements with a procurement participant to implement the Project;

WHEREAS, Special Counsel has a national reputation for legal expertise in the field of public contracts using alternative project delivery methods;

WHEREAS, the City is authorized by law to engage attorneys and to fix their compensation, and desires to engage the legal services of Special Counsel in connection with the negotiation of agreements to implement the Project; and

WHEREAS, Special Counsel has determined to accept the engagement and provide to the City the legal services described herein;

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

SECTION 1. Engagement. The City hereby engages Special Counsel to render legal services to the City in connection with the Project on the terms and conditions set forth herein. Special Counsel hereby accepts the City’s engagement and agrees to provide such legal services.

SECTION 2. Scope of Services. Special Counsel shall provide the legal services set forth in the Workplan and Estimated Legal Budget annexed hereto as Attachment A (the “**Workplan**”) or as otherwise mutually agreed by the City and Special Counsel.

SECTION 3. State and Local Law Matters. The City agrees to seek and rely exclusively upon the advice of counsel admitted in Colorado in connection with matters of real estate, procurement, construction, contract, bond, environmental, labor and other applicable state and local law pertaining to the Project. Special Counsel shall advise the City and such counsel, where appropriate and as requested, when Special Counsel’s national experience with similar transactions has a bearing on the interpretation by such counsel of such state and local laws, their applicability to

the Project, or the drafting of any legislation, agreements, or documents necessary to implement the Project.

SECTION 4. Federal Law Matters. Matters of federal law bearing upon the Project shall be handled by Special Counsel or by other qualified counsel, as directed by the City. Such matters may include, as applicable, federal law pertaining to the tax-exemption of municipal bonds issued in connection with the Project; the disposition of any federal grant-funded assets; and the tax-beneficial ownership of the assets comprising the Project.

SECTION 5. Professional Judgment and Legal Advice. Special Counsel acknowledges that the City has engaged it to obtain quality legal services at a reasonable price in a manner that is consistent with Special Counsel's professional responsibilities. Although Special Counsel promises to perform legal services on behalf of the City to the best of its attorneys' abilities, it cannot make and has not made any guarantees regarding the outcome of any aspect of the proposed transaction. Expressions of opinion about outcome are professional estimates only, and are limited by Special Counsel's actual knowledge at the time those expressions are made. In particular, it is agreed that the legal advice provided by Special Counsel is neither a warranty nor guaranty that no court will invalidate either the procedures followed, the actions taken or the contracts entered into in connection with this engagement, and it is further agreed that Special Counsel's advice neither promises nor assures the achievement of wholly valid procedures, actions or contracts or the actual performance by the contractual parties of their respective obligations. Special Counsel will be compensated for the time and effort it devotes on the City's behalf and not for any particular result.

SECTION 6. Non-Legal Professional Services. Special Counsel is not engaged to provide advice with respect to credit standing, financial statements, price proposals, technical qualifications or merit, or other similar financial, technical or other non-legal matters or conditions pertaining to any proposer, to any proposal, or to the company executing any agreement, and owes the City no duty in respect thereof. Special Counsel advises the City to seek qualified independent professional advice concerning all such matters.

SECTION 7. Communication and Direction of Services. Special Counsel shall keep the City reasonably informed about the status of and developments in connection with the Project and services provided by Special Counsel under this Agreement, and shall promptly respond to the City's inquiries. Services under this agreement shall be performed under the direction of the City Attorney. In light of the variability of the time and complexity of the issues involved in projects of this nature, Special Counsel and the City agree to consult regularly as to the level of effort which is appropriate to the carrying out of services hereunder.

SECTION 8. Compensation.

(A) Special Counsel shall be compensated for services performed under this agreement at the per hour rates set forth in Attachment B for all attorneys rendering service. Such rates shall be increased annually, commencing on January 1, 2024 to account for general inflation based on the percentage change in the Legal

Services component of the national Consumer Price Index, All Urban Consumers, U.S. City Average (Legal Services Index). Special Counsel's employees will bill for their time on services provided to the City in 1/10 of an hour (i.e., six minute) increments, and will round to the nearest such increment.

(B) The City further agrees to reimburse Special Counsel for actual out-of-pocket expenses incurred in rendering services under this agreement. These include expenses for travel, lodging, telephone, tolls, postage, messenger, courier and delivery services, computer data and word processing, document reproduction, conference and closing expenses, stenographic and clerical overtime, and similar out-of-pocket items. Travel time will be billed at one-half of the applicable hourly rates. In any billing for disbursements, Special Counsel shall provide the City with a statement breaking down the amounts for each category of expense- and supporting receipts for all expenses incurred. Special Counsel shall obtain prior authorization of the City for attendance at meetings or conferences by more than one attorney, provided that Special Counsel may, in its reasonable discretion, be accompanied at meetings and on conference calls by an associate without the need for prior authorization.

(C) The individual time and disbursement records customarily maintained by Special Counsel for billing evaluation and review purposes shall be made available to the City in connection with bills rendered by Special Counsel.

(D) Special Counsel agrees to forward to the City a statement of account for each one month period of services under this agreement. The City agrees to use reasonable efforts to process and pay Special Counsel's bills within 30 days of receipt.

~~(E) The parties acknowledge that the City is presently authorized to make payments up to an aggregate of \$200,000 under this agreement. In the event payments in excess of \$200,000 will be necessary the City will need to obtain additional authorization from the Fountain City Council. Should such additional authorization be necessary the parties will cooperate to facilitate such approval in a timely manner.~~

(E) In the event the City desires in good faith to dispute any amounts billed by Special Counsel the City shall promptly notify Special Counsel of the disputed amount and the reasonable basis for such dispute. The parties shall thereafter seek in good faith to resolve such dispute informally. In the event the parties are unable to resolve the dispute within 60 days after the City's notice then the parties shall seek to mediate or arbitrate such dispute with the assistance of a mutually acceptable professional arbitrator or mediator experienced in handling legal fee disputes. In the event the parties are unable to agree on a mediator or arbitrator then such mediation or arbitration shall be conducted under the auspices of the American Arbitration Association. The results of any arbitration shall be binding upon the parties and, if either party fails to comply with the arbitrator's decision within 30 days, may be entered in any court with jurisdiction.

SECTION 9. Initial Workscope Budget. The initial budget for the legal services of Special Counsel is as set forth in the Workplan and the initial workscope of Special Counsel's services is the workscope described in the Workplan. The City



acknowledges that the budget is an estimate based on Special Counsel's current understanding of the Project and its experience in other transactions, and that the extent of legal services actually required of Special Counsel may be affected by circumstances that are not within Special Counsel's control, including but not limited to unusually protracted negotiations among the transaction participants and the occurrence of factual or legal developments in the course of the transaction that are not typical or presently anticipated. Special Counsel will notify the City if and when it reasonably determines that the scope of work is likely to result in fees that exceed what is contemplated in the initial budget, along with a reasonable explanation of the basis for such determination.

SECTION 10. Additional Workslope. The City and Special Counsel will reasonably cooperate to address in a mutually agreeable manner any increase in the extent or scope of legal services requested by the City or otherwise required in the course of the transaction.

SECTION 11. Termination. The City reserves the right to discharge Special Counsel at any time upon delivery of a written notice. In the event of termination of this agreement for any reason, Special Counsel will be paid for services satisfactorily rendered by Special Counsel up to the date of termination. Upon any such termination, Special Counsel shall provide reasonable cooperation to facilitate the transition and transfer of pending matters to any successor or to the City, including execution of all forms necessary, to effect such transfer in accordance with the City's instructions. At the City's written request, Special Counsel shall promptly deliver to the City, or its designee, all files, records and other documentation and information concerning matters under this agreement.

SECTION 12. Independent Contractor. Special Counsel is an independent contractor and neither it nor its officers, employees, or agents are employees of the City for any purpose whatsoever. Special Counsel and its officers, employees and agents have no right or authority to assume or create any obligation or responsibility, express or implied, on behalf of the City, unless expressly authorized in writing.

SECTION 13. Records. Special Counsel shall maintain, and shall make available to the City for inspection, books, records, documents and other evidence directly pertinent to performance under this agreement in accordance with its general practices.

SECTION 14. Non-Discriminatory Employee Practices. Special Counsel will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin.

SECTION 15. Applicable Law. Colorado law shall govern the interpretation of this agreement.

SECTION 16. Assignment. Special Counsel shall not assign or transfer its interest in this agreement without the prior written consent of the City.

SECTION 17. Severability. Any provisions or portion of this agreement prohibited as unlawful or unenforceable under any applicable law of any jurisdiction shall as to such jurisdiction be ineffective without affecting other provisions of this agreement.

SECTION 18. Counterparts. This agreement may be executed in counterparts, which together will constitute the entire agreement.

SECTION 19. TABOR / Subject to Appropriations. In accord with the City Charter, performance of the City's obligations under this Agreement are expressly subject to appropriation of funds by the City Council. The Parties acknowledge and agree that the Parties are subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The Parties do not intend, by the execution of this Agreement, to violate the requirements of TABOR. It is understood and agreed that this Agreement does not create a multi-fiscal year indirect or direct obligation or debt within the meaning of TABOR and all payment obligations of the City are expressly conditioned upon and dependent upon the continuing availability of funds beyond the term of the City's current fiscal period, notwithstanding anything in this Agreement to the contrary. Financial obligations of the City payable after the current fiscal year are contingent upon funds for that purpose being appropriated and otherwise made available in accordance with applicable law and the resolutions, regulations, and rules of the City. The Agreement shall be deemed terminated upon the failure to appropriate such funds.

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IN WITNESS WHEREOF, the parties have executed this agreement as of the date first set forth above.

CITY OF FOUNTAIN, COLORADO

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

HAWKINS DELAFIELD & WOOD LLP

BY \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

[Signature Page]

**ATTACHMENT A**

**WORKPLAN AND ESTIMATED LEGAL BUDGET\***

Work in each of the categories below generally is expected to include attendance at meetings; participation in telephone and conference calls with multiple working group members; legal research; drafting of memoranda, reports and analyses; contract and document drafting; internal meetings and discussions; preparation for calls, conferences and meetings; reviewing and commenting on drafts, reports and documents prepared by the owner and other consultants and professionals; attendance at discussion and negotiating sessions; review of the results of meetings, calls and conferences; review of correspondence; and transaction administration.

| <b>WORK PHASE</b>                                     | <b>PRINCIPAL ACTIVITIES</b>   | <b>ESTIMATED FEES**</b> |
|---|---|-------------------------|
| <b><i>Initial Transaction Review and Analysis</i></b> | <ul style="list-style-type: none"><li>• Familiarization with detailed Project information and objectives, including review of procurement documents, underlying Project materials, and relevant technical materials</li><li>• Review and comment on Tallgrass proposal, including preparation of proposed changes to current draft of Term Sheet for internal review and consideration</li><li>• Assistance with the City’s submittal to Tallgrass of a response to the current Term Sheet proposal</li><li>• Discussions with City staff and technical advisors regarding all of the foregoing</li></ul> | \$25,000 - \$50,000     |
| <b><i>Finalize Term Sheet</i></b>                     | <ul style="list-style-type: none"><li>• Assist City in negotiations to finalize Term Sheet, including discussions with Tallgrass; discussions with City staff and technical advisors; preparation of proposed Term Sheet revisions</li></ul>  | \$10,000 - \$30,000     |

|  |  |                             |
|--|--|-----------------------------|
| <p><b>Prepare Initial Contract Documents</b></p>     | <ul style="list-style-type: none"> <li>• Preparation of initial drafts of Project Agreement and related documentation for internal City review and comment prior to submission to Tallgrass</li> <li>• Internal discussions regarding City comments and questions</li> <li>• Preparation of revised document drafts incorporating internal comments and relevant project technical information</li> </ul> <p><u>Note:</u> <i>It is typical to go through several internal drafts before submission of the contract to the transaction counter-party</i></p>  | <p>\$40,000 - \$80,000</p>  |
| <p><b>Negotiation of Final Project Documents</b></p> | <ul style="list-style-type: none"> <li>• Review and analysis of Tallgrass comments to initial Project Agreement and related documents</li> <li>• Assist City in formulating responses to Tallgrass comments</li> <li>• Discussions with Tallgrass regarding its comments and questions</li> <li>• Preparation of revised drafts of Project documents</li> <li>• Review and, as applicable, negotiation of all documents provided by Tallgrass, including proposed subcontracts and applicable security for performance arrangements</li> </ul> <p><u>Note:</u></p> <ul style="list-style-type: none"> <li>• <i>There will likely be several rounds of internal and external discussions, followed each time by draft contract revisions, depending on the number and nature of Tallgrass's comments</i></li> <li>• <i>The foregoing assumes that Tallgrass provides cash financing and does not introduce a lender into the transaction, which would typically increase the scope of work required to reach Closing</i></li> </ul> | <p>\$30,000 - \$100,000</p> |

|  |   |                       |
|--|---|-----------------------|
| <b><i>Final City Approval of Transaction</i></b> | <ul style="list-style-type: none"> <li>• Assistance with internal presentations and approval of final Project Documents</li> </ul>  | \$5000 - \$15,000     |
| <b><i>Closing</i></b>                            | <ul style="list-style-type: none"> <li>• Preparation of final execution documents, including all technical and reference documents</li> <li>• Review of all final documents provided by Tallgrass</li> <li>• Collation and distribution of transcript containing all closing documents</li> </ul> | \$5000 - \$10,000     |
| <b>TOTAL</b>                                     |   | \$115,000 - \$285,000 |

\* This budget is an estimate based on our experience with other transactions; the actual time and fees will depend on many factors not within Hawkins' control.

\*\* Numbers shown represent approximate legal fees; they do not include disbursements or travel costs, if any.

**ATTACHMENT B**  
**ATTORNEY RATES**

The hourly rates for 2023 are as set forth below:

| <b>TITLE</b>                                       | <b>HOURLY RATE</b>        |
|--|---------------------------|
| Partner/Counsel                                    | \$600                     |
| Senior Associate (5 to 7 years experience)         | \$550                     |
| Mid-level Associate (3 to 4 years experience)      | \$500                     |
| Junior Associate (Less than 3 years experience)    | \$425                     |
| Law Clerk (An associate not yet admitted to a bar) | \$325                     |
| Legal Assistant/Paralegal                          | <del>\$0</del> <u>175</u> |

For work performed in 2024 and any subsequent years, the rates will be adjusted based on Section 8(A) of this agreement. Out-of-pocket disbursements are additional, as set forth in Section 8(B) of this agreement.

| <b>Summary report:</b><br><b>Litera Compare for Word 11.2.0.54 Document comparison done on</b><br><b>2/17/2023 3:07:28 PM</b> |           |
|---|-----------|
| <b>Style name:</b> Default Style  |           |
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| <b>Changes:</b>   |           |
| <u>Add</u>  | 20        |
| <del>Delete</del>   | 14        |
| <del>Move From</del>  | 0         |
| <u>Move To</u>  | 0         |
| <u>Table Insert</u>   | 0         |
| <del>Table Delete</del>   | 0         |
| <u>Table moves to</u>   | 0         |
| <del>Table moves from</del>   | 0         |
| Embedded Graphics (Visio, ChemDraw, Images etc.)  | 0         |
| Embedded Excel  | 0         |
| Format changes  | 0         |
| <b>Total Changes:</b>   | <b>34</b> |