



**CITY COUNCIL AGENDA**  
**May 9, 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**
  - Proclamation Declaring That Henceforth, The Of The Friday Prior To Memorial Day As “Fountain Poppy Day” In Honor Of Our Fallen
  - Presentation of COS Creek Plan by Annie Berlemann, Colorado Springs Utilities
- 4.2) **Board/Commission/Committee**
- 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 April 25, 2023, City Council Meeting Minutes (S. Huffman)
  - B. Request By The City Clerk To Reschedule The Regular City Council Meeting Dates In June 2023 (S. Huffman)
  - C. Referral Of An Annexation Petition For School District 8 Arena Access Generally Located At 10535 Jimmy Camp Road (K. Martinez)
  - D. Resolution No. 23-022, A Resolution Of The City Council Of The City Of Fountain, Colorado Awarding The Contract For The 2022 Community Development Block Grant Construction To Concrete Experts, LLC (B. Sheets)
  - E. Resolution 23-024, A Resolution Authorizing And Approving The Non-Exclusive Permanent Easement And Temporary Construction Easement Agreements Between The City Of Fountain, Fountain Colony 1933 LLC And Fountain Colony 1933 No. II LLC For Waterline Easements To Support The 36” SW/Link Transmission Main Project (T. Murphy)

**8) Old Business**

- A.** Second Reading Of Ordinance 1787, An Ordinance Amending Chapter 15.05 (Public Safety Impact Fees) Of The Fountain Municipal Code (D. Graham est. 5 Min)

**9) New Business**

- A.** Consideration Of Items Removed From The Consent Agenda
- B.** Resolution 23-023, A Resolution Requesting Inclusion Into The Pikes Peak Rural Transportation Authority (T. Johnson est. 20 Min)
- C.** Resolution 23-025, A Resolution Increasing The City Of Fountain Public Safety Impact Fee (D. Graham est. 5 Min)

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

**11) Announcement of Executive Sessions**

**12) Adjourn**

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

**NEXT REGULAR COUNCIL MEETING**

**May 23, 2023**



PROCLAMATION



DECLARING THAT HENCEFORTH, THE OF THE FRIDAY PRIOR TO MEMORIAL DAY AS "FOUNTAIN POPPY DAY" IN HONOR OF OUR FALLEN

WHEREAS, poppies are worn and displayed as a symbolic tribute to our fallen and the future of living veterans and service members; and

WHEREAS, at the end of World War I, The American Legion adopted the poppy as a symbol of freedom and the blood sacrificed by troops in wartimes; and

WHEREAS, the use of the poppy symbolically comes from the poem In Flanders Fields, which movingly begins, "In Flanders Fields the poppies blow, between the crosses, row on row," referring to the poppies that sprang up in the churned earth of battlefields across Belgium and France where soldiers died fighting; and

WHEREAS, The American Legion Family has long utilized the red poppy as its official flower, symbolizing the blood shed by those who have served in our U.S. military, and it is fitting that as The American Legion and American Legion Auxiliary celebrate their 104th anniversaries, they expand the meaning and symbolism of the poppy, mirroring the manner in which the poppy is symbolically showcased in England and Canada in celebratory fashion on their Remembrance Day, also known as Armistice Day and Poppy Day; and

WHEREAS, wearing a poppy will unite citizens from across the country who decide to show their patriotism; and

WHEREAS, May 26, 2023, would be an appropriate date to designate as "Fountain Poppy Day"

NOW, THEREFORE, BE IT PROCLAIMED that the Mayor and City Council of the City of Fountain, Colorado hereby proclaims that henceforth, the Friday before Memorial Day as "Fountain Poppy Day" in honor of our fallen.

Done this 9th day of May 2023.

ATTEST:

Sharon Thompson, Mayor

Silvia Huffman, City Clerk



# Regular City Council Meeting

**Consent –7A**  
Council Meeting Minutes

**May 9, 2023**

### Summary Information

Title:

**APPROVAL OF THE APRIL 25, 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 April 25, 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**  
**April 25, 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 Cory  
Council Member Rick  
Council Member Applegate  
Council Member Duncan  
Council Member Hinton

**4 (1) Presentations**

- **A Proclamation Declaring the Week Of April 23-29, 2023, As Nation Library Week**

Council Member Duncan made a motion to approve the proclamation, seconded by Council Member Hinton. All members voted yes (7-0); the motion carried.

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

- **Reappoint Brittanie Diaz to the Park and Recreation Advisory Board**

City Clerk Huffman stated that current member Diaz's term is expiring, and she is seeking reappointment.

Council Member Rick made a motion to appoint Mrs. Diaz for a second term, seconded by Mayor Pro Tem Estes. All members voted yes (7-0); the motion carried.

- **Economic Development Commission New Board Appointee, Terrance Diaz**

Economic Development Director Bailey reported that Mr. Diaz is a business owner and member of the Fountain Valley Chamber of Commerce and is seeking an inaugural 1 year term on the Commission.

Council Member Hinton made a motion to appoint Mr. Diaz, seconded by Council Member Duncan. All members voted yes (7-0); the motion carried.

**5) City Council Agenda Requests**

There were no requests.

**6) Public to be Heard**

There was no public to be heard.

**7) Consent Agenda**

- A. Approval Of The March 28, 2023 City Council Meeting Minutes**
- B. Approval Of The April 11, 2023, City Council Meeting Minutes (S. Huffman)**
- C. Request For Approval Of A Park Permit And In-Kind City Sponsorship For Thunder In The Valley Event (Aaron Twite/ S. Huffman)**
- D. Resolution No. 23-021, A Resolution To Approve The Purchase Of The Commercial Property Located At 120 E. Ohio Avenue, In The City Of Fountain. (T. Johnson)**

Council Member Rick 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. Second Reading of Ordinance 1786, An Ordinance Amending Chapter 17.04 (Zoning Districts) Section 17.04.120 C.2 (Regional Commercial Dimensional Requirements) of the Fountain Municipal Code**

Planning Supervisor Martinez stated there have been no changes to this ordinance since first reading.

Council Member Applegate made a motion to approve Ordinance 1786 on second reading, seconded by Council Member Duncan. All members voted yes (7-0); the motion carried.

**9) New Business**

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

There were no items removed.

- B. First Reading Of Ordinance 1787, An Ordinance Amending Chapter 15.05 (Public Safety Impact Fees) Of The Fountain Municipal Code**

Fire Marshall Gates reported this request is to remove the costs and fees from this Ordinance. He stated the fees will be put into a resolution.

Council Member Rick made a motion to approve Ordinance 1787, seconded by Council Member Duncan. All members voted yes (7-0); the motion carried.

- C. Resolution 23-020, A Resolution Amending Exhibit F Of Resolution 22-023, For Costs Incurred In The Administration And Processing Of License Fees, Service Charges, Applications, Permits, Vehicle Inspection Fees And Other Fees And Charges And Authorizing The Waiver Or Reduction Of Certain Fees Or Charges.**

Fire Marshall Gates reported that these fee proposals are conforming with city, state and regional partners. He also stated that these fees would be for new or renewal businesses only.

Several attendees asked if they could be allowed more time to review the fee proposal and suggested tabling this item.

Mayor Thompson stated that this item and all other items for consideration are made public the Friday before each Council meeting and current information on fees can be found online.

Council Member Applegate made a motion to approve Resolution 23-020, seconded by Mayor Pro Tem Estes. All members voted yes (7-0); the motion carried.

#### **D. Community discussion regarding a possible ballot initiative of joining the Pikes Peak Rural Transportation Authority (PPRTA)**

City Attorney Johnson reported that no action shall be taken on this matter tonight and it is strictly for discussion.

Deputy City Manager Evans reported that the citizens of Fountain wanted staff to address roadway concern options. He noted that since a ballot measure was not approved, another option would be to ask voters to participate in the Pikes Peak Rural Transportation Authority (PPRTA). When the authority was created, the city opted out of joining because the funding disbursement would not be advantageous to the local roadways, but they have since changed the disbursement rules.

Should the Council decide to place this item on the ballot, it would be a 1% sales tax increase. The 1% is already being charged in the South Academy Highlands development as this area was annexed after the PPRTA tax was implemented.

Robert McDonald, Street Superintendent reviewed statistics and results from the Pavement Management study noting that this study in addition to the Roadway Focus group determines the priority roads to address.

Rick Sonnenburg, PPRTA, delivered a timeline to ensure that the members of the PPRTA has sufficient time to review Fountain's request and to coordinate with the election in November. He noted that official intent to join will need to be submitted by May 9, 2023.

Penny Cimino, resident asked if Colorado Springs could provide a report on expenditures and progress of projects that utilize these funds.

Deputy City Manager Evans gave examples of how this funding could be utilized under maintenance and capital projects.

Mayor Thompson declared the meeting in recess at 7:47 P.M.

Mayor Thompson declared the meeting back in session at 7:55 P.M.

Discussion was held regarding the impact to public safety without acceptable infrastructure, research other members of the PPRTA to get feedback, and the ability to utilize this funding for grant matching.

Both Mayor Thomas and Council Member Hinton stressed that City Council does not take this proposition lightly as they are aware of the impacts from both sides of this issue. Considerable

time and vetting have gone into this discussion and the future of Fountain. Mayor Thompson also asked citizens to ask questions, conduct research, and give feedback.

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

City Attorney Johnson stated he will need to request an executive session tonight.

Mayor Pro Tem Estes noted it is National Laborer workers week. She attended the Arkansas River forum, and the Watershed District will continue its meetings in Council Chambers.

Mayor Thompson noted the major bill is SB 23-213 the land use bill and some proposed changes are before the legislature and gave examples of the detriment it could cause for local municipalities. She asked citizens to write to the committee members to give their feedback on this bill.

#### **11) Announcement of Executive Sessions**

City Clerk Huffman requested the following executive sessions:

- **Pursuant to C.R.S. Section 24-6-402(4)(e) for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators.**
- **Pursuant to C.R.S. Section 24-6-402(4)(b) for the purpose of receiving legal advice on specific legal questions.**

Mayor Pro Tem Estes made a motion to hold the executive sessions as requested, seconded by Council Member Hinton. All members voted yes, except Council Members Rick and Applegate (5-2); the motion carried.

#### **12) Adjourn**

There being no further business, Mayor Thompson declared the meeting adjourned at 8:51 P.M.

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City Clerk

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Mayor





# Regular City Council Meeting

**Consent –7B**

Meeting date change

**May 9, 2023**

### Summary Information

**Title:**

**REQUEST BY THE CITY CLERK TO RESCHEDULE THE REGULAR CITY COUNCIL MEETING DATES IN JUNE 2023**

Initiator : City Clerk

Presenter: Silvia Huffman, City Clerk

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The Colorado Municipal League is hosting its annual conference June 25-28.

Several Council Members and staff have registered for this event and will be unable to attend the June 27<sup>th</sup> Council Meeting.

Staff are requested to reschedule the regular Council meetings to the 1<sup>st</sup> and 3<sup>rd</sup> Tuesday of June. June 6<sup>th</sup> and 20<sup>th</sup> will be the new dates if approved.

### Background Information

City Charter states in part:

Section 2.7- The city council shall meet regularly at least twice each month at a day and hour to be fixed by the rules of the Council

If approved this shall serve as official notification to the public of the date change.

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

N/A

### Proposed Motion



# Regular City Council Meeting

**Consent –7C**

Annexation Petition

**May 9, 2023**

### Summary Information

Title:

**REFERRAL OF AN ANNEXATION PETITION FOR SCHOOL DISTRICT 8 ARENA ACCESS GENERALLY LOCATED AT 10535 JIMMY CAMP ROAD**

Initiator: Kristy Martinez, Planning Supervisor

Presenter: Kristy Martinez, Planning Supervisor

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The purpose of this informational item is for the City Council to acknowledge the City of Fountain has received a petition for annexation.

Previous Action by City Council: N/A

Attachment A: Vicinity Map

Attachment B: Annexation Petition

### Background Information

El Paso County School District No. 8 has submitted an annexation petition for approximately 1.38 acres located at 10535 Jimmy Camp Road. The location of the proposed annexation is shown on the vicinity map in Attachment A. 100% of the perimeter of the annexation area is contiguous to the corporate limits of the City of Fountain. State law requires a minimum of 16.6% to be contiguous.

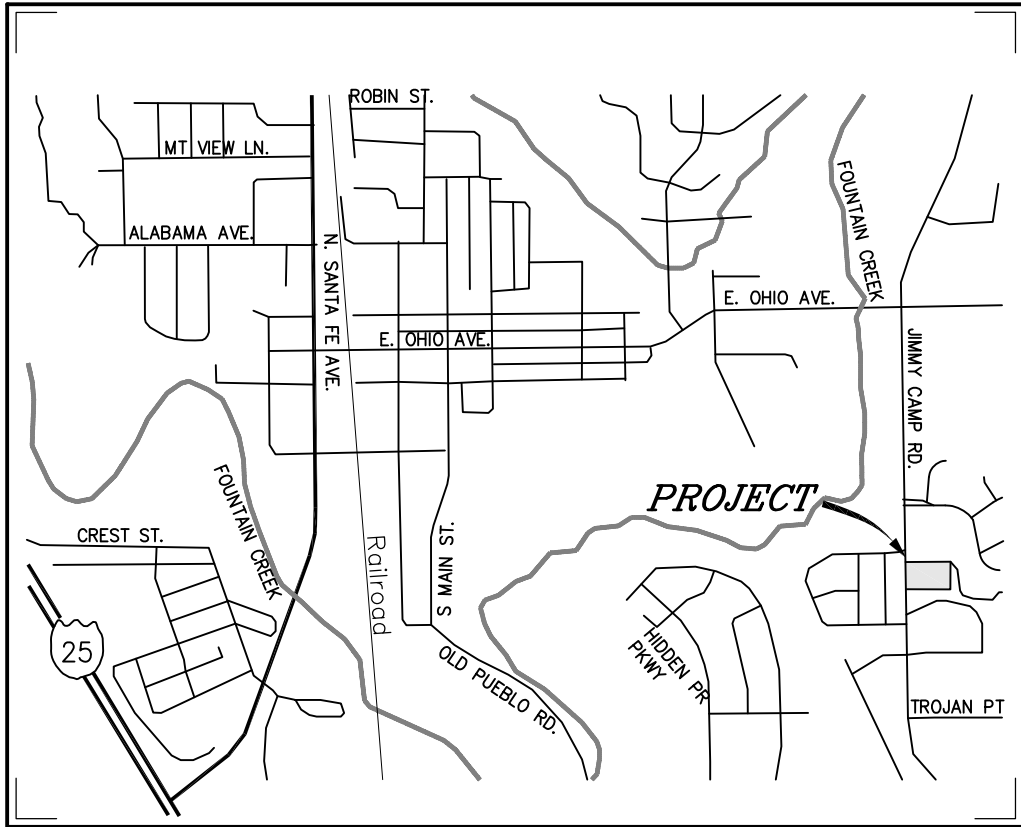
Pursuant to State law, the City Clerk shall refer the annexation petition to the governing body as a communication. No action is necessary at this time. The next step in the annexation process is to schedule a resolution for consideration by City Council to determine if the petition is in substantial compliance with State law and will establish a public hearing date on the proposed annexation.

### Recommendation

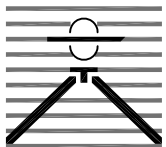
No action is required.

### Proposed Motion

Motion shall be included under consent.



N.T.S.



# VICINITY MAP

Drexel, Barrell & Co.  
Engineers • Surveyors

DATE:  
1-04-23

DWG. NO.

JOB NO:  
20416-20

**VMAP**

SHEET 1 OF 1



**PETITION FOR ANNEXATION OF UNINCORPORATED  
TERRITORY IN THE COUNTY OF EL PASO,  
STATE OF COLORADO, TO THE CITY OF FOUNTAIN,  
STATE OF COLORADO**

**Petition Known As:   School District 8 Arena Access**

The undersigned in accordance with the Municipal Annexation Act of 1965, Chapter 31, Article 12, C.R.S. 1973, as amended, hereby petitions the City Council of the City of Fountain for annexation to the City of Fountain of the following described unincorporated territory located in the County of El Paso, State of Colorado, to wit:

**PARCEL A:**

A PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 8 IN TOWNSHIP 16 SOUTH, RANGE 65 WEST OF THE 6TH P.M., COUNTY OF EL PASO, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

FROM THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 8, RUN SOUTH ON THE WEST LINE THEREOF A DISTANCE OF 238 FEET FOR THE POINT OF BEGINNING OF THE TRACT HEREIN DESCRIBED; THENCE CONTINUE SOUTH ON SAID WEST LINE A DISTANCE OF 235 FEET; THENCE ANGLE LEFT 90° EASTERLY 290 FEET; THENCE ANGLE LEFT 90° NORTHERLY 235 FEET; THENCE ANGLE LEFT 90° WESTERLY 290 FEET TO THE POINT OF BEGINNING; EXCEPTING THE WESTERLY 30 FEET THEREOF RESERVED FOR ROADWAY PURPOSES.

**PARCEL B:**

A NON-EXCLUSIVE RIGHT OF WAY FOR INGRESS AND EGRESS IN DEED RECORDED JANUARY 16, 2015 UNDER RECEPTION NO. **215004960**, COUNTY OF EL PASO, STATE OF COLORADO.

In support of the said Petition, your Petitioner alleges that:

1. It is desirable and necessary that the above described territory be annexed to the City of Fountain, Colorado
2. The area sought to be annexed to the City of Fountain meets the requirements of Section 31-12-104 and 105, as amended, of the Municipal Annexation Act of 1965, in that:
  - a. No less than one-sixth (1/6) of the perimeter of the area proposed to be annexed is contiguous with the City of Fountain.
  - b. A community of interest exists between the territory proposed to be annexed and the City of Fountain.

- c. The territory to be annexed is urban or will be urbanized in the future.
- d. The territory proposed to be annexed is integrated or is capable of being integrated with the City of Fountain.
- e. No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate – check whichever statement is applicable:

Is divided into separate parts or parcels without the written consent of the landowner or landowners thereof unless where such tracts or parcels are already separated by a dedicated street, road or other public way.

Is comprised of twenty acres or more which, together with the buildings and improvements situated thereon, has an assessed value in excess of two-hundred thousand dollars for an ad valorem tax purpose for the year preceding the annexation is included within the territory proposed to be annexed, without the written consent of the landowner or landowners thereof.

- f. No annexation proceedings have been commenced by another municipality and are currently pending for the annexation of part or all of the area proposed herein to be annexed to the City of fountain.
  - g. The proposed annexation will not have the effect of extending a municipal boundary more than three miles in any direction from any point of the City boundary in any one year.
  - h. The entire width of any street or alley to be annexed is included within the annexation.
3. All requirements of CRS 31-12-104, as amended, and CRS 31-12-105, as amended, exist or have been met.
4. Petitioner affirms: (check whichever statement is applicable)

The signer of the Petition comprises one-hundred percent (100%) of the landowners in the area to be annexed and are the landowners and own one-hundred percent (100%) of the territory included in the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality; or

The signers of the petition comprise more than fifty percent (50%) of the landowners in the area to be annexed and are the landowners of more than fifty

percent (50%) of the territory included in the area proposed to be annexed, excluding public streets and alleys and any land owned by the annexing municipality.

5. The mailing address of each signer, the legal description of the land owned by each signer and the date of signing of each signature are all shown on this Petition.
6. Attached to this Petition is the Affidavit of the Circulator of this Petition affirming that each signature hereon is the signature of the person whose name it represents and is dated within 180 days of the date of the filing.
7. Accompanying this petition is a map(s) as required by the municipality.

**SIGNATURE OF LANDOWNERS**

Petitioner hereby requests that the City of Fountain approve the annexation of the area proposed to be annexed. If any Petitioner is a legal entity (e.g., corporation, LLC, LLP, etc.), this Petition must be signed by person authorized to execute this Petition on behalf of the Petitioner. Petitioner may be required to submit evidence of authority.

**Legal Owner's Printed Name:** El Paso County School District No. 8  
**Legal Owner's Signature:** *Joanne Vergunst*  
**Title (if Owner is an entity):** Assistant Superintendent  
**Legal Owner's Address:** 10565 Jimmy Camp Rd, Fountain, CO 80817

**Date Signed:** 3/10/23

If necessary, attach a separate sheet that contains the names, addresses, and signatures of additional property owners.

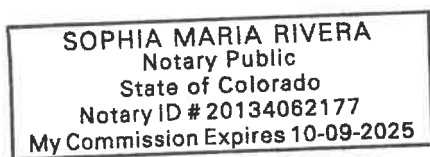
**Notary Certificate**

STATE OF COLORADO )  
                                          ) ss.  
COUNTY OF )

Subscribed and sworn to before me this 10 day of March, 2023, by  
*Joanne Vergunst*.

Witness my hand and official seal.

My commission expires: 10-09-2025



*Sophia Maria Rivera*  
Notary Public

**AFFIDAVIT OF CIRCULATOR**

The undersigned, being of lawful age, who being first duly sworn upon oath, deposes and says:

That (he or she) was a circulator of the foregoing Petition for Annexation of lands to the City of Fountain, Colorado, and that each signature therein whose name is set forth below was witnessed by your affiant and is the true signature of the person whose name it purports to be.

NAME(S) of SIGNERS OF PETITION

<u>Montina Romero</u>	_____
_____	_____
_____	_____
_____	_____
_____	_____

Joanne Vergunst

Joanne Vergunst  
Circulator

STATE OF COLORADO )  
                                      ) ss.  
COUNTY OF                     )

The foregoing Affidavit of Circulator was subscribed and sworn to before me this 10 day of March, 2023 A.D., by Joanne Vergunst.

Witness my hand and official seal.

My commission expires: 10-09-2025

SOPHIA MARIA RIVERA  
Notary Public  
State of Colorado  
Notary ID # 20134062177  
My Commission Expires 10-09-2025

Sophia Maria Rivera  
Notary Public





# Regular City Council Meeting

**Consent –7D**  
Award of Contract 2022 CDBG

*May 9, 2023*

### Summary Information

**Title:**

**RESOLUTION NO. 23-022, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOUNTAIN, COLORADO AWARDING THE CONTRACT FOR THE 2022 COMMUNITY DEVELOPMENT BLOCK GRANT CONSTRUCTION TO CONCRETE EXPERTS, LLC.**

Initiator: Ben Sheets, City Engineer

Presenter: Todd Evans, Deputy City Manager

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

**Summary Overview and List of Attachments:**

The purpose of this action item is for City Council to authorize the Mayor to execute the 2022 Community Development Block Grant Program contract in the amount of \$134,913

### Background Information

The construction for this project will be located in the Southmoor area and will include sidewalk and curb & gutter repairs and installation.

Strategic Plan Priority (if applicable):

- Transportation Infrastructure**
- Telecommunications Technology and Capabilities.**
- Distribution of Public Safety Resources**
- Improve the Availability of Venues Which Support Community Activities**

### Recommendation

Staff recommends approval.

### Proposed Motion

Motion to approve shall be included under the consent agenda.



**RESOLUTION 23-022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOUNTAIN, COLORADO  
AWARDING THE CONTRACT FOR THE 2022 COMMUNITY DEVELOPMENT BLOCK  
GRANT CONSTRUCTION TO CONCRETE EXPERTS, LLC.**

WHEREAS, the City of Fountain, Colorado has participated in the Community Development Block Grant program for over a decade; and

WHEREAS, the construction of these improvements greatly benefit the citizens of Fountain who live in low- to moderate-income neighborhoods; and

WHEREAS, staff has reviewed all proposals and believes Concrete Experts, LLC will provide the most value and experience to the City at a reasonable price.

NOW, THEREFORE, BE IT RESOLVED by the City Council:

Section 1. Concrete Experts, LLC has agreed to be contracted by the City to complete the 2022 Community Development Block Grant Program construction.

Section 2. The Construction Contract outlines the services to be provided as well as the amount of services to be executed not to exceed \$134,913.

Section 3. Mayor is authorized to sign and execute the agreement.

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

Done this 9<sup>th</sup> day of May 2023.

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Sharon Thompson, Mayor

ATTEST:

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Silvia Huffman, City Clerk

**CITY OF FOUNTAIN  
CONTRACT**

Contract Number	C4218607	Project Name:	<b>Bonita Drive , Sidewalk and ADA Improvements Project #4221210</b>
Vendor/Contractor	Concrete Experts LLC		
Address	1160 Valley Street, Colorado Springs, CO 80915		
Federal Tax ID #	26-4060384	Please check one:	<input type="checkbox"/> Corporation <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input checked="" type="checkbox"/> LLC
<b>CITY CONTACTS:</b>	Ben Sheets, P.E. Ph. 719- 393-4935	<b>Engineering Department</b>	
Amount & Account #	<b>\$134,913.00</b>		

**CONSTRUCTION CONTRACT**

THIS CONTRACT, made and entered into this 3 day of May, 2023 by and between the City of Fountain, Colorado, a municipal corporation, in the County of El Paso, State of Colorado, party to the first part hereinafter in the Contract Documents referred to as the "City", and Concrete Experts, LLC a (corporation, individual or partnership) organized as existing under the laws of the State of Colorado, hereinafter in the Contract Documents called the "Contractor"; party of the second part.

**WITNESSETH:**

Whereas the City has heretofore prepared the necessary Contract Documents for **2022 CDBG Bonita Drive, Sidewalk and ADA Improvements Project #4221210** in the City of Fountain; and whereas the party of the second part did on the 21st day of April, 2023, submit to the City his/her written offer and proposal to do the work therein described under the terms and conditions therein set forth and furnish all labor, materials, tools, equipment, transportation and services for said work in strict conformity with the accompanying Contract Documents which include: Notice to Bidders, Instructions to Bidders, Bid Proposal, Notice of Award, Contract, Performance, Labor and Material Payment and Maintenance Bonds, Notice to Proceed, General and Special Conditions, Specifications and Drawings.

**NOW, THEREFORE**, it is hereby agreed that for the considerations and amounts specified in the Bid Proposal and the total contract amount designated in the Notice of Award to be paid by the City to the Contractor, Contractor agrees to furnish all materials and to perform all work as set forth in his/her proposal and as required by the aforesaid Contract Documents.

It is further agreed that the Contractor will start work promptly and continue work diligently until completed. The Contract Period of Performance for this contract is Ninety (90) Calendar Days. The Contractor shall provide a two-year guarantee on all works performed under this contract after the job has been completed and accepted.

In accord with the City Charter, performances of the City's obligations under this agreement are expressly subject to appropriations of funds by the City Council. Further, in the event that funds are not appropriated in whole or in part sufficient for performance of the City's obligations under this contract, or appropriated funds may not be expended due the City Charter spending limitations, then the City may terminate this Agreement without compensation to the Contractor.

The funds appropriated for this contract are equal to or exceed the awarded contract amount.

The Contractor and the City further agree and acknowledge as a part of this contract that no Change Order or other form or order or directive which requires additional compensable work to be performed under this contract shall be issued by the City unless funds are available to pay such additional compensable work performed under this contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the contractor was given a written Change Order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which Change Order was signed by the authorized City Representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any Change Order under this contract.

2022 CDBG Bonita Drive Sidewalk and ADA Improvements

CITY OF FOUNTAIN

Adherence to predetermined HUD Fair Labor Clauses (Exhibit 1 & Exhibit 2), Prevailing Wages (Exhibit 3) and use of Certified Payroll (Exhibit 4) is a requirement of this Federally funded contract.

THE CONTRACTOR hereby Certifies that at the time of this certification, the Contractor does not knowingly employ or contract with an illegal alien and that the contractor has participated or attempted to participate in the basic pilot program in order to verify that the Contractor does not employ any illegal aliens. "Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States Department of Homeland Security.

The Contractor and the City further agree and acknowledge as a part of this contract that no Change Order or other form or order or directive which requires additional compensable work to be performed under this contract shall be issued by the City unless funds are available to pay such additional compensable work performed under this contract, and expressly waives any rights to additional compensation, whether by law or equity, unless, prior to commencing the additional work, the contractor was given a written Change Order describing the additional compensable work to be performed, and setting forth the amount of compensation to be paid, which Change Order was signed by the authorized City Representative. It is the Contractor's sole responsibility to know, determine, and ascertain the authority of the City representative signing any Change Order under this contract.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed on the month, day and year first above written.

This contract is executed in Three (3) original copies. THE

CITY OF FOUNTAIN, COLORADO

\_\_\_\_\_  
Name: Sharon Thompson

\_\_\_\_\_  
Title: Mayor

SECOND PARTY:

Concrete Experts, LLC

\_\_\_\_\_  
Corporate Name

*Amy Grell*  
\_\_\_\_\_  
Signature

Amy Grell

\_\_\_\_\_  
Signatory Printed Name: Brock Grell

\_\_\_\_\_  
Title: Managing Member

**CITY OF FOUNTAIN**

**Exhibit 1**

**A. APPLICABILITY**

The Project or Program to which the construction work covered by this Contract pertains is being assisted by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**(1) MINIMUM WAGES**

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment, computed at rates not less than those contained in the wage determination of the Secretary of Labor (which is attached hereto and made a part hereof), regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH1321)) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place, where it can be easily seen by the workers.

**(ii) Additional Classifications.**

- (A) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination;
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (B) If the contractor, the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division ("Administrator"), Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget ("OMB") under OMB control number 1235-0023.)
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, or HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)

- (D) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (1)(ii)(B) or (C) of this paragraph, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1235-0023.)
- (2) **Withholding.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Department of Labor shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(3) **Payrolls and basic records.**

- (i) **Maintaining Payroll Records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification(s), hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid.

Whenever the Secretary of Labor has found, under 29 CFR 5.5(a)(1)(iv), that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1235-0023 and 1215-0018)

(ii) **Certified Payroll Reports.**

- (A) The contractor shall submit weekly, for each week in which any contract work is performed, a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead, the payrolls only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <https://www.dol.gov/agencies/whd/forms> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the U.S. Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1235-0008.)

- (B)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
    - (1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;
    - (2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;
    - (3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract; and
  - (C)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (a)(3)(ii)(b).
  - (D)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.
- (iii)** The contractor or subcontractor shall make the records required under subparagraph (a)(3)(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the U.S. Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **(4) Apprentices and Trainees.**

- (i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency (where appropriate), to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program.



If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed, unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal employment opportunity.** The utilization of apprentices, trainees, and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

- (5) **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.
- (6) **Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs (1) through (11) in this paragraph (a) and such other clauses as HUD or its designee may, by appropriate instructions, require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.
- (7) **Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
- (8) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.
- (9) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
- (10) **Certification of Eligibility.**
- (i) By entering into this Contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) Anyone who knowingly makes, presents, or submits a false, fictitious, or fraudulent statement, representation or certification is subject to criminal, civil and/or administrative sanctions, including fines, penalties, and imprisonment (e.g., 18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §§ 3729, 3802).

**(11) Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic, to whom the wage, salary, or other labor standards provisions of this Contract are applicable, shall be discharged or in any other manner discriminated against by the contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

#### **B. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

The provisions of this paragraph (b) are applicable where the amount of the prime contract exceeds **\$100,000**. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**(1) Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**(2) Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph B(1) of this paragraph, the contractor, and any subcontractor responsible therefor, shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph B(1) of this paragraph, in the sum of **\$27** for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph B(1) of this paragraph. In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note), the Department of Labor adjusts this civil monetary penalty for inflation no later than January 15 each year.

**(3) Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the U.S. Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the contractor or subcontractor under any such contract, or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages, as provided in the clause set forth in subparagraph B(2) of this paragraph.

**(4) Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph B(1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs B(1) through (4) of this paragraph.

#### **C. HEALTH AND SAFETY**

The provisions of this paragraph (c) are applicable where the amount of the prime contract exceeds **\$100,000**.

**(1)** No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety, as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

**(2)** The contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96), 40 U.S.C. § 3701 et seq.

**(3)** The contractor shall include the provisions of this paragraph in every subcontract, so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

**CITY OF FOUNTAIN**

**Exhibit 2**

**SUPPLEMENTARY CONDITIONS  
TO THE CONSTRUCTION  
CONTRACT**

U.S. Department of Housing  
and Urban Development  
Office of Housing

OMB Approval No. 2502-0598  
(Exp. 9/30/2021)

Public Reporting Burden for this collection of information is estimated to average 0.2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. While no assurance of confidentiality is pledged to respondents, HUD generally discloses this data only in response to a Freedom of Information Act request.

**Warning:** Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802, 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

**Article 1: Labor Standards**

**A. Applicability.** The Project or program to which the construction work covered by this Contract pertains is being assisted or insured by the United States of America, and the following Federal Labor Standards Provisions are included in this Contract or related instrument pursuant to the provisions applicable to such Federal assistance or insurance. Any statute or regulation contained herein shall also include any subsequent amendment or successor statute or regulation. The terms of this Supplementary Conditions to the Construction Contract (HUD-92554M) takes precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with said Supplementary Conditions.

**B. Minimum Wages.** Pursuant to Section 212 of the National Housing Act, as amended, 12 U.S.C. 1715c, the minimum wage provisions contained in this paragraph B do not apply to those projects with Security Instruments insured under Section 221(h)(1) designed for less than 9 families and they do not apply to those projects with Security Instruments insured under either Section 220 or 233 designed for less than 12 families.

1. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project) shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1 (b)(2) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)) on behalf of laborers or mechanics are considered wages paid to such laborers or

mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii)) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics that is not listed in the wage determination and that is to be employed under this Contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210 (“**Administrator**”). The Administrator, or an authorized representative, shall approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise HUD or its designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, shall issue a determination within thirty (30) days of receipt and so advise HUD or its

designee or shall notify HUD or its designee within the thirty (30) day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs B.1.(ii)(b) or (c) of this Article, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit that is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. **Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), all or part of the wages required by the Contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due.

### 3. **Payrolls, records, and certifications.**

(i) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct

classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii))), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act (40 U.S.C. 3141(2)(B)(ii)), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor shall submit the payrolls to the applicant, sponsor, or Owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired, whether paper (Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site), or electronically pursuant to Program Obligations. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or Owner, as the case may be, for transmission to HUD or its designee, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee.

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or

supervises the payment of the persons employed under the Contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete.

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph B.3.(ii)(b) of this Article.

(d) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Sections 3801 et seq of Title 31 of the United States Code.

(iii) The Contractor or subcontractor shall make the records required under subparagraph B.3.(i) of this Article available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

(i) **Apprentices.** Apprentices shall be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by such Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the



program, but who has been certified by the Office of Apprenticeship, or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where the Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship, or a State Apprenticeship Agency recognized by such Office, withdraws approval of an apprenticeship program, the Contractor shall no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees shall not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on

the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor shall no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act Requirements.** The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Contract.

**6. Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 10 of this paragraph B and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage determination, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all Contract clauses referenced in this subparagraph.

**7. Contract termination and debarment.** A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor or a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. Certification of Eligibility.**

(i) By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act (40 U.S.C. 3144(b)(2)) or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Department . . . makes, passes, utters or publishes any statement, knowing the same to be false . . . shall be fined under this title or imprisoned not more than two years, or both."

### C. **Contract Work Hours and Safety Standards Act.**

1. **Applicability and Definitions.** This paragraph C of Article 1 is applicable only if a direct form of federal assistance is involved, such as Section 8, Section 202/811 Capital Advance, grants etc., and is applicable only where the prime contract is in an amount greater than \$100,000. As used in this paragraph C, the terms "laborers" and "mechanics" include watchmen and guards.

2. **Overtime requirements.** No contractor or subcontractor contracting for any part of the Contract work that may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.

3. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the immediately preceding subparagraph C.2, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of such subparagraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in such subparagraph.

4. **Withholding for unpaid wages and liquidated damages.** HUD or its designee shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract, or under any other Federal contract with the same prime contractor, or under any other Federally-assisted contract subject to the Contract Work

Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 3 of this paragraph C.

**5. Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs 1 through 5 of this paragraph C and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in such subparagraphs 1 through 5.

#### **D. Certification.**

For projects with Security Instruments insured under the National Housing Act, as amended, that are subject to paragraph B of this Article 1, the Contractor is required to execute the Contractor's Prevailing Wage Certificate within HUD-92448 as a condition precedent to insurance by HUD of the Loan, or an advance thereof, made or to be made by the Lender in connection with the construction of the Project.

### **Article 2: Equal Employment Opportunity**

**A. Applicability.** This Article 2 applies to any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee.

**B.** The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, disability, or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, disability or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

**C.** The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, disability, or national origin.

**D.** The Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a

notice to be provided advising the said labor union or workers representatives of the Contractor's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

E. The Contractor shall comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

F. The Contractor shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

G. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

H. The Contractor shall include the provisions of paragraphs A through H of this Article 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions shall be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontract or purchase order as HUD or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. *Provided, however,* that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by HUD or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

### **Article 3: Equal Opportunity for Businesses and Lower Income Persons Located Within the Project Area**

A. This Article 3 is applicable to projects covered by Section 3, as defined in 24 CFR Part 135.

B. The work to be performed under this Contract is on a project assisted under a program providing Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low and very-low income residents of the unit of local government or the metropolitan area (or non-metropolitan county) as determined by HUD in which the Project is located and contracts for work in connection with the Project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or non-metropolitan county) as the Project.

#### **Article 4: Health and Safety**

A. This Article 4 is applicable only where the prime contract is in an amount greater than \$100,000.

B. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his or her health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

C. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to 29 CFR Part 1926, and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

D. The Contractor shall include the provisions of this Article 4 in every subcontract so that such provisions shall be binding on each subcontractor. The Contractor shall take such action with respect to any subcontract as HUD or the Secretary of Labor shall direct as a means of enforcing such provisions.

**CITY OF FOUNTAIN**

**Exhibit 3**

"General Decision Number: CO20230008 02/24/2023

Superseded General Decision Number: CO20220008

State: Colorado

Construction Type: Highway

Counties: El Paso, Pueblo and Teller Counties in Colorado.

HIGHWAY CONSTRUCTION PROJECTS

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(2)-(60).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 14026 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$16.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2023.</li></ul>
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none"><li>. Executive Order 13658 generally applies to the contract.</li><li>. The contractor must pay all covered workers at least \$12.15 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2023.</li></ul>

The applicable Executive Order minimum wage rate will be



adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/06/2023
1	02/24/2023

ELEC0012-009 09/01/2021

PUEBLO COUNTY

	Rates	Fringes
ELECTRICIAN.....	\$ 29.80	13.00+3%

ELEC0113-009 06/01/2022

EL PASO AND TELLER COUNTIES

	Rates	Fringes
ELECTRICIAN.....	\$ 34.90	17.25

\* ENGI0009-009 05/01/2022

	Rates	Fringes
POWER EQUIPMENT OPERATOR:		
(3)-Drill Rig Caisson (smaller than Watson 2500 and similar).....	\$ 33.30	13.30
(4)-Crane (50 tons and under).....	\$ 33.83	13.30
(5)-Drill Rig Caisson (Watson 2500 similar or larger), Crane (51-90 tons).	\$ 33.48	13.30
(6)-Crane (91-140 tons).....	\$ 35.28	13.30

\* SUC02011-003 09/15/2011

Rates	Fringes
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CARPENTER

Excludes Form Work.....	\$ 24.15	6.25
Form Work Only		
El Paso, Teller.....	\$ 19.06	5.84
Pueblo.....	\$ 19.00	5.88

CEMENT MASON/CONCRETE FINISHER

El Paso, Teller.....	\$ 17.36	3.00
Pueblo.....	\$ 17.74	3.00

FENCE ERECTOR.....	\$ 13.02 **	3.20
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GUARDRAIL INSTALLER.....	\$ 12.89 **	3.20
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HIGHWAY/PARKING LOT

STRIPING:Painter.....	\$ 12.62 **	3.21
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IRONWORKER, REINFORCING

(Excludes Guardrail Installation)

El Paso, Teller.....	\$ 20.49	1.65
Pueblo.....	\$ 16.69	5.45

IRONWORKER, STRUCTURAL

(Excludes Guardrail Installation)

.....	\$ 18.22	6.01
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LABORER

Asphalt Raker.....	\$ 17.54	3.16
Asphalt Shoveler.....	\$ 21.21	4.25
Asphalt Spreader.....	\$ 18.58	4.65
Common or General		
El Paso.....	\$ 17.05	3.69
Pueblo.....	\$ 16.29	4.25
Teller.....	\$ 16.88	3.61
Concrete Saw (Hand Held)....	\$ 16.29	6.14
Landscape and Irrigation....	\$ 12.26 **	3.16
Mason Tender-		
Cement/Concrete.....	\$ 16.29	4.25
Pipelayer.....	\$ 18.72	3.24
Traffic Control (Flagger)...	\$ 9.55 **	3.05
Traffic Control (Sets		
Up/Moves Barrels, Cones,		
Install Signs, Arrow		
Boards and Place		
Stationary Flags)(Excludes		
Flaggers).....	\$ 12.43 **	3.22

PAINTER (Spray Only).....	\$ 16.99	2.87
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POWER EQUIPMENT OPERATOR:

Asphalt Laydown.....	\$ 22.67	8.72
Asphalt Paver.....	\$ 21.50	3.50
Asphalt Roller		
El Paso.....	\$ 24.42	6.96
Pueblo.....	\$ 23.67	9.22
Teller.....	\$ 24.42	6.96
Asphalt Spreader.....	\$ 22.67	8.72
Backhoe/Trackhoe		
El Paso.....	\$ 23.31	5.61
Pueblo.....	\$ 21.82	8.22
Teller.....	\$ 23.32	5.50
Bobcat/Skid Loader.....	\$ 15.37 **	4.28
Boom.....	\$ 22.67	8.72
Broom/Sweeper		
El Paso, Teller.....	\$ 23.43	8.04
Pueblo.....	\$ 23.47	9.22
Bulldozer		
El Paso.....	\$ 26.56	7.40
Pueblo, Teller.....	\$ 26.11	6.92
Drill.....	\$ 17.59	3.45
Forklift.....	\$ 15.91 **	4.68
Grader/Blade		
El Paso.....	\$ 22.83	8.72
Pueblo.....	\$ 23.25	6.98
Teller.....	\$ 23.22	8.72
Guardrail/Post Driver.....	\$ 16.07 **	4.41
Loader (Front End)		
El Paso.....	\$ 23.61	7.79
Pueblo.....	\$ 21.67	8.22
Teller.....	\$ 23.50	7.64
Mechanic		
El Paso.....	\$ 22.35	6.36
Pueblo.....	\$ 24.02	8.43
Teller.....	\$ 22.16	6.17
Oiler		
El Paso.....	\$ 23.29	7.48
Pueblo.....	\$ 23.13	7.01
Teller.....	\$ 22.68	7.11
Roller/Compactor (Dirt and Grade Compaction)		
El Paso.....	\$ 16.70	3.30
Pueblo, Teller.....	\$ 18.43	4.62
Rotomill.....	\$ 16.22	4.41
Scraper.....	\$ 24.28	4.83
Screed		
El Paso, Teller.....	\$ 25.22	5.74
Pueblo.....	\$ 23.67	9.22
Tractor.....	\$ 13.13 **	2.95

TRUCK DRIVER

Distributor		
El Paso, Teller.....	\$ 17.98	3.97
Pueblo.....	\$ 18.35	3.85
Dump Truck		
El Paso, Teller.....	\$ 16.85	4.83
Pueblo.....	\$ 16.87	4.79
Lowboy Truck.....	\$ 17.25	5.27
Mechanic.....	\$ 26.69	3.50
Multi-Purpose Specialty &		
Hoisting Truck.....	\$ 17.27	3.71
Pickup and Pilot Car.....	\$ 13.93 **	3.68
Semi/Trailer Truck.....	\$ 16.00 **	2.60
Truck Mounted Attenuator....	\$ 12.43 **	3.22
Water Truck		
El Paso.....	\$ 17.24	4.15
Pueblo.....	\$ 20.93	4.98
Teller.....	\$ 17.31	4.07

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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\*\* Workers in this classification may be entitled to a higher minimum wage under Executive Order 14026 (\$16.20) or 13658 (\$12.15). Please see the Note at the top of the wage determination for more information.

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within

the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

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The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

#### Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

#### Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007

in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

#### Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

---

#### WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- \* an existing published wage determination
- \* a survey underlying a wage determination
- \* a Wage and Hour Division letter setting forth a position on a wage determination matter
- \* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations  
Wage and Hour Division  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

=====

END OF GENERAL DECISION"

**CITY OF FOUNTAIN**

**Exhibit 4**





PAYROLL

(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rev. Dec. 2008

NAME OF CONTRACTOR  OR SUBCONTRACTOR  ADDRESS

OMB No.: 1235-0008  
Expires: 07/31/2024

PAYROLL NO.  PROJECT AND LOCATION

FOR WEEK ENDING  PROJECT OR CONTRACT NO.

(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) EXEMPTIONS OR REMARKS	(3) WORK CLASSIFICATION	OT OR ST.	(4) DAY AND DATE			(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS			(9) NET WAGES PAID FOR WEEK
				HOURS	WORKED	EACH DAY				FICA	WITH- HOLDING TAX	OTHER	

While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210

Date \_\_\_\_\_

I, \_\_\_\_\_ (Name of Signatory Party) \_\_\_\_\_ (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by \_\_\_\_\_ (Contractor or Subcontractor) on the \_\_\_\_\_ (Building or Work); that during the payroll period commencing on the \_\_\_\_\_ day of \_\_\_\_\_, and ending the \_\_\_\_\_ day of \_\_\_\_\_, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said \_\_\_\_\_ (Contractor or Subcontractor) from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That: (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE \_\_\_\_\_ SIGNATURE \_\_\_\_\_

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 3729 OF TITLE 31 OF THE UNITED STATES CODE.



# Regular City Council Meeting

**Consent – 7E**  
Fountain Colony Waterline  
Easements

*May 9, 2023*

## Summary Information

**Title:**

**RESOLUTION 23-024, A RESOLUTION AUTHORIZING AND APPROVING THE NON-EXCLUSIVE PERMANENT EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENTS BETWEEN THE CITY OF FOUNTAIN, FOUNTAIN COLONY 1933 LLC AND FOUNTAIN COLONY 1933 NO. II LLC FOR WATERLINE EASEMENTS TO SUPPORT THE 36" SW/LINK TRANSMISSION MAIN PROJECT.**

Initiator: Taylor Murphy, Water Resource Manager

Council Action

Presenter: Taylor Murphy

Council Information

Legal Review:  Yes  No

Report to Council

**Summary Overview and List of Attachments:**

The SW/Link Transmission Main Project has been in design since 2021 with construction targeted for late 2023. The City requires 5 separate easements for the selected alignment, and Utilities Department staff has been negotiating with the property owners for 18+ months. Staff has arrived at agreeable terms for 3 of the 5 Easements on lands owned by Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC at no cost to the City.

**Attachments:**

Lot 5607301001 Easement Agreement (7 pages)

Lot 5607400001 Easement Agreement (8 pages)

Lot 5600000154 and 5600000155 Easement Agreement (9 pages)

## Background Information

The SW/Link Transmission Main Project will connect Fountain's Southwest Water Tank to the existing 36" Pipeline that crosses Fountain Creek and connects to Link Road near Old Pueblo Road. Once finished, this pipeline will boost the flows and provide redundancy to the southern half of the city's water system. The Project is being designed by RESPEC (formerly JDS Hydro) and is targeted for construction in late 2023.

The selected pipe alignment requires 5 separate easements from 4 different property owners to connect the storage tank west of I-25 to the existing 36" pipe east of the BNSF Railroad. The City has been negotiating with the various property owners for 18+ months to acquire these easements.

Utilities staff has reached agreeable terms with two of these owners, Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC, to acquire three of the five easements. The parcels containing these easements currently have no water infrastructure nearby and would bear costly off-site infrastructure expenses to extend the water system to them. The SW/Link project will greatly enhance the ability to develop these properties by bringing a high-capacity water supply through the parcels. The owner has agreed to grant these easements to the City of Fountain at no cost if the city installs points of connection on the pipeline for their future use, and agrees to waive any future cost-recovery charges for this pipeline when the parcels are developed.

**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 23-024, authorizing and approving the Non-Exclusive Permanent Easement and Temporary Construction Easement Agreements with Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC.

***Proposed Motion***

"I move to approve Resolution 23-024 authorizing and approving the Easement Agreements with Fountain Colony 1933 LLC and Fountain Colony 1933 No. II LLC."



**RESOLUTION 23-024**

**A RESOLUTION AUTHORIZING AND APPROVING THE NON-EXCLUSIVE PERMANENT EASEMENT AND TEMPORARY CONSTRUCTION EASEMENT AGREEMENTS BETWEEN THE CITY OF FOUNTAIN, FOUNTAIN COLONY 1933 LLC AND FOUNTAIN COLONY 1933 NO. II LLC FOR WATERLINE EASEMENTS TO SUPPORT THE 36” SW/LINK TRANSMISSION MAIN PROJECT.**

**WHEREAS**, The City of Fountain is designing the SW/Link Transmission Main project to install a 36” water pipeline that will greatly benefit the southern half of the City’s water system; and

**WHEREAS**, the SW/Link project requires numerous easements across private properties to connect the Southwest storage tank to the rest of the water system; and

**WHEREAS**, Utilities Department staff has negotiated acceptable terms with Fountain Colony 1933 LLC and Fountain Colony 1933 NO. II LLC to acquire needed easements at no cost in exchange for providing pipeline connection points and waiving future cost-recovery charges stemming from the SW/Link project; and

**WHEREAS**, the City Council of the City of Fountain desires to approve the Easement Agreements and accept the easements from Fountain Colony 1933 LLC and Fountain Colony 1933 NO. II LLC for the SW/Link Transmission Main Project.

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

- 1. The Mayor, City Manager or other representative of the City delegated by the Mayor or City Manager are hereby authorized to execute the Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement with Fountain Colony 1933 LLC and Fountain Colony 1933 NO. II LLC to complete and close upon the purchase of the Easements.**
- 2. The above authorization extends to the related documents necessary to achieve the identified and approved actions for acquisition of the easements.**

Done this 9<sup>th</sup> day of May 2023.

\_\_\_\_\_  
Sharon Thompson, Mayor

ATTEST:

\_\_\_\_\_  
Silvia Huffman, City Clerk

**NON-EXCLUSIVE PERMANENT EASEMENT AND  
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

FOUNTAIN COLONY 1933 LLC, a Colorado limited liability company (the “Grantor”), and the CITY OF FOUNTAIN, Colorado, a Colorado home rule city and municipal corporation (the “Grantee”), hereby agree as follows:

Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” Pursuant to the terms set forth in this Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement (“Easement Agreement”), Grantor, being the owner of the real property legally described as Lot 1 Fountain Colony Industrial Park Filing No. 1 and identified by El Paso County Assessors Schedule Number 5607301001 (the "Property") located in the County of El Paso and the State of Colorado, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant to the Grantee the following easements:

- A. A nonexclusive permanent easement for the installation of a 36” potable water transmission pipeline and all other related attachments and appurtenant facilities (collectively the “Water Facilities”) over, under and across the real property as described and depicted in **Exhibit A** (the "Waterline Easements"), together with rights of ingress and egress across the Property of the Grantor for the installation, maintenance, repair, and replacement of the Water Facilities within the Waterline Easements; and
- B. During the period of construction of the Water Facilities, the Waterline Easements shall include twenty-five (25) feet on either side of the edge of the permanent easements, thus constituting a temporary construction easement totaling fifty (50) feet in width (the “Construction Easement”).
- C. The Waterline Easements and the Construction Easement are collectively referred to herein as the "Easements.” The Construction Easement shall expire upon completion of construction of the Water Facilities as reasonably determined by mutual agreement between the Parties' representatives.
- D. Except as provided herein, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Water Facilities and use of the Easements. Grantor reserves use of the Easements, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), that do not interfere with Grantee's use of the Easements, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the Parties, does not injure or interfere with, now or in the future, any of the rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- E. Grantor shall notify Grantee in writing of any of Grantor's Improvements that Grantor desires to construct or place on any part of the Easements. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such Grantor Improvements on the Water Facilities and the Easements. Grantor shall work with Grantee to ensure that any such Grantor Improvements do not negatively impact the Water Facilities and or Grantor's use of and rights associated with the Easements. No Grantor Improvements may be erected on any part of the Easements without the mutual written agreement of the Parties. Any Grantor Improvements constructed or placed on, in, above, or under the Easements without the mutual written consent of the Parties as detailed above, may be removed by Grantee without liability for any damages or claims arising therefrom, and Grantor shall reimburse Grantee for all expenses associated with removing such violating Grantor Improvements.
- F. The Grantor shall not undertake to construct or place Grantor Improvements on, in, above, under, or otherwise within the Easements that necessitate the relocation, reconstruction, removal, or abandonment of any of the Water Facilities that are located within the Easements.
- G. The foregoing notwithstanding, in no event shall Grantor:
  - a) construct or place, longitudinally along or otherwise within the Easements, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of Grantee; or
  - b) change, by excavation or filling, the present grade or ground level of the Easements, by more than one foot without the prior written consent of Grantee; or
  - c) drill or operate any well within the Easements; or
  - d) erect or construct any building or other permanent structure on, in, above, under, or otherwise within the Easements without the prior written consent of the Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration of landfills, land excavations, water impoundments, and other land uses within the Easements or within the Property, which might, in Grantee's discretion, endanger or interfere with the Water Facilities and or Grantee's use of and rights associated with the Easements, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- H. Grantor shall replace, repair, or reimburse Grantee for the reasonable cost of replacement or repair of physical damage to Grantee's Water Facilities if such damage is caused by the construction or placement of Grantor Improvements.
- I. Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Property, whether or not within the Easements, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Water Facilities.

- J. The Grantee shall have the right to trim or remove any vegetation that may interfere with the rights granted to the Grantee in association with these Easements, without being required to replace or reimburse Grantor for said vegetation.
- K. At the time of future development on the Property, Grantor shall not be required to pay to Grantee any cost-recovery or surcharge associated with the construction of the Water Facilities beyond the standard Tap Fee amount set at such future time for the tap size being requested.
- L. Grantee will provide, at no cost to Grantor, three (3) 16” water distribution connections with the Water Facilities at locations mutually agreeable to the Parties.
- M. The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the respective Parties hereto.
- N. The provisions herein shall be a covenant running with the land.
- O. The Grantor covenants that it has the authority to grant the Easements as set forth herein. Grantee agrees and understands that it commences its use of the Property –“AS IS” and without any warranties of any kind or nature.
- P. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Property for materials supplied or work performed at the request of, or for the benefit of, Grantee, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Property.
- Q. The Grantor shall hold Grantee and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, and liabilities of any kind or nature as a result of or in connection with Grantor's, its contractors', agents', or employees' use of the Easements, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantor's, its contractors', agents', or employees' negligence or willful misconduct. In addition, to the extent expressly permitted by law, the Grantee shall hold Grantor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Grantee's, its contractors', agents', or employees' use of the Easement, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit any defenses, rights, or immunities available to the Grantee pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
- R. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of



such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

- S. This Agreement, together with Exhibit A, supersedes all prior negotiations, representations, and agreements, whether oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement, shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all Parties.
- T. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- U. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Paso. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of Colorado.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**Grantor:**

**FOUNTAIN COLONY 1933 LLC**

\_\_\_\_\_,  
a Colorado limited liability company

By: \_\_\_\_\_

\_\_\_\_\_, as Manager

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

The above Easement Agreement is hereby approved and accepted by the City of Fountain, Colorado.

**Grantee:**

**CITY OF FOUNTAIN,  
a Colorado home rule city**

By: \_\_\_\_\_

\_\_\_\_\_, as \_\_\_\_\_

ATTEST

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

**RATIFICATION AND ACCEPTANCE OF EASEMENT**

For good and valuable consideration [**NAME OF LENDER**] by virtue of that certain Deed of Trust to the Public Trustee of El Paso County, Colorado recorded on \_\_\_\_\_ (date) under reception number \_\_\_\_\_ records of said County, does hereby ratify, confirm and accept the above Grant of Easement. The lender subordinates the lien of the Deed of Trust to the above Grant of Easement, agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence of the Grant of Easement, and agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence or continuing validity of the Grant of Easement, which Grant of Easement shall run with the land and remain in full force and effect as if such Grant of Easement was executed, delivered, and recorded prior to the execution, delivery and recording of the Deed of Trust.

LENDER:

\_\_\_\_\_

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Typed name

\_\_\_\_\_  
Title

STATE OF COLORADO    )  
                                                                  ) ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by \_\_\_\_\_ on behalf of the lender.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

(S E A L)

\_\_\_\_\_  
Notary Public

# EXHIBIT A

## Legal Description

### Waterline Easement

#### Fountain Colony 1933 LLC

(THIS REVISES ONE DATED 03/02/23)

Legal description of a strip of land located in the Southwest  $\frac{1}{4}$  of Section 7 and in the North  $\frac{1}{2}$  of the North  $\frac{1}{2}$  of Section 18, Township 16 South, Range 65 West of the 6th P.M., El Paso County, Colorado being in a portion of Lot 1, Fountain Colony Industrial Park Filing No. 1, recorded under Reception Number 208712761 of the Records of El Paso County, Colorado described as follows:

(Bearings are based on the West line of Lot 1 of Fountain Colony Industrial Park Filing No. 1 as bearing  $N00^{\circ}48'45'' W$ )

Commencing at the Southwest Corner of said Lot 1, thence  $N00^{\circ}48'45''W$ , 253.72 feet along the West line of said Lot 1 to the **TRUE POINT OF BEGINNING**;

Thence continue  $N00^{\circ}48'45''W$ , 31.14 feet

Thence  $N88^{\circ}00'41''E$ , 10.65 feet;

Thence  $S46^{\circ}59'19''E$ , 260.08 feet;

Thence  $N88^{\circ}00'41''E$ , 305.05 feet to a point on the East line of said Lot 1;

Thence Southeasterly, a distance of 46.89 feet along the arc of a curve concave to the Northeast, said arc having a radius of 501.08 feet, a central angle of  $05^{\circ}21'41''$  and being subtended by a chord that bears  $S52^{\circ}11'36''E$ , 46.87 feet;;

thence along a line non-tangent to said curve,  $S88^{\circ}00'41''W$ , a distance of 353.49 feet

Thence  $N46^{\circ}59'17''W$ , 258.47 feet; to the West line of said Lot 1 and the **TRUE POINT OF BEGINNING**.

Area = 17,804.71 square feet, 0.41 acres, more or less.

Randall D. Hency, PLS Colorado 27605  
for and on behalf of  
Polaris Surveying, Inc.  
1903 Lalaray Street, Suite 102  
Colorado Springs, Co. 80909  
Job No. 210909

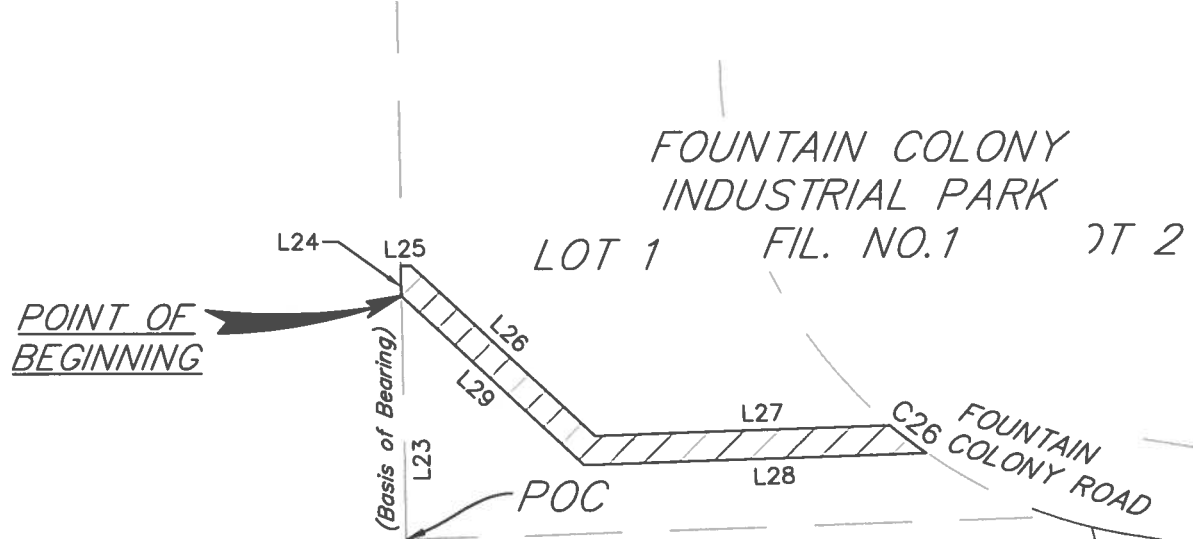
Date 03/21/23



EXHIBIT MAP  
Waterline Easement  
Fountain Colony 1933



SCALE 1" = 200'



Line Table		
Line #	Direction	Length
L23	S00°48'45"E	253.72'
L24	N00°48'45"W	31.14'
L25	N88°00'41"E	10.65'
L26	S46°59'19"E	260.08'
L27	N88°00'41"E	305.05'
L28	S88°00'41"W	353.49'
L29	N46°59'17"W	258.47'

UNPLATTED



Curve #	Length	Radius	Delta	Chord Bearing	Chord Dist
C26	46.89'	501.08'	005°21'41"	S52°11'36"E	46.87'

Rev: 03/21/23  
March 1, 2023  
JOB: 21-09-09  
JDS Hydro

*Waterline Easement Exhibit Map*

**POLARIS SURVEYING, INC.**  
1903 Lelaray Street, Suite 102  
COLORADO SPRINGS, CO 80909  
(719)448-0844 FAX (719)448-9225

**NON-EXCLUSIVE PERMANENT EASEMENT AND  
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

FOUNTAIN COLONY 1933 LLC, a Colorado limited liability company (the “Grantor”), and the CITY OF FOUNTAIN, Colorado, a Colorado home rule city and municipal corporation (the “Grantee”), hereby agree as follows:

Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” Pursuant to the terms set forth in this Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement (“Easement Agreement”), Grantor, being the owner of the real property identified by El Paso County Assessors Schedule Number 5607400001 (the "Property") located in the County of El Paso and the State of Colorado, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant to the Grantee the following easements:

- A. A nonexclusive permanent easement for the installation of a 36” potable water transmission pipeline and all other related attachments and appurtenant facilities (collectively the “Water Facilities”) over, under and across the real property as described and depicted in **Exhibit A** (the "Waterline Easements"), together with rights of ingress and egress across the Property of the Grantor for the installation, maintenance, repair, and replacement of the Water Facilities within the Waterline Easements; and
- B. During the period of construction of the Water Facilities, the Waterline Easements shall include twenty-five (25) feet on either side of the edge of the permanent easements, thus constituting a temporary construction easement totaling fifty (50) feet in width (the “Construction Easement”).
- C. The Waterline Easements and the Construction Easement are collectively referred to herein as the "Easements.” The Construction Easement shall expire upon completion of construction of the Water Facilities as reasonably determined by mutual agreement between the Parties' representatives.
- D. Except as provided herein, Grantor shall retain the right to make full use of the Property, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Water Facilities and use of the Easements. Grantor reserves use of the Easements, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), that do not interfere with Grantee's use of the Easements, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the Parties, does not injure or interfere with, now or in the future, any of the rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- E. Grantor shall notify Grantee in writing of any of Grantor's Improvements that Grantor desires to construct or place on any part of the Easements. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such Grantor Improvements on the Water Facilities and the Easements. Grantor shall work with Grantee to ensure that any such Grantor Improvements do not negatively impact the Water Facilities and or Grantor's use of and rights associated with the Easements. No Grantor Improvements may be erected on any part of the Easements without the mutual written agreement of the Parties. Any Grantor Improvements constructed or placed on, in, above, or under the Easements without the mutual written consent of the Parties as detailed above, may be removed by Grantee without liability for any damages or claims arising therefrom, and Grantor shall reimburse Grantee for all expenses associated with removing such violating Grantor Improvements.
- F. The Grantor shall not undertake to construct or place Grantor Improvements on, in, above, under, or otherwise within the Easements that necessitate the relocation, reconstruction, removal, or abandonment of any of the Water Facilities that are located within the Easements.
- G. The foregoing notwithstanding, in no event shall Grantor:
  - a) construct or place, longitudinally along or otherwise within the Easements, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of Grantee; or
  - b) change, by excavation or filling, the present grade or ground level of the Easements, by more than one foot without the prior written consent of Grantee; or
  - c) drill or operate any well within the Easements; or
  - d) erect or construct any building or other permanent structure on, in, above, under, or otherwise within the Easements without the prior written consent of the Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration of landfills, land excavations, water impoundments, and other land uses within the Easements or within the Property, which might, in Grantee's discretion, endanger or interfere with the Water Facilities and or Grantee's use of and rights associated with the Easements, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- H. Grantor shall replace, repair, or reimburse Grantee for the reasonable cost of replacement or repair of physical damage to Grantee's Water Facilities if such damage is caused by the construction or placement of Grantor Improvements.
- I. Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Property, whether or not within the Easements, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Water Facilities.

- J. The Grantee shall have the right to trim or remove any vegetation that may interfere with the rights granted to the Grantee in association with these Easements, without being required to replace or reimburse Grantor for said vegetation.
- K. At the time of future development on the Property, Grantor shall not be required to pay to Grantee any cost-recovery or surcharge associated with the construction of the Water Facilities beyond the standard Tap Fee amount set at such future time for the tap size being requested.
- L. Grantee will provide, at no cost to Grantor, three (3) 16” water distribution connections with the Water Facilities at locations mutually agreeable to the Parties.
- M. The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the respective Parties hereto.
- N. The provisions herein shall be a covenant running with the land.
- O. The Grantor covenants that it has the authority to grant the Easements as set forth herein. Grantee agrees and understands that it commences its use of the Property –“AS IS” and without any warranties of any kind or nature.
- P. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Property for materials supplied or work performed at the request of, or for the benefit of, Grantor, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Property.
- Q. The Grantor shall hold Grantee and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, and liabilities of any kind or nature as a result of or in connection with Grantor's, its contractors', agents', or employees' use of the Easements, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantor's, its contractors', agents', or employees' negligence or willful misconduct. In addition, to the extent expressly permitted by law, the Grantee shall hold Grantor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Grantee's, its contractors', agents', or employees' use of the Easement, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit any defenses, rights, or immunities available to the Grantee pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
- R. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of



such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

- S. This Agreement, together with Exhibit A, supersedes all prior negotiations, representations, and agreements, whether oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement, shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all Parties.
- T. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- U. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Paso. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of Colorado.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**Grantor:**

**FOUNTAIN COLONY 1933 LLC**

\_\_\_\_\_,  
a Colorado limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_, as Manager

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

The above Easement Agreement is hereby approved and accepted by the City of Fountain, Colorado.

**Grantee:**

**CITY OF FOUNTAIN,  
a Colorado home rule city**

By: \_\_\_\_\_  
\_\_\_\_\_, as \_\_\_\_\_

ATTEST

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

**RATIFICATION AND ACCEPTANCE OF EASEMENT**

For good and valuable consideration [**NAME OF LENDER**] by virtue of that certain Deed of Trust to the Public Trustee of El Paso County, Colorado recorded on \_\_\_\_\_ (date) under reception number \_\_\_\_\_ records of said County, does hereby ratify, confirm and accept the above Grant of Easement. The lender subordinates the lien of the Deed of Trust to the above Grant of Easement, agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence of the Grant of Easement, and agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence or continuing validity of the Grant of Easement, which Grant of Easement shall run with the land and remain in full force and effect as if such Grant of Easement was executed, delivered, and recorded prior to the execution, delivery and recording of the Deed of Trust.

LENDER:

\_\_\_\_\_

By: \_\_\_\_\_

Signature

\_\_\_\_\_  
Typed name

\_\_\_\_\_  
Title

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by \_\_\_\_\_ on behalf of the lender.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

(S E A L)

\_\_\_\_\_  
Notary Public

# EXHIBIT A

## Legal Description

### Waterline Easement

#### Fountain Colony 1933 LLC

Legal description of a strip of land located in the South ½, of the South ½ of Section 7 and in the North ½ of the North ½ of Section 18, Township 16 South, Range 65 West of the 6th P.M., El Paso County, Colorado. described as follows:

*(Bearings are based on the East line of Lot 4 of Fountain Colony Industrial Park Filing No. 1 as bearing S09°09'10" W)*

**BEGINNING** at the SE Corner of Fountain Colony Road as shown on the subdivision plat of Fountain Colony Industrial Park Filing No. 1, recorded under Reception Number 208712761 of the Records of El Paso County, Colorado, thence N09°09'10"E, 30.00 feet along the East line of said Fountain Colony Road;

Thence S80°50'50"E, 164.71 feet;

Thence S58°22'33"E, 378.77 feet;

Thence S35°34'49"E, 392.03 feet;

Thence S50°29'09"E, 187.03 feet;

Thence S40°13'40"E, 8.10 feet to a point on the South Line of said Section 7;

Thence S89°23'30"W, 44.31 feet along said South line;

Thence N50°29'09"W, 165.04 feet;

Thence N35°34'49"W, 389.90 feet;

Thence N58°22'33"W, 366.76 feet;

Thence N80°50'50"W, 158.75 feet; to the Southeast Corner of said Fountain Colony Road and the **POINT OF BEGINNING**.

Area = 33,177.5 square feet, 0.76 acres, more or less.

Randall D. Hency, PLS Colorado 27605  
for and on behalf of  
Polaris Surveying, Inc.  
1903 Lalaray Street, Suite 102  
Colorado Springs, Co. 80909  
Job No. 220909

Date 03/20/23





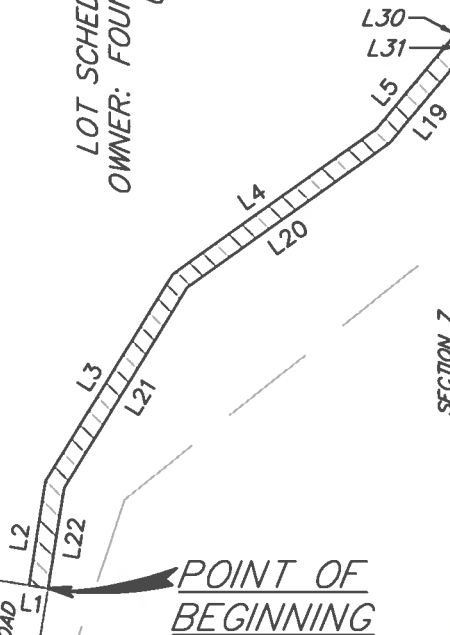
EXHIBIT MAP  
Waterline Easement  
Fountain Colony 1933 LLC

SCALE 1" = 300'

FOUNTAIN COLONY  
INDUSTRIAL PARK  
FIL. NO.1  
LOT 4

(S 09°09'10" W)  
Basis of Bearing

FOUNTAIN COLONY ROAD



LOT SCHEDULE NO. 5607400001  
OWNER: FOUNTAIN COLONY 1933 LLC  
UNPLATTED

SECTION 7  
SECTION 18

SECTION 7  
SECTION 18

1-25

LOT SCHEDULE NO. 5600000154  
OWNER: FOUNTAIN COLONY 1933  
NO II LLC

LOT SCHEDULE NO. 5600000155  
OWNER: FOUNTAIN COLONY 1933  
NO II LLC  
UNPLATTED

LOT SCHEDULE NO. 5600000146  
OWNER: COPART INC  
UNPLATTED



REV: 3/20/23  
March 9, 2023  
JOB: 21-09-09  
JDS Hydro

**Waterline Easement  
Fountain Colony 1933**

**POLARIS SURVEYING, INC.**

1903 Lelaray Street, Suite 102  
COLORADO SPRINGS, CO 80909  
(719)448-0844 FAX (719)448-9225

Line Table  
Waterline Easement

Line Table		
Line #	Direction	Length
L1	N09°09'10"E	30.00'
L2	S80°50'50"E	164.71'
L3	S58°22'33"E	378.77'
L4	S35°34'49"E	392.03'
L5	S50°29'09"E	187.03'
L19	N50°29'09"W	165.04'
L20	N35°34'49"W	389.90'
L21	N58°22'33"W	366.76'
L22	N80°50'50"W	158.75'
L30	S40°13'40"E	8.10'
L31	S89°23'30"W	44.31'

REV: 3/20/23  
March 1, 2023  
JOB: 21-09-09  
JDS Hydro

***Waterline Easement Line Table  
Fountain Colony 1933***

***POLARIS SURVEYING, INC.***

1903 Lelaray Street, Suite 102  
COLORADO SPRINGS, CO 80909  
(719)448-0844 FAX (719)448-9225

**NON-EXCLUSIVE PERMANENT EASEMENT AND  
TEMPORARY CONSTRUCTION EASEMENT AGREEMENT**

FOUNTAIN COLONY 1933 NO. II LLC, a Colorado limited liability company (the “Grantor”), and the CITY OF FOUNTAIN, Colorado, a Colorado home rule city and municipal corporation (the “Grantee”), hereby agree as follows:

Grantor and Grantee are referred to herein individually as a “Party” and collectively as the “Parties.” Pursuant to the terms set forth in this Non-Exclusive Permanent Easement and Temporary Construction Easement Agreement (“Easement Agreement”), Grantor, being the owner of the real properties identified by El Paso County Assessors Schedule Numbers 5600000154 and 5600000155 (the "Properties") located in the County of El Paso and the State of Colorado, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration, the sufficiency of which is hereby acknowledged, does hereby grant to the Grantee the following easements:

- A. A nonexclusive permanent easement for the installation of a 36” potable water transmission pipeline and all other related attachments and appurtenant facilities (collectively the “Water Facilities”) over, under and across the real properties as described and depicted in **Exhibit A** (the "Waterline Easements"), together with rights of ingress and egress across the Properties of the Grantor for the installation, maintenance, repair, and replacement of the Water Facilities within the Waterline Easements; and
- B. During the period of construction of the Water Facilities, the Waterline Easements shall include twenty-five (25) feet on either side of the edge of the permanent easements, thus constituting a temporary construction easement totaling fifty (50) feet in width (the “Construction Easement”).
- C. The Waterline Easements and the Construction Easement are collectively referred to herein as the "Easements.” The Construction Easement shall expire upon completion of construction of the Water Facilities as reasonably determined by mutual agreement between the Parties' representatives.
- D. Except as provided herein, Grantor shall retain the right to make full use of the Properties, except for such use as might endanger or interfere with the rights of Grantee in its construction, operation or maintenance of the Water Facilities and use of the Easements. Grantor reserves use of the Easements, whether longitudinal or otherwise, for installing public improvements including but not limited to pavement, curbs, gutters, sidewalks, paved parking areas and associated curb cuts, paved driveways, fences (except fences which cannot be reasonably removed and erected again such as stone, brick, or other masonry type fences or walls), that do not interfere with Grantee's use of the Easements, low-height landscaping, and sprinkler systems which are capable of being reasonably located by Grantee and Grantor (the "Grantor's Improvements"); provided, however, that the exercise of such rights, in the mutual agreement of the Parties, does not injure or interfere with, now or in the future, any of the rights provided to Grantee under this Easement Agreement, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- E. Grantor shall notify Grantee in writing of any of Grantor's Improvements that Grantor desires to construct or place on any part of the Easements. Such notice shall include all engineering and construction plans and any other information necessary for Grantee to evaluate the impact of such Grantor Improvements on the Water Facilities and the Easements. Grantor shall work with Grantee to ensure that any such Grantor Improvements do not negatively impact the Water Facilities and or Grantor's use of and rights associated with the Easements. No Grantor Improvements may be erected on any part of the Easements without the mutual written agreement of the Parties. Any Grantor Improvements constructed or placed on, in, above, or under the Easements without the mutual written consent of the Parties as detailed above, may be removed by Grantee without liability for any damages or claims arising therefrom, and Grantor shall reimburse Grantee for all expenses associated with removing such violating Grantor Improvements.
- F. The Grantor shall not undertake to construct or place Grantor Improvements on, in, above, under, or otherwise within the Easements that necessitate the relocation, reconstruction, removal, or abandonment of any of the Water Facilities that are located within the Easements.
- G. The foregoing notwithstanding, in no event shall Grantor:
- a) construct or place, longitudinally along or otherwise within the Easements, any tree, underground pipeline, cable, wire, conduit, valve, stub, or other utility or appurtenance without the prior written consent of Grantee; or
  - b) change, by excavation or filling, the present grade or ground level of the Easements, by more than one foot without the prior written consent of Grantee; or
  - c) drill or operate any well within the Easements; or
  - d) erect or construct any building or other permanent structure on, in, above, under, or otherwise within the Easements without the prior written consent of the Grantee.

Grantor shall control and, to the extent reasonably necessary, prevent the construction or alteration of landfills, land excavations, water impoundments, and other land uses within the Easements or within the Properties, which might, in Grantee's discretion, endanger or interfere with the Water Facilities and or Grantee's use of and rights associated with the Easements, including, but not limited to, Grantee's rights of maintenance and reasonable access.

- H. Grantor shall replace, repair, or reimburse Grantee for the reasonable cost of replacement or repair of physical damage to Grantee's Water Facilities if such damage is caused by the construction or placement of Grantor Improvements.
- I. Grantee shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's Improvements on the Properties, whether or not within the Easements, but only if such damage is caused by Grantee's construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Water Facilities.



- J. The Grantee shall have the right to trim or remove any vegetation that may interfere with the rights granted to the Grantee in association with these Easements, without being required to replace or reimburse Grantor for said vegetation.
- K. At the time of future development on the Properties, Grantor shall not be required to pay to Grantee any cost-recovery or surcharge associated with the construction of the Water Facilities beyond the standard Tap Fee amount set at such future time for the tap size being requested.
- L. Grantee will provide, at no cost to Grantor, three (3) 16” water distribution connections with the Water Facilities at locations mutually agreeable to the Parties.
- M. The provisions herein shall inure to the benefit of and bind the heirs, successors and assigns of the respective Parties hereto.
- N. The provisions herein shall be a covenant running with the land.
- O. The Grantor covenants that it has the authority to grant the Easements as set forth herein. Grantee agrees and understands that it commences its use of the Properties –“AS IS” and without any warranties of any kind or nature.
- P. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Properties for materials supplied or work performed at the request of, or for the benefit of, Grantor, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense, incurred by Grantor to release any such mechanic's or materialmen's liens against the Properties.
- Q. The Grantor shall hold Grantee and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, and liabilities of any kind or nature as a result of or in connection with Grantor's, its contractors', agents', or employees' use of the Easements, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantor's, its contractors', agents', or employees' negligence or willful misconduct. In addition, to the extent expressly permitted by law, the Grantee shall hold Grantor and its heirs, successors and/or assigns harmless from and against any and all damages, loss, cost, expense, liabilities of any kind or nature as a result of, or in connection with Grantee's, its contractors', agents', or employees' use of the Easement, but only to the extent such damages, loss, cost, expense, and liabilities are due to or arising from Grantee's negligence or willful misconduct, but not as to the use by the general public. Nothing in this section shall be deemed to waive or otherwise limit any defenses, rights, or immunities available to the Grantee pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.
- R. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of

such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

- S. This Agreement, together with Exhibit A, supersedes all prior negotiations, representations, and agreements, whether oral or in writing, between the Parties with respect to the subject matter herein. Each Party to this Agreement acknowledges that no representation by any party which is not embodied herein, nor any other agreement, statement, or promise not contained in this Agreement, shall be valid and binding. Any modification of this Agreement shall be effective only if it is in writing and signed by all Parties.
- T. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.
- U. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation between the Parties, venue in state trial courts shall lie exclusively in the County of El Paso. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the District of Colorado.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**Grantor:**

**FOUNTAIN COLONY 1933 NO. II LLC**

\_\_\_\_\_,  
a Colorado limited liability company

By: \_\_\_\_\_

\_\_\_\_\_, as Manager

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2023, by \_\_\_\_\_.

WITNESS my hand and official seal.

My Commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public

The above Easement Agreement is hereby approved and accepted by the City of Fountain, Colorado.

**Grantee:**

**CITY OF FOUNTAIN,  
a Colorado home rule city**

By: \_\_\_\_\_

\_\_\_\_\_, as \_\_\_\_\_

ATTEST

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

**RATIFICATION AND ACCEPTANCE OF EASEMENT**

For good and valuable consideration [**NAME OF LENDER**] by virtue of that certain Deed of Trust to the Public Trustee of El Paso County, Colorado recorded on \_\_\_\_\_ (date) under reception number \_\_\_\_\_ records of said County, does hereby ratify, confirm and accept the above Grant of Easement. The lender subordinates the lien of the Deed of Trust to the above Grant of Easement, agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence of the Grant of Easement, and agrees that any foreclosure of the Deed of Trust shall not adversely affect the existence or continuing validity of the Grant of Easement, which Grant of Easement shall run with the land and remain in full force and effect as if such Grant of Easement was executed, delivered, and recorded prior to the execution, delivery and recording of the Deed of Trust.

LENDER:

\_\_\_\_\_

By:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed name

\_\_\_\_\_  
Title

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2023, by \_\_\_\_\_ on behalf of the lender.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

(S E A L)

\_\_\_\_\_  
Notary Public

# EXHIBIT A

## Legal Description

### Waterline Easement

#### Fountain Colony 1933 No.II LLC

Legal description of a strip of land located in the North ½ of the North ½ of Section 18, Township 16 South, Range 65 West of the 6th P.M., El Paso County, Colorado. described as follows:

*(Bearings are based on the West line of Lot 4 of Fountain Colony Industrial Park Filing No. 1 as bearing S09°09'10" W)*

Commencing (POC) at the SE Corner of Fountain Colony Road as shown on the subdivision plat of Fountain Colony Industrial Park Filing No. 1, recorded under Reception Number 208712761 of the Records of El Paso County, Colorado, thence N09°09'10"E, 30.00 feet along the East line of said Fountain Colony Road, thence S80°50'50"E, 164.71 feet, thence S58°22'33"E, 378.77 feet, thence S35°34'49"E, 392.03 feet, thence S50°29'09"E, 187.03 feet,; thence S40°13'40"E, 8.10 feet to a point on the North line of said Section 18 and the **TRUE POINT OF BEGINNING**;

Thence continue S40°13'40"E, 214.26 feet;

Thence S42°47'06"E, 226.96 feet;

Thence S45°47'24"E, 205.73 feet;

Thence S67°56'31"E, 88.96 feet;

Thence N72°30'00"E, 750.10 feet;

Thence N62°31'23"E, 34.33 feet to a point on the West Right-of-Way line of Interstate Highway 25 ;

Thence S25°34'48"E, 30.02 feet along said West Right-of-Way line;

Thence S62°31'23"W, 35.96 feet;

Thence S72°30'00"W, 763.51 feet;

Thence N67°56'31"W, 105.62 feet;

Thence N45°47'24"W, 212.39 feet;

Thence N42°47'06"W, 228.42 feet;

Thence N40°13'40"W, 220.34 feet;

Thence N50 29'09"W, 23.22 feet to a point on the North line of said Section 18;

Thence N89°23'30"E, 44.31 feet along said North line to the **TRUE POINT OF BEGINNING**.

Area = 46,635.9 square feet, 1.07 acres, more or less.

Randall D. Hency, PLS Colorado 27605  
for and on behalf of  
Polaris Surveying, Inc.  
1903 Lalaray Street, Suite 102  
Colorado Springs, Co. 80909  
Job No. 220909

Date 03/20/23





EXHIBIT MAP  
Waterline Easement  
Fountain Colony 1933 No. II LLC

SCALE 1" = 300'

FOUNTAIN COLONY  
INDUSTRIAL PARK  
FIL. NO.1  
LOT 4

(S 09°09'10" W)  
Basis of Bearing

FOUNTAIN COLONY ROAD

LOT SCHEDULE NO. 5607400001  
OWNER: FOUNTAIN COLONY 1933 LLC  
UNPLATTED

POINT OF  
BEGINNING

SECTION 7  
SECTION 18

SECTION 7  
SECTION 18

1-25

LOT SCHEDULE NO. 5600000154  
OWNER: FOUNTAIN COLONY 1933  
NO II LLC  
UNPLATTED

LOT SCHEDULE NO. 5600000155  
OWNER: FOUNTAIN COLONY 1933  
NO II LLC  
UNPLATTED

LOT SCHEDULE NO. 5600000146  
OWNER: COPART INC  
UNPLATTED



REV: 3/20/23  
March 9, 2023  
JOB: 21-09-09  
JDS Hydro

**Waterline Easement**  
**Fountain Colony 1933 No. II**

**POLARIS SURVEYING, INC.**  
1903 Lelaray Street, Suite 102  
COLORADO SPRINGS, CO 80909  
(719)448-0844 FAX (719)448-9225

Line Table  
Waterline Easement

Line Table		
Line #	Direction	Length
L1	N09°09'10"E	30.00'
L2	S80°50'50"E	164.71'
L3	S58°22'33"E	378.77'
L4	S35°34'49"E	392.03'
L5	S50°29'09"E	187.03'
L6	S40°13'40"E	214.26'
L7	S42°47'06"E	226.96'
L8	S45°47'24"E	205.73'
L9	S67°56'31"E	88.96'
L10	N72°30'00"E	750.10'
L11	N62°31'23"E	34.33'
L12	S25°34'48"E	30.02'
L13	S62°31'23"W	35.96'
L14	S72°30'00"W	763.51'
L15	N67°56'31"W	105.62'
L16	N45°47'24"W	212.39'
L17	N42°47'06"W	228.42'
L18	N40°13'40"W	220.34'
L30	S40°13'40"E	8.10'
L31	N89°23'30"E	44.31'
L32	N50°29'09"W	23.22'

REV: 3/20/23  
March 1, 2023  
JOB: 21-09-09  
JDS Hydro

***Waterline Easement Line Table  
Fountain Colony 1933 No. II***

***POLARIS SURVEYING, INC.***

1903 Lelaray Street, Suite 102  
COLORADO SPRINGS, CO 80909  
(719)448-0844 FAX (719)448-9225





# Regular City Council Meeting

## Old Business – 8A

Public Safety Impact Fee

### May 9, 2023

#### Summary Information

Title:

**SECOND READING OF ORDINANCE 1787, AN ORDINANCE AMENDING CHAPTER 15.05 (PUBLIC SAFETY IMPACT FEES) OF THE FOUNTAIN MUNICIPAL CODE**

Initiator: Fire Marshal, Michael Gates

Presenter: Fire Chief, Devin Graham

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

There have been no changes since first reading.

Removal of the Impact Fee Rates from Ordinance 1754, Future rate adjustments adopted by resolution at the recommendation of the Public Safety Director.

Attachment:

Ordinance 1787

#### 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 approval of Ordinance 1787 on second reading.

#### Proposed Motion

"I motion to approve Ordinance 1787 on second reading"

**ORDINANCE NO. 1787****AN ORDINANCE AMENDING CHAPTER 15.05 (PUBLIC SAFETY IMPACT FEES) OF THE FOUNTAIN MUNICIPAL CODE**

**WHEREAS**, the City of Fountain, Colorado is municipal corporation duly organized and operating as a home-rule city under the Constitution of the State of Colorado and the Charter of the City; and

**WHEREAS**, it is in the best interests of the citizens of the City of Fountain (the “City”) to assure that they are provided sufficient public safety facilities; and

**WHEREAS**, on February 14, 2012, the Fountain City Council adopted the Public Safety Facility Master Plan; and

**WHEREAS**, it is anticipated that the City of Fountain will experience significant growth and development over the 20 to 40 years that will significantly increase the need for public safety services and infrastructure; and

**WHEREAS**, the Fountain City Council adopted Ordinance No. 1754 on December 8<sup>th</sup>, 2020, creating Title 15, Chapter 15.05 which established the ability to assess a public impact fee on new development, or annexed developed within the City of Fountain; and

**WHEREAS**, pursuant to Section 9.3(f) of the City Charter, the City Council is authorized to adopt and impose such fees provided that such fee is adopted and imposed by ordinance; and

**WHEREAS**, the City seeks to provide a source of dedicated funds for public safety capital needs as identified in the 2012 Public Safety Facility Master Plan; and

**WHEREAS**, the City of Fountain hereby determine that the most appropriate way to assure that the development pays its fair share of such improvements is to impose fees upon development; and

**WHEREAS**, the City of Fountain hereby finds that, the imposition of such fees is in the best interests of the City of Fountain; and

**WHEREAS**, the Public Safety Impact Fees will be collected to defray the costs of public safety capital purposes; and

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

Section 1. Impact Fees. The public safety impact fee will be assessed to residential, multi-family, commercial and industrial land uses.

The amount of the public safety impact fee charged shall be based upon the previous cost and capacity of existing facilities and modeling it for future facilities necessitated by proposed future development.

Section 2. Expenditure of Fees. The fees collected pursuant to this Ordinance by the City of Fountain shall be used exclusively for capital purposes for the City's public safety departments. Capital purposes includes, but is not limited to, such items as: facilities, vehicles (and related equipment) or equipment with a cost in excess of \$5,000 and a useful life of more than one year following the date of acquisition. Relative to facilities, capital costs would also include appropriate architectural or other consulting costs related to the facility.

Section 3. Annual Adjustment of Fees. The Public Safety Director is hereby authorized and directed to annually adjust the Public Safety Impact Fees based upon the rise of inflation of building cost, recommendations shall be based upon the Colorado Construction Cost Index Report.

Annual Adjustment of the Fees by the Public Safety Director shall be by resolution at a normally scheduled City Council meeting.

Section 4. Implementation. The City of Fountain Public Safety Director, or designee shall be responsible for implementation of this Ordinance and for promulgating such rules and regulations as may be reasonably necessary.

Section 5. Effective Date. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read and passed this 25th day of April 2023, by the City Council, Fountain, Colorado, signed by the Mayor, and ordered published in the Gazette, a newspaper of general circulation in the City of Fountain, Colorado.

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Mayor

ATTEST:

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City Clerk

Passed on second and final reading this 9<sup>th</sup> day of May 2023, by the City Council, Fountain, Colorado, signed by the Mayor, and ordered published in the Gazette, a newspaper of general circulation in the City of Fountain, Colorado.

\_\_\_\_\_  
Mayor

ATTEST:

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



# Regular City Council Meeting

## New Business –9A

Items removed from Consent Agenda

May 9, 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

Requesting Inclusion PPRTA

May 9, 2023

### Summary Information

Title:

**RESOLUTION 23-023, A RESOLUTION REQUESTING INCLUSION INTO THE PIKES PEAK RURAL TRANSPORTATION AUTHORITY**

Initiator: City Council

Presenter: Troy Johnson, City Attorney

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The purpose of this action item is for City Council to consider the preliminary step of formally asking permission for the City of Fountain to join the PPRTA.

### Background Information

The City conducted a survey and held a public discussion regarding Fountain joining the PPRTA. There are many steps along the process, but the first step would be to communicate the City's interest in joining. Following approval of the resolution, PPRTA and its member governments will consider their position on Fountain's inclusion. If approved, the City could then move forward with a ballot measure in the November election.

Strategic Plan Priority (if applicable):

**Transportation Infrastructure**

**Telecommunications Technology and Capabilities.**

**Distribution of Public Safety Resources**

**Improve the Availability of Venues Which Support Community Activities**

### Recommendation

Staff makes no recommendation.

### Proposed Motion

"I move to approve Resolution 23-023."



## RESOLUTION 23-023

### A RESOLUTION REQUESTING INCLUSION INTO THE PIKES PEAK RURAL TRANSPORTATION AUTHORITY

**WHEREAS**, the City of Fountain (the “City”) desires to join the Pikes Peak Rural Transportation Authority (the “PPRTA”), a regional transportation authority organized pursuant to C.R.S. § 43-4-601, *et seq.*;

**WHEREAS**, the PPRTA is governed by the Fifth Amended and Restated Intergovernmental Agreement Among El Paso County, Colorado, the City of Colorado Springs, the City of Manitou Springs, the Town of Green Mountain Falls, the Town of Ramah, and the Town of Calhan For Creation of the Pikes Peak Rural Transportation Authority (the “Establishing IGA”);

**WHEREAS**, the Establishing IGA and C.R.S. §§ 43-4-603(1)(h) and 43-4-605(2) control how new territory and members may be added to the PPRTA;

**WHEREAS**, before the City can be added to the PPRTA, voters within the City will need to approve the City becoming a member of the PPRTA, including the territory within the City limits within the boundaries of PPRTA, and imposing the PPRTA sales and use tax within the City;

**WHEREAS**, if approved by the PPRTA members, the City expects to place a ballot question on the ballot at the Colorado Coordinated Election on November 7, 2023;

**WHEREAS**, also before the City can be added to the PPRTA, the Establishing IGA may need to be amended to include the City as a party; and

**WHEREAS**, the City desires to take the preliminary step of requesting being added as a party to the Establishing IGA and having its territory included into the PPRTA boundaries.

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

Section 1. In accordance with Sections 12.1 and 12.2 of the Establishing IGA, the City hereby states that it is a municipality as defined by C.R.S. § 31-1-101(6) and formally requests to be added as a new member of the PPRTA, a party to the Establishing IGA, and to have the territory within the City limits included into the boundaries of the PPRTA.

Section 2. In accordance with C.R.S. § 43-4-605(2)(a) the City Council hereby consents to the inclusion of the territory within the City limits being included into the boundaries of the PPRTA.

Section 3. If determined necessary by the Board of Directors of the PPRTA or one of the current parties to the Establishing IGA, the City hereby requests an amendment to the Establishing IGA to effectuate its addition as a party to the Establishing IGA and member of the PPRTA.

Section 4. The City Council further requests confirmation from the Board of Directors of the PPRTA that it intends to cooperate in the addition of the City as a new member of the PPRTA, a party to the Establishing IGA, and to have the territory within the City limits included into the boundaries of the PPRTA, subject to City voter approval and provided that all legal requirements therefore are met and provided the necessary unanimous consent from all of the present members of the PPRTA is obtained as required by Section 12.3 of the Establishing IGA.

Section 5. The Mayor and City staff are hereby authorized to take such additional steps as may be necessary to pursue addition of the City as a new member of the PPRTA, a party to the Establishing IGA, and to have the territory within the City limits included into the boundaries of the PPRTA.

Done this 9<sup>th</sup> day of May 2023.

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Sharon Thompson, Mayor

ATTEST:

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Silvia Huffman, City Clerk





# Regular City Council Meeting

**New Business – 9C**  
Public Safety Impact Fee

*May 09, 2023*

## Summary Information

Title:

**RESOLUTION 23-025, A RESOLUTION INCREASING THE CITY OF FOUNTAIN PUBLIC SAFETY IMPACT FEE.**

Initiator: Fire Marshal, Michael Gates

Presenter: Fire Chief, Devin Graham

Legal Review:  Yes  No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The Public Safety Impact Fee rates are reflected by the Colorado Construction Cost Index, fourth quarter amount. In 2022, the report had an increase of 31.49%.

Attachments: 2022 Fourth Quarter CCI

## 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 of Resolution 23-025.

## Proposed Motion

I move to approve Resolution 23-025.



**RESOLUTION 23-025**

**A RESOLUTION INCREASING THE CITY OF FOUNTAIN PUBLIC SAFETY IMPACT FEE.**

**WHEREAS**, the City of Fountain, Colorado is municipal corporation duly organized and operating as a home-rule city under the Constitution of the State of Colorado and the Charter of the City; and

**WHEREAS**, it is in the best interests of the citizens of the City of Fountain (the “City”) to assure that they are provided sufficient public safety facilities; and

**WHEREAS**, on December 8, 2020, the Fountain City Council adopted the Public Safety Impact Fee by Ordinance 1754 of the municipal code; and

**WHEREAS**, the Public Safety Director is hereby authorized and directed to annually adjust the Public Safety Impact Fees based upon the Colorado Construction Cost Index Report from the fourth quarter of the previous year; and

**WHEREAS**, the Colorado Construction Cost Index for the fourth quarter of 2022 increased up to 31.49%; and

**WHEREAS**, the Public Safety Impact Fee will be assessed to residential, multi-family, commercial and industrial land uses

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

**Section 1.** The Public Safety Impact Fee for residential, multi-family, commercial and industrial land uses for 2023 shall be as follows:

<b>Public Safety Impact Fee</b>	<b>Fee</b>
Residential Impact Fee, each dwelling unit impact fee	\$2,154.44
Multi-Family Dwelling Impact Fee, each unit impact fee	\$1,293.86
Commercial/Industrial Impact Fee, each square foot of development	\$0.68

**Section 2.** These fees become effective upon the effective date of the passage of this resolution.

Done this 9<sup>th</sup> day of May 2023.

---

Sharon Thompson, Mayor

ATTEST:

---

Silvia Huffman, City Clerk



**COLORADO**  
Department of Transportation

Division of Project Support  
Construction Engineering Services Branch

# Colorado Construction Cost (CCI) Index Report

## Calendar Year 2022 – Fourth Quarter

*Prepared for:*

Stephen Harelson, Chief Engineer

*Prepared by:*

Stephen Bokros, Manager  
Cost Estimating Services Unit  
Construction Engineering Services Branch  
Division of Project Support

## CCI Report Summary

### Third Quarter Ending December 31, 2022

Relative change from last quarter, quarterly data .....	-21.96%*
Cumulative change from same quarter last year, quarterly data .....	31.49%*
Relative change from last year, annual data** .....	20.32%

\* Calculations based on quarterly data may vary significantly due to strong seasonality in Colorado.

\*\* Calculations derived from the most recent four consecutive quarters of data compared to the previous four consecutive quarters of data. For example, relative change for Second Quarter Ending June 30, 2017 is derived from July 1, 2016 to June 30, 2017 data compared to July 1, 2015 to June 30, 2016 data.

**Summary for all Design-Bid-Build projects awarded between 10/01/2022 and 12/31/2022**

Project Amount	Number of Projects	Number of Bidders	Biddable Items Total Amount	Average Number of Bidders
\$0.00 to \$999,999.99	5	13	\$3,121,139.00	2.60
\$1,000,000.00 to \$4,999,999.99	17	56	\$48,994,435.95	3.29
\$5,000,000.00 to \$19,999,999.99	26	84	\$283,723,644.21	3.23
\$20,000,000.00 or Greater	0	0	\$0.00	0.00
<b>Total</b>	48	153	\$335,839,219.16	3.19

Average number of bidders per project increased to **3.19** this quarter, from **2.95** the previous quarter.  
 Average cost per Design-Bid-Build project was **\$6,996,650.40**.

Colorado Construction Cost Index Tabulations: Quarterly Data

Year	Quarter	Earthwork		Hot Mix Asphalt		Concrete Pavement*		Structural Concrete		Reinforcing Steel		Fisher Ideal Index	
		Price (\$/CY)	Qty (CY)	Price (\$/TON)	Qty (TON)	Price (\$/SY)	Qty (SY)	Price (\$/CY)	Qty (CY)	Price (\$/LB)	Qty (LB)	Relative	Cumulative
2012	Q1	9.32	295,331.00	83.52	611,829.00	29.47	459,695.83	433.44	7,636.00	0.88	1,956,874.00		1.0000
2012	Q2	10.61	367,636.10	82.65	328,357.21	31.18	264,194.31	472.96	5,910.00	0.97	833,101.00	1.0190	1.0190
2012	Q3	11.92	212,117.00	90.76	59,799.23	34.76	107,643.81	487.93	2,388.20	1.04	485,586.00	1.0995	1.1204
2012	Q4	9.49	246,805.00	102.24	146,197.04	n/a**	n/a**	527.68	1,772.00	0.94	310,307.00	1.0344	1.1589
2013	Q1	8.08	659,125.00	76.07	393,759.56	31.81	549,580.81	487.00	9,019.00	0.87	1,929,721.00	0.8044	0.9322
2013	Q2	12.75	316,498.00	84.37	501,946.32	52.18	60,482.78	427.09	6,857.00	0.91	1,048,761.00	1.2121	1.1300
2013	Q3	8.72	419,967.00	85.00	147,064.84	35.57	170,833.67	372.83	9,917.00	0.77	2,350,291.00	0.8947	1.0110
2013	Q4	10.00	75,520.00	80.78	198,528.45	42.64	97,749.00	309.40	1,752.00	0.85	486,791.00	1.0086	1.0197
2014	Q1	20.16	99,605.00	92.28	433,692.17	76.84	57,552.78	476.21	3,265.00	0.98	629,246.00	1.2581	1.2829
2014	Q2	12.88	610,731.00	88.13	548,253.70	34.34	302,520.17	517.01	8,249.90	0.90	1,468,195.00	0.8421	1.0803
2014	Q3	13.30	708,794.00	100.07	102,680.99	52.39	147,911.17	592.26	16,294.30	1.01	2,949,114.00	1.1740	1.2683
2014	Q4	10.73	695,288.00	113.42	141,154.23	46.12	156,635.11	549.86	6,657.10	1.03	948,029.00	0.9591	1.2164
2015	Q1	16.60	301,494.80	83.80	736,968.84	34.36	311,378.67	744.81	1,994.30	1.66	368,665.00	0.8798	1.0702
2015	Q2	15.12	167,066.00	94.22	311,989.59	46.36	219,498.00	577.73	1,119.00	1.64	205,245.00	1.1391	1.2190
2015	Q3	20.32	40,649.00	98.61	89,024.05	75.70	12,880.78	739.20	706.90	1.33	86,854.00	1.1536	1.4063
2015	Q4	12.16	309,414.10	81.21	66,957.40	47.46	128,174.06	598.73	3,702.00	1.42	366,651.00	0.7434	1.0454
2016	Q1	12.27	939,477.00	84.03	1,078,315.35	39.18	243,518.78	617.10	6,507.71	1.02	1,627,487.00	0.9767	1.0211
2016	Q2	11.34	14,104.00	110.17	118,434.28	104.99	1,936.89	1,028.57	126.00	2.79	12,189.00	1.4571	1.4878
2016	Q3	10.66	503,305.00	83.55	286,987.61	52.59	275,462.06	606.80	1,952.80	0.94	331,788.70	0.6500	0.9671
2016	Q4	18.00	81,788.00	106.93	108,909.09	47.97	51,601.89	978.88	300.80	2.28	18,840.00	1.2318	1.1913
2017	Q1	24.99	110,497.40	82.20	480,758.14	36.08	60,069.44	1,138.99	67.00	2.17	26,054.00	0.8105	0.9655
2017	Q2	11.28	153,010.00	88.48	302,427.67	36.44	147,787.36	592.94	2,168.00	1.06	416,630.00	0.9916	0.9574
2017	Q3	27.34	51,552.00	115.01	19,675.64	97.88	2,088.89	629.83	2,292.00	1.15	346,069.00	1.4673	1.4048
2017	Q4	16.17	23,686.00	95.90	152,110.33	72.95	2,823.00	1,068.73	263.00	2.32	24,850.00	0.9449	1.3274
2018	Q1	13.97	163,772.00	90.91	302,427.23	92.58	7,834.00	862.30	1,167.00	1.39	206,568.00	0.9415	1.2497
2018	Q2	15.58	47,167.00	110.11	42,157.74	n/a**	n/a**	809.61	887.00	1.54	139,494.00	1.1643	1.4551
2018	Q3	15.69	77,482.00	107.51	38,587.91	60.91	11,825.11	711.51	5,097.00	1.07	1,480,110.00	0.8995	1.3088
2018	Q4	16.51	174,175.00	89.89	594,326.44	35.97	974,214.00	674.59	2,017.00	1.29	213,561.00	0.8238	1.0785
2019	Q1	12.73	545,088.00	101.34	491,723.60	53.33	197,389.61	840.94	4,426.90	1.40	871,380.00	1.1848	1.2778
2019	Q2	26.64	55,197.00	119.73	116,528.65	79.43	13,611.17	479.34	8,463.00	1.05	1,230,972.00	1.1236	1.4357
2019	Q3	n/a**	n/a**	n/a**	n/a**	104.00	4,074.22	n/a**	n/a**	n/a**	n/a**	1.0100	1.4501
2019	Q4	16.30	207,333.00	95.42	275,273.38	43.76	41,068.89	798.39	468.00	1.39	149,577.00	0.8508	1.2337
2020	Q1	20.76	456,146.00	93.02	867,587.63	62.82	53,818.89	805.97	4,026.00	1.22	820,456.00	1.0204	1.2589
2020	Q2	9.86	764,455.00	104.16	156,927.56	51.27	177,038.39	809.92	1,804.90	1.43	363,737.00	0.9156	1.1527
2020	Q3	18.41	38,940.00	119.00	26,251.98	46.08	108,008.22	874.51	829.50	1.35	142,067.00	1.1208	1.2920
2020	Q4	7.97	236,919.00	103.21	204,957.94	118.13	129.78	663.99	1,372.40	1.50	170,603.00	1.1677	1.5087
2021	Q1	29.41	70,042.00	86.42	717,198.89	75.43	38,520.44	776.10	1,205.40	1.44	193,123.00	0.9550	1.4408
2021	Q2	15.43	336,448.00	90.69	153,802.91	61.18	44,898.56	988.80	2,639.00	1.61	431,045.00	0.9405	1.3550
2021	Q3	15.10	614,822.00	104.66	60,911.11	83.54	7,714.89	879.03	2,306.00	1.51	302,787.00	1.0677	1.4467
2021	Q4	18.77	279,454.00	114.06	772,464.56	49.21	107,696.78	733.07	1,857.40	1.52	409,460.00	1.0811	1.5641
2022	Q1	21.51	158,601.00	118.27	377,371.40	66.87	79,738.72	1,027.78	1,812.50	1.60	537,299.00	1.0708	1.6748
2022	Q2	21.07	368,073.00	119.68	350,768.54	61.64	75,600.89	936.83	1,583.60	1.60	570,628.00	0.9971	1.6700
2022	Q3	27.51	212,003.00	188.25	29,884.24	88.39	8,176.00	1,214.56	3,082.70	2.43	766,514.00	1.4597	2.4377
2022	Q4	27.60	318,969.00	131.02	534,592.84	100.75	10,902.00	917.16	7,633.00	1.89	2,025,919.00	0.7804	1.9024

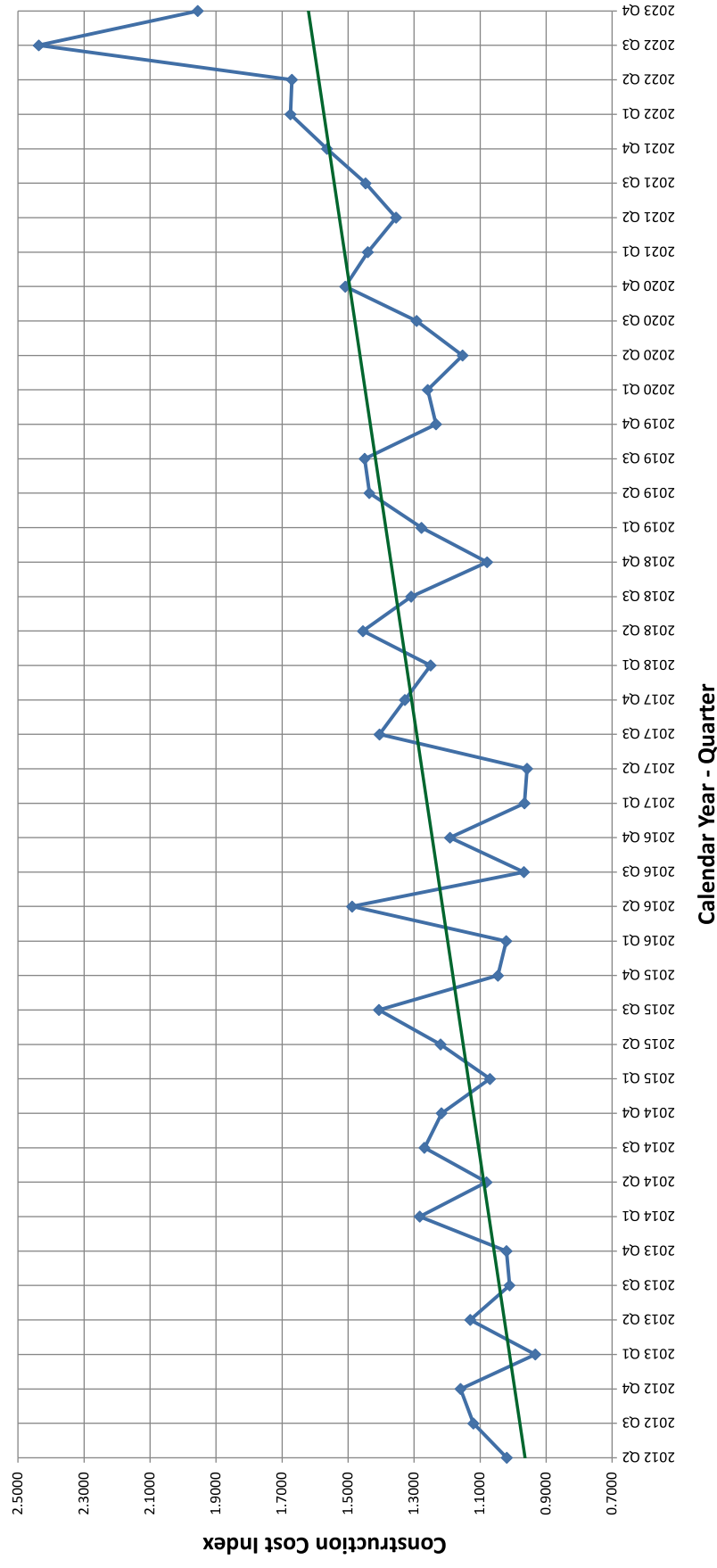
Weighted average prices and quantities are calculated after outliers (< 5% and > 95%) are removed in the preceding 7 years for a given quarter.

\* Concrete Pavement is normalized to 9 inches thick.

\*\* Assuming same price and quantity as previous quarter for index calculations, due to insufficient data of this sub group.

### Colorado CCI - Quarterly Data, Cumulative Assuming 2022 Q4 = 1.0000

Quarterly Trendline: Annual Percentage = 6.18%





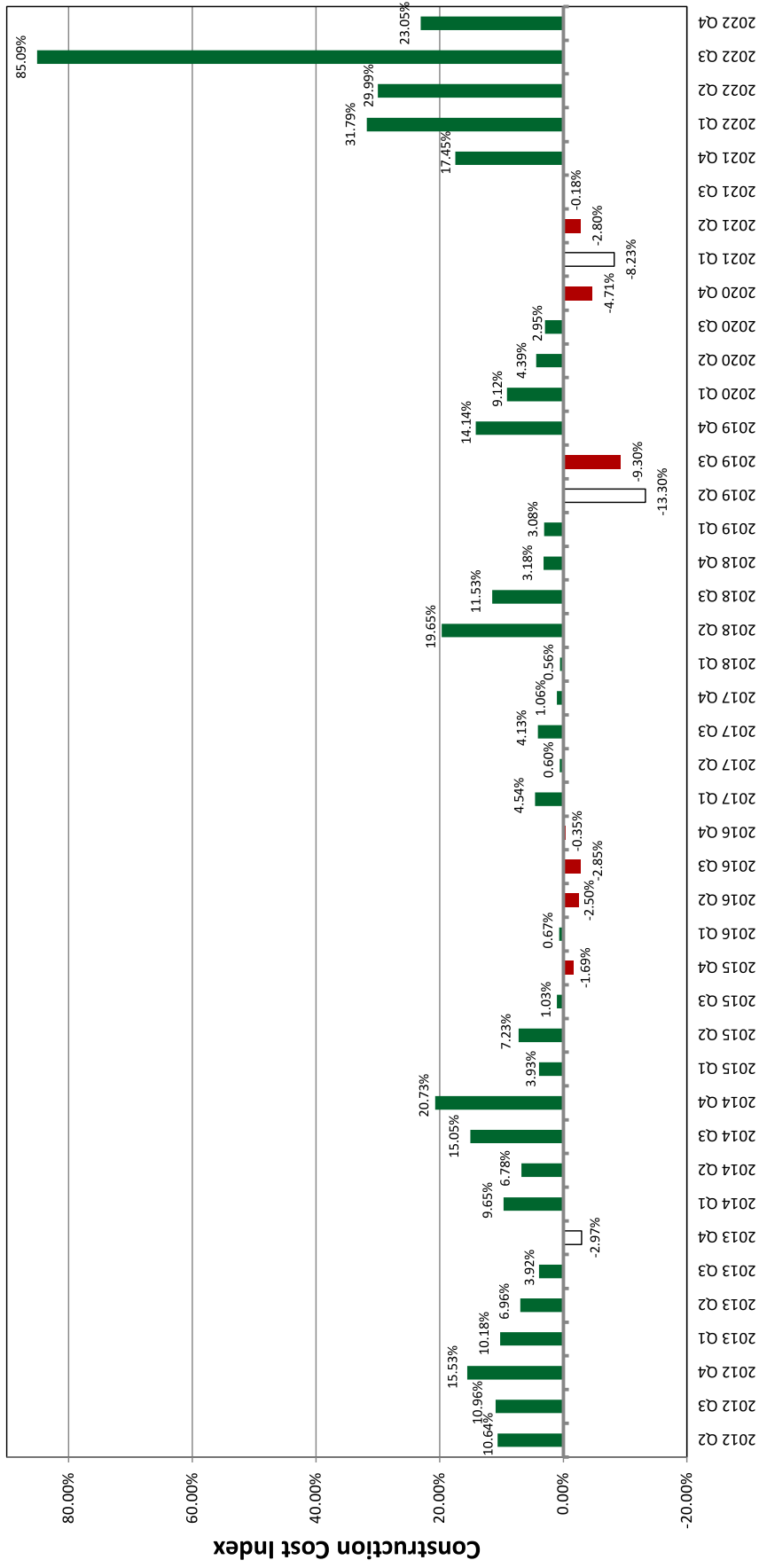
Colorado Construction Cost Index Tabulations: Annual Percentage Change

Year	Earthwork		Hot Mix Asphalt		Concrete Pavement*		Structural Concrete		Reinforcing Steel		Fisher Ideal Index (Annual Change)			
	Price (\$/CY)	Qty (CY)	Price (\$/TON)	Qty (TON)	Price (\$/SY)	Qty (SY)	Price (\$/CY)	Qty (CY)	Price (\$/LB)	Qty (LB)	Q1	Q2	Q3	Q4
2012 Q1	7.48	3,751,697.00	74.46	2,382,261.64	34.23	900,143.46	422.36	73,783.53	0.85	13,569,678.00	15.75%	-	-	-
2012 Q2	8.23	1,880,505.10	80.96	1,363,144.44	30.16	816,743.88	443.62	23,011.23	0.90	4,772,701.00	-	10.64%	-	-
2012 Q3	8.48	1,846,077.10	81.66	1,287,260.97	31.05	843,073.00	452.94	22,476.20	0.91	4,787,809.00	-	-	10.96%	-
2012 Q4	10.27	1,121,889.10	86.04	1,146,182.48	31.16	939,177.75	463.41	17,706.20	0.93	3,585,868.00	-	-	-	15.53%
2013 Q1	9.49	1,485,683.10	83.47	928,113.04	32.27	1,029,062.73	486.55	19,089.20	0.92	3,558,715.00	10.18%	-	-	-
2013 Q2	9.92	1,434,545.00	84.12	1,101,702.15	34.07	825,351.20	470.21	20,036.20	0.91	3,774,375.00	-	6.96%	-	-
2013 Q3	9.36	1,642,395.00	83.90	1,188,967.76	34.28	888,541.07	433.64	27,565.00	0.84	5,639,080.00	-	-	3.92%	-
2013 Q4	9.37	1,471,110.00	81.24	1,241,299.17	35.11	873,646.26	419.69	27,545.00	0.84	5,815,564.00	-	-	-	-2.97%
2014 Q1	11.48	911,590.00	86.56	1,281,231.78	46.14	381,618.23	400.29	21,791.00	0.84	4,515,089.00	9.65%	-	-	-
2014 Q2	11.85	1,205,823.00	88.04	1,327,539.16	39.83	623,655.62	433.90	23,183.90	0.84	4,934,523.00	-	6.78%	-	-
2014 Q3	13.42	1,494,650.00	89.35	1,283,155.31	44.14	600,733.12	541.68	29,561.20	0.96	5,533,346.00	-	-	15.05%	-
2014 Q4	12.66	2,114,418.00	93.51	1,225,781.09	44.81	664,619.23	555.07	34,466.30	0.98	5,994,584.00	-	-	-	20.73%
2015 Q1	12.85	2,316,307.80	89.18	1,529,057.76	39.26	918,445.12	574.22	33,195.60	1.03	5,734,003.00	3.93%	-	-	-
2015 Q2	13.04	1,872,642.80	90.84	1,292,793.65	42.91	835,422.95	592.48	26,064.70	1.10	4,471,053.00	-	7.23%	-	-
2015 Q3	13.13	1,204,497.80	90.64	1,279,136.71	41.51	700,392.56	602.72	10,477.30	1.27	1,608,793.00	-	-	1.03%	-
2015 Q4	14.80	818,623.90	87.45	1,204,939.88	41.57	671,931.51	647.54	7,522.20	1.54	1,027,415.00	-	-	-	-1.69%
2016 Q1	12.80	1,456,606.10	86.80	1,546,286.39	44.32	604,071.62	614.96	12,035.61	1.15	2,286,237.00	0.67%	-	-	-
2016 Q2	12.70	1,303,644.10	87.14	1,352,731.08	43.47	386,510.51	623.45	11,042.61	1.11	2,093,181.00	-	-2.50%	-	-
2016 Q3	11.94	1,766,300.10	85.82	1,550,694.64	46.70	649,091.79	614.15	12,288.51	1.08	2,338,115.70	-	-	-2.85%	-
2016 Q4	12.21	1,538,674.00	87.45	1,529,646.33	46.65	572,519.62	632.92	8,887.31	1.03	1,990,304.70	-	-	-	-0.35%
2017 Q1	14.15	709,694.40	88.62	995,089.12	49.69	389,070.28	688.84	2,446.60	1.15	388,871.70	4.54%	-	-	-
2017 Q2	13.35	848,600.40	86.42	1,179,082.51	45.83	534,920.75	632.98	4,488.60	1.08	793,312.70	-	0.60%	-	-
2017 Q3	18.57	396,847.40	87.95	911,770.54	39.12	261,547.58	642.08	4,827.80	1.16	807,593.00	-	-	4.13%	-
2017 Q4	18.54	338,745.40	87.05	954,971.78	37.43	212,768.69	644.35	4,790.00	1.17	813,603.00	-	-	-	1.06%
2018 Q1	14.81	392,020.00	91.55	776,640.87	40.62	160,533.25	681.91	5,890.00	1.19	994,117.00	0.56%	-	-	-
2018 Q2	16.83	286,177.00	94.87	516,370.94	90.43	20,579.89	748.33	4,609.00	1.34	716,981.00	-	19.65%	-	-
2018 Q3	14.81	312,107.00	95.04	535,283.21	78.40	30,316.11	759.65	7,414.00	1.16	1,851,022.00	-	-	11.53%	-
2018 Q4	15.38	462,596.00	91.78	977,499.32	37.15	1,001,707.11	732.07	9,168.00	1.16	2,039,733.00	-	-	-	3.18%
2019 Q1	13.94	843,912.00	96.03	1,166,795.69	39.47	1,191,262.72	758.62	12,427.90	1.22	2,704,545.00	3.08%	-	-	-
2019 Q2	14.67	851,942.00	97.78	1,241,166.61	39.57	1,197,039.89	638.21	20,003.90	1.15	3,796,023.00	-	-13.30%	-	-
2019 Q3	15.37	829,657.00	99.43	1,319,107.35	39.58	1,189,289.00	564.69	23,369.90	1.15	3,546,885.00	-	-	-9.30%	-
2019 Q4	15.37	862,815.00	104.00	1,000,054.28	53.99	256,143.89	559.54	21,820.90	1.15	3,482,901.00	-	-	-	14.14%
2020 Q1	20.40	773,873.00	98.03	1,375,918.32	59.37	112,573.17	547.70	21,420.00	1.11	3,431,977.00	9.12%	-	-	-
2020 Q2	14.74	1,483,131.00	96.92	1,416,317.22	53.19	276,000.39	618.95	14,761.90	1.18	2,564,742.00	-	4.39%	-	-
2020 Q3	14.38	1,466,874.00	95.35	1,326,040.54	50.62	379,934.39	814.45	7,128.40	1.30	1,475,837.00	-	-	2.95%	-
2020 Q4	13.10	1,496,460.00	96.62	1,255,725.11	51.48	338,995.28	789.68	8,032.80	1.31	1,496,863.00	-	-	-	-4.71%
2021 Q1	10.99	1,110,356.00	92.83	1,105,336.37	52.44	323,696.83	773.95	5,212.20	1.43	869,530.00	-8.23%	-	-	-
2021 Q2	14.45	682,349.00	90.91	1,102,211.72	55.57	191,557.00	856.99	6,046.30	1.52	936,838.00	-	-2.80%	-	-
2021 Q3	14.64	1,258,231.00	91.00	1,136,870.85	69.17	91,263.67	861.81	37,614.00	1.54	1,097,558.00	-	-	-0.18%	-
2021 Q4	18.77	279,454.00	114.06	772,464.56	49.21	107,696.78	733.07	1,857.40	1.52	409,460.00	-	-	-	17.45%
2022 Q1	21.51	158,601.00	118.27	377,371.40	66.87	79,738.72	1027.78	1,812.50	1.60	537,299.00	31.79%	-	-	-
2022 Q2	21.07	368,073.00	119.68	350,768.54	61.64	75,600.89	936.83	1,583.60	1.60	570,628.00	-	29.99%	-	-
2022 Q3	27.51	212,003.00	188.25	29,884.24	88.39	8,176.00	1214.56	3,082.70	2.43	766,514.00	-	-	85.09%	-
2022 Q4	27.60	318,969.00	131.02	534,592.84	100.75	10,902.00	917.16	7,633.00	1.89	2,025,919.00	-	-	-	20.32%

Weighted average prices and quantities are calculated after outliers (< 5% and > 95%) are removed in the preceding 7 years for a given quarter

\* Concrete Pavement is normalized to 9 inches thick.

## Colorado CCI - Annual Percentage Change



## Calendar Year - Quarter

Calculations derived from the most recent four consecutive quarters of data compared to the previous four consecutive quarters of data.

**Comments:**

The methodology for preparing the CCI is documented in a brief report attached to the '2012 CCI Q2 (Quarter Two)' report at the link below under the 'Construction Cost Index' heading and '2012 CCI Q2' report (<https://www.codot.gov/business/eema/constructioncostindex>).

Starting with 2016 Q3, this quarterly CCI report includes calculations based on annual data. The annual data calculations are less volatile than the quarterly data calculations, partially due to the strong seasonal nature of transportation construction in Colorado.

For the current quarter, price changes for the five subgroups, as shown in the 'Colorado Construction Cost Index Tabulations: Quarterly Data', are listed as follows:

**Earthwork (Excavation and Embankment):**

The average price was \$27.60/CY (cubic yard), which is up \$0.09/CY, with 150.45% of the quantity, from the previous quarter.

**Hot Mix Asphalt:**

The average price was \$131.02/Ton, which is up -\$57.23/TON, with 1788.88% of the quantity, from the previous quarter.

**Concrete Pavement:**

The average price was \$100.75/SY (square yard), which is up \$12.36/SY, with 133.34% of the quantity, from the previous quarter.

**Structural Concrete:**

The average price was \$917.16/CY, which is up -\$297.40/CY, with 247.61% the quantity, from the previous quarter.

**Reinforcing Steel:**

The average price was \$1.89/LB (pound), which is up -\$0.54, with 264.30% the quantity, from the previous quarter.

**Additional Information:**

This quarter, based on preceding quarterly data, all five subgroups, Earthwork, Hot Mix Asphalt, Concrete Pavement, Structural Concrete, and Reinforcing Steel, showed an increase in price. 19 Design-Bid-Build projects for a total of \$74,653,881.41 were bid and awarded this quarter. The five categories for CCI items totaled \$17,786,346.72, which is 23.83% of the total Design-Bid-Build awarded amount. Last quarter, by comparison, had 22 Design-Bid-Build projects bid and awarded.

**Projects Awarded This Quarter and Not Used in the CCI Calculations**

<b>Project Type</b>	<b>Number of Projects</b>	<b>Biddable Items Total Amount</b>
Design-Build	0	\$0.00
Hybrid / Modified / Streamlined Design-Build	0	\$0.00
Construction Manager / General Contractor	0	\$0.00
Emergency	1	\$2,191,362.00
<b>Sub Total</b>	<b>1</b>	<b>\$2,191,362.00</b>

**Economic Development Commission  
January 9, 2023**

**General Meeting Minutes**

*(COVID Social Distancing Protocols and Unvaccinated Masks in Effect)*

Chair Small called a regular monthly meeting of the Economic Development Commission to order at 5:30 pm; along with Happy New Year salutations. Commissioners present included Vice Chair (VC) Dan Osinski, Phyllis Baez, Wandaleen Thomas, and James Flowers. Staff in attendance included the Economic Development Director (EDD) Kimberly Bailey. Guest speaker in attendance included Brandon Eldridge, Underline EPC LLC., Marketing Director.

**APPROVAL OF MINUTES**

Chair Small presented for approval the November 14, 2022 meeting minutes. Flowers motioned for approval, seconded by Thomas, and passed unanimously by the board. The EDC December 12, 2022 general board meeting did not transpire due to a lack of a quorum to officiate business.

**NEW ITEMS**

Underline EPC LLC.

EDD Bailey provided an introduction and welcomed guest speaker Brandon Eldridge, Underline's El Paso County (EPC) Enterprise Sales Lead and Market Director, to provide an update on broadband fiber project deployment in the City and the business subscription enrollment timeframe.

Eldridge provided a personal introduction as an EPC resident since 1998 with a financial banking services background and his community compassion interests in volunteer roles among multiple Pikes Peak organizations. In his current role, he is responsible for business sales and business community outreach for the fiber network provider.

A presentation was provided by Eldridge which included a project overview, service territory map, and first deployment areas in Q1 2023. Early community engagement and marketing have resulted in an overwhelming response rate for the network (which offers a choice of 3 ISPs) from "take-rate" of subscriptions among residential households and businesses. Its first deployment area for Q1 2023 is the Olde Town district to avail affordable internet connective access for the LMI community population; as a key social impact mission of the service provider and a main priority commitment under the City's service contract. Business service is anticipated to launch around spring 2023 and will offer up to 100 gigabit broadband connections at competitive rates. In closing, Underline El Paso has been announced as the 2023 breakfast sponsor for the Fountain Valley Chamber of Commerce and will begin engaging with businesses at the cusp of 2023 new year.

To learn more, please visit online at [www.underline.com/fountain](http://www.underline.com/fountain) and/or refer to the presentation materials on record.

**UPDATES**

### Lorraine Center, EPA Brownfield project report

EDD Bailey provided an excerpt of the project report findings as it pertains to the Lorraine Center located at 301 E Iowa Avenue in Fountain, CO. The site is comprised of 8.67 acres and is a former public school system facility to which the city-owned property seeks to steward reuse/redevelopment of the site on behalf of district revitalization.



By participating in the EPA Brownfields program, the City received the following resources:

- \* Site Development ReUse Action Plan
- \* Conceptual Site Plan Design and Engineering toward procuring a private-development partner
- \* Public Survey and Community Engagement Services
- \* Existing and Environmental Site Assessment Reporting

A [City Council presentation](#) on project findings was shared on December 6, 2022 by the EPA Brownfield Coalition Partnership.

### Economics Dashboard

EDD Bailey shared economic data reporting as a courtesy copy provided by Data-Driven Economic Strategies; a spin off affiliate under the former UCCS Forum economist, Tatiana Bailey. EDD has continued due-diligence mining with the UCCS Dean of Business College to explore future economist direction of the university and the annual forum as it compares to affiliate service providers. As of December, the Dean has resigned from the University and the Business College is still determining its next direction with data services and the Forum. At this time, the EDC has not committed any budget resources to either entity and continues its due diligence with mining data sources.

### 2023 Board Tenure

EDD Bailey provided a courtesy reminder of upcoming expiring board terms to consist of Davis, Baez, and Osinski; each expressed interest for a reappointment 2YR Term with City Council. In addition, there is one vacancy due to the transition of Reinhardt to serve with the Urban Renewal Authority. Bailey stated Commission recruitment will transpire via the City's website and Fire Department message boards, in addition to service member's recruitment aide. Per EDC bylaws, the board's fiscal New Year begins March 1, 2023 with City Council appointments slated to transpire by February 28, 2023. Please coordinate with EDD Bailey on finalizing board applications.

## **COMMISSIONER COMMENTARY TIME**

### Olde Town

- Thomas mentioned the district is doing well with property upkeep and small businesses; while noting Ink Fountain has closed its operations in the Dale Street Shopping Center.

### Small Business Advocacy

- Flowers mentioned the following activities with the FV Chamber of Commerce:
  - Open House will be held on January 10<sup>th</sup> @ 5pm @ City Hall in advance of City Council session.
  - A business breakfast vs. lunch options will alternate on a monthly basis for networking.
  - Business after Hours will reignite in 2023 and transpire 1x per month.
  - The Fall Festival and Business Seasonal Expos are on the docket in planning stages for 2023.
  - New Admin Role has been hired – Kevin will be in Chamber offices on Tues-Friday schedule.

### Business Development/Policy

- N/A at this time.

#### Real Estate Market

- N/A at this time, however VC Osinski offered to fill-in this role with the Reinhardt transfer.

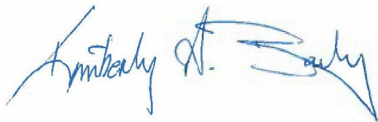
#### Military

- Baez mentioned I-25/ S. Academy construction will impact Fort Carson Gates 1, 3, 4, and 20 due to the CDOT project thru January 16<sup>th</sup> timeframe; the interstate/military project has a 3YR overall timeframe.

#### **ANNOUNCEMENTS**

- Fountain Valley News final publication date, December 28, 2022
- Sixty35 is a new combination media outlet for the region <https://sixty35media.org/>
- March 2-4, 2023 the annual Wine Festival will transpire at the Broadmoor, to learn more please visit <https://www.winefestivalofcoloradosprings.com> (VC Osinski)

Chair Small asked if there was further business. No further topics were brought forth by subsequent board members; therefore, James motioned to adjourn, seconded by VC Osinski, passed unanimously at 7:05pm.



\_\_\_\_\_  
Kimberly Bailey

05/09/23

\_\_\_\_\_  
Date

# FOUNTAIN URBAN RENEWAL AUTHORITY

January 17, 2023

*(COVID-19 Social Distancing and Unvaccinated Masks in effect)*

## General Board Meeting Minutes

Chair Aragon called a regular monthly meeting of the Fountain Urban Renewal Authority to order at 6:02pm. Commissioners present included Vice Chair (VC) McMaster, Dixie Snyder, Leslie Louzon-Keller, and Nicole Reinhardt. Guest attendees included Russ Perkins of Evergreen DEVCO Development LLC. Additional attendees include: Carrie Bartow and Mallorie Hansen of CliftonLarsonAllen (CLA), Carolynne White of Brownstein Hyatt Farber Schreck (BHFS), as well as, FURA Executive Director (ED) Kimberly Bailey.

### WELCOME

The board provided a round of introductions and welcomed its newest board member Nichole Reinhardt to the Urban Renewal Authority.

### CONSENT AGENDA

The following Consent Agenda items were presented for approval:

- Approval of November 18, 2022 General Meeting Minutes
  - *December 13, 2022 meeting did not transpire due to a lack of quorum to officiate business*
- Ratify December 13, 2022 Accounts Payable
- Approval of January 17, 2023 Accounts Payable
- Approval of January 17, 2023 Monthly Financials Report

VC McMaster motioned for Consent approval as denoted, second by Louzon-Keller, and the motion passed unanimously by the Board.

### NEW ITEMS

#### Chair and Vice Chair Appointments

ED Bailey introduced a recommendation by Chair Aragon and Vice Chair McMaster for their subsequent appointment positions for 2023 and/or asked for other expressed interests of board appointment nominations. With no other expressed interests of board appointment nominations, Snyder motioned for Chair and Vice Chair reappointments, second by Louzon-Keller, and the motion passed unanimously by the board.

#### **EXECUTIVE SESSION** *(start 6:08pm, end 7:26pm)*

C.R.S. Section 24-6-402 (4) C (i) – Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations, and instructing negotiators.

#### First Amendment Tax Sharing Agreement #1 INFILL

VC McMaster motioned for approval of First Amendment Tax Sharing Agreement #1 INFILL, second by Louzon-Keller, and the motion passed unanimously by the board.

#### Tax Sharing Agreement #2 INFILL

VC McMaster motioned for approval of Tax Sharing Agreement #2 INFILL for Lot 5 and Plats A,C for Gas Infrastructure reimbursement, second by Snyder, and the motion passed unanimously by the board.

#### Tax Sharing Agreement #3 INFILL

VC McMaster motioned on behalf of ED Bailey for administrative review and authorization to execute Tax Sharing Agreement #3 INFILL approval, per the following conditions:

- Modify Section 5.2 FURA TSA pledge to .5% Sales Tax Revenue CAP
- Verification of City Council as a first execute measure of its Tax Sharing Agreement INFILL

The motion was second by Chair Aragon, and the motion passed unanimously by the board.

### South Academy Highlands/ Venetucci Road

ED Bailey notified the board of Venetucci Road defect/erosion and the hiring of a civil engineer to determine the cause of such conditions, which may include: ie. road base compaction, groundhog burrowing, water intrusion, or a design flaw. In the course of the next 60-days, further follow up and final report will be disclosed to the board for a recommendation of remediation, responsible party, and approval to proceed.

## UPDATES

### Lorraine Center, EPA Brownfield project report

ED Bailey provided an excerpt of the project report findings as it pertains to the Lorraine Center located at 301 E Iowa Avenue in Fountain, CO. The property is located in the Olde Town district of the US85 URA. The site is comprised of 8.67 acres and is a former public school system facility to which the city-owned property seeks to steward reuse/redevelopment of the site on behalf of district revitalization.

By participating in the EPA Brownfields program, the City received the following resources:

- Site Development ReUse Action Plan
- Conceptual Site Plan Design and Engineering toward procuring a private-development partner
- Public Survey and Community Engagement Services
- Existing and Environmental Site Assessment Reporting



A [City Council presentation](#) on project findings was shared on December 6, 2022 by the EPA Brownfield Coalition Partnership.

### Retail Strategies Recruitment Spec Sheet

ED Bailey referred to the US85 Pad Site recruitment spec sheet, developed by Retail Strategies consultant, for tenant fulfillment of the FURA owned property. Bailey asked for suggestive feedback or endorsement to proceed by the board; noting no changes the board endorsed the spec sheet for publication and tenant fulfillment by ED Bailey and the Consultant.

### Real Estate

ED Bailey provided a courtesy notification that the February 2023 board meeting discussions will be focused on ground floor cost-to-renovate revised estimates by Nunn G.C., ADA access options by TDG Architect, and a preview of the 2<sup>nd</sup> FL Reno completion project. Bailey highly encouraged all board members to be present for this important next phase of discussions with regards to its Woodman Hall property.

## FINANCE

### CLA Master Services Agreement

CLA Bartow presented its Master Services Agreement for review and renewal by the board. The Agreement envelops a 5YR Term, Scope of Services, Service Rates, and a 15% Discount on service fees. With no further questions posed by the board, Chair Aragon motioned for approval of the CLA Master Services Agreement, second by Louzon-Keller, and the motion passed unanimously by the board.



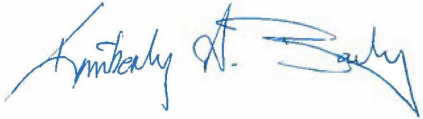
Check Signing

As approved on consent, A/P checks were signed totaling \$155,744.05.

**ANNOUNCEMENTS**

1. Fountain Valley News final publication date, December 28, 2022. Future public notifications will transpire via The Gazette and/or Colorado Real Estate Journal publications as required under State Statute notices of disclosure.

Chair Aragon asked if there was any further business. No further topics were brought forth by board members; therefore, VC McMaster motioned to adjourn, second by Louzon-Keller, passed unanimously by the board at 8:08pm.



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Kimberly Bailey, Executive Director

05/09/23

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Date

**Economic Development Commission  
February 13, 2023**

**General Meeting Minutes**

*(COVID Social Distancing Protocols and Unvaccinated Masks in Effect)*

Chair Small called a regular monthly meeting of the Economic Development Commission to order at 5:31 pm. Commissioners present included Vice Chair (VC) Dan Osinski, Wandaleen Thomas, Mercedes Davis, and James Flowers. Staff in attendance included the Economic Development Director (EDD) Kimberly Bailey. Public in attendance included Andrew VanDerWege.

**APPROVAL OF MINUTES**

Chair Small presented for approval the January 9, 2023 meeting minutes. Flowers motioned for approval, seconded by VC Osinski, and passed unanimously by the board.

**NEW ITEMS**

Comprehensive Economic Development Strategy (CEDS)

EDD Bailey informed the board of a regional initiative being spearheaded by the Pikes Peak Area Council of Governments (PPACG); the initiative is the Comprehensive Economic Development Strategy (CEDS). On February 22<sup>nd</sup>, the PPACG will host its kick off session among the three-County region to include El Paso, Teller, and Park; in collaboration with the State of CO and EDA representatives. This multi region effort has an aggressive deliverable timeline of < 8MTHS to drive results and deliver a final report to the State and EDA.

The CEDS scope will include a Strategic Direction and Action Plan for guidance and identification of alternative funding sources for regional communities' stakeholders. It will include a Strengths, Weaknesses, Opportunities Threats (SWOT) Analysis, Future Goals and Objectives, and Action Plan steps as to succession planning. It's important to note that the CEDS is intended as a tool as an overall guidance resource while also preserving a city/county/regional unique economic vitality characteristics for its planning efforts of future goal attainment. The CEDS does fall with the CoF Economic Development Strategic Objective (D13) as tasked by City Council.

**UPDATES**

South Powers Boulevard Extension

EDD Bailey provided a reminder of the ongoing Transportation Improvement Study being led by CDOT, El Paso County, and the City of Fountain; known as the South Powers Boulevard Extension. Bailey referenced the January 2023 Project Status PPT as shared with City Council session and provided by Wilson and Co. Consultant. The Study is in the last quarter of due diligence with final reporting anticipated around summer 2023 for public disclosure. At this time, public input is still being gathered by the Consultant; please visit online at <https://www.southpowersstudy.com/>

2023 CoF Publication Editions

EDD Bailey shared online links to the following City publication materials as updated community resources:

- [About Us](#)
- [Housing Development Map](#)
- [Military Snapshot](#)

**COMMISSIONER COMMENTARY TIME**

Olde Town

- Thomas mentioned MC Motorcycles will be closing its storefront at the Dale Street Shopping Center and moving its business to an online platform
- Thomas mentioned the Fountain Creek Winery is open and is planning to transform the rear property as an Event Patio outdoor space for rental and host venue
- Thomas mentioned the Winery is also planning to open a Farmers Market at a separate building/parcel in the district

Small Business Advocacy

- Flowers mentioned the following activities with the FV Chamber of Commerce:
  - A business breakfast vs. lunch options will alternate on a monthly basis for networking
  - Business after Hours and ribbon cutting is being planned for the Fountain Creek Winery
  - March 1st is renewal membership enrollment period for the FV Chamber of Commerce
  - A warning about online trolls and spam bots has been encountered by the online platform of the FV Chamber of Commerce; businesses should be on alert with their online presence

Business Development/Policy

- N/A at this time.

Real Estate Market

- N/A at this time

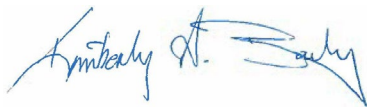
Military

- Chair Small, on Baez behalf, mentioned the Fort Carson Gate 19 Press Release as previously emailed and the new traffic pattern shift as expected within the City Olde Town District and the Military Installation.

**ANNOUNCEMENTS**

- CoF Officer Becerra donations <https://csppa.org/fallen-officer-relief-fund/>
- **OPEN POSITION: [Economic Development Specialist](#)**
- [Army Community Partnerships Award](#), City of Fountain/Fort Carson 2022
- [ARTICLE: Industrial Rail Park, Fort Carson Resiliency \(CoF Strategic Objective D14\)](#)
- Southern Colorado Business Partnership, President appointment
- February 28, 2023 EDC Board Member reappointments
- March 3-4, 2023 Food and Wine Festival *by: VC Osinski*
  - i. <https://www.winefestivalofcoloradosprings.com/>
- March 4, 2023 Africa American Youth Leadership Conference (AAYLC) *by: J.Flowers*
  - i. <https://www.aaylc-co.org/2023-conference>

Chair Small asked if there was further business. No further topics were brought forth by subsequent board members; therefore, VC Osinski motioned to adjourn, seconded by Davis, passed unanimously at 6:14pm.



\_\_\_\_\_  
Kimberly Bailey

05/09/23

\_\_\_\_\_  
Date