



CITY COUNCIL AGENDA
August 8, 2023, 6:00 P.M.
116 Main St., Fountain
Register to attend virtually @
www.fountaincolorado.org

1) Call to Order

2) Pledge of Allegiance

3) Roll Call

4.1) Presentations

- Home Front Military Network Update (Kate Hatten) 10 min
- Proclamation for the Honoring the Brave Day
- Department Update: Police Dept. (Mark Cristiani) 10 min
 - Fountain UP Presentation of donation to K-9 unit

4.2) Board/Commission/Committee

5) Correspondence, Comments and Ex-Officio Reports

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 July 25, 2023, City Council Meeting Minutes (S. Huffman)
- B.** Approval Of A Special Event Park Permit Requesting In-Kind Sponsorship From Fountain Up. (S. Huffman)
- C.** Resolution 23-033 Authorizing And Approving The Augmentation And Water Service Agreement Between The City Of Fountain And Pikes Peak International Raceway, LLC For The Sale Of Well Water To The Pikes Peak Raceway. (T. Murphy)

8) Old Business

9) New Business

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

10) City Council Agenda Requests

City Council shall use this time to request any items for future consideration.

11) Announcement of Executive Sessions

12) Adjourn

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

NEXT REGULAR COUNCIL MEETING

August 22, 2023



PROCLAMATION

A PROCLAMATION IN RECOGNITION OF HONORING THE BRAVE DAY, SEPTEMBER 13, 2023

WHEREAS, El Paso County is home to more than 100,000 veterans and their families, as well as nearly 40,000 active-duty service members and their families; and

WHEREAS, the City of Fountain is home to more than 4,500 veterans, plus family members and a large active-duty military population; and

WHEREAS, approximately one-third of the population in El Paso County is military or veteran-connected, and El Paso County has one of the largest veteran-civilian population ratios in the nation; and

WHEREAS, El Paso County is home to five military installations including Cheyenne Mountain Space Force Station, The United States Air Force Academy, Fort Carson, Peterson Space Force Base, and Schriever Space Force Base, as well as National Guard and Reserve missions that contribute more than 100,000 jobs and an overall economic impact of more than \$17 billion to the local economy and \$36 billion statewide; and

WHEREAS, the Home Front Military Network (HFMN) was established to enhance collaboration among and between military and VA organizations, state and local government agencies, and community service providers; and

WHEREAS, HFMN has nearly 50 partner agencies that provide a broad range of services to our military and veteran community; and

WHEREAS, collectively, the HFMN partner agency network has provided more than 530,000 services to service members, veterans and families in the region and referrals within the network have increased 2,000% since 2015; and

WHEREAS, HFMN is hosting the 7th Annual Honoring the Brave Breakfast on September 13, 2023 to highlight the collective impact of HFMN and its partners;

NOW THEREFORE, BE IT PROCLAIMED, that the City Council of the City of Fountain, Colorado, does hereby proclaim Wednesday, September 13, 2023 as Honoring the Brave Day in the City, to recognize the sacrifices of those who have served our country.

Done this 8th day of August, 2023.

ATTEST:

Sharon Thompson, Mayor

Silvia Huffman, City Clerk



Regular City Council Meeting

Consent –7A
Council Meeting Minutes

August 8, 2023

Summary Information

Title:

APPROVAL OF THE JULY 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 July 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

July 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 Hinton

Council Member Duncan

Council Member Applegate was absent.

4 (1) Presentations

Park and Recreation Director McCormick gave an update on current projects and events occurring in each department.

4 (2) Board/Commission/Committee Appointments

There were no appointments.

5) Correspondence, Comments and Ex-Officio Reports

City Manager Trainor reported that he attended the Colorado Springs City Council meeting and they voted to allow the City of Fountain to join the PPRTA, and the next meeting on this item would be with El Paso County. He stated that staff is currently in internal meeting on the budget and the City will be welcoming an Army fellow next week.

Economic Development Director Bailey stated that the EDC is working with the Old Town Steering Committee and together will be hosting an open house for business recognition.

Deputy City Manager Evans stated he has met with those residents affected by the flooding and is currently working with them on a resolution.

Fire Chief Graham reported that there will be new Paramedics sworn in this Monday and the ISO inspectors should be here in August.

Police Chief Cristiani updated Council on the recent car chase and truck route incident and they came into compliance. He thanked Al Lender for his help in securing a suspect.

Mayor Thompson stated that electric bills may be elevated due to the increased use of cooling units, the Utility Department has not increased rates.

City Manager Trainor reported that if customers see a higher bill, it would still be advisable to contact customer service to ensure that they don't have a water leak or other issues.

Council Member Duncan spoke about the use of fees from retailers on plastic bags. She spoke about classes offered to those 55 and older to help with technology. She noted that many places are collecting back to school supplies. She attended the redistricting meeting and had concerns on removing Ft. Carson from District 4. Also, El Paso County is conducting a location for hazardous waste drop off.

Mayor Pro Tem Estes noted that Colorado is celebrating its 147 year on August 1, 2023.

Council Member Hinton reported that Brain Injury Alliance will be hosting its annual Pikes Peak challenge and if you are unable to conduct the challenge, they are looking for volunteers.

Council Member Rick reminded all that the city will host a town hall meeting on July 31st and August 14 for any questions on the ballot issue for PPRTA. The Military Order of the Purple Heart will have an open house on Friday August 4. He asked residents to step up and help their neighbors to cut their yards as Code Enforcement has hundreds of violations.

Mayor Thompson noted that many property owners are responsible for weeds up to the curb and both sides of corner lots. She also noted that PPACG will begin its long range transportation plan to include freight study plan. She reported that Manitou Springs have partnered with non-profits for a sunrise ride on the Cog. She thanked the girl scouts for making and installing the little library in City Hall. She asked Chief Cristiani about the new move-over law.

Chief Cristiani stated it will not just protect public safety but for all those in construction, towing, any company that is off the side of the road.

6) Public to be Heard

Mr. Langley, American Legion Post 38 updated on the post's upcoming events.

7) Consent Agenda

- A. Approval Of The July 11, 2023, City Council Meeting Minutes (S. Huffman)**
- B. Resolution 23-029, A Resolution To Approve An Intergovernmental Agreement Between The City Of Fountain And The Ventana Metropolitan District For The District To Maintain A Portion Of Tract A In Filing 6 Of City Owned Open Space At No Charge. (G. McCormick)**
- C. Request For Approval Of An Event Park Permit And Sponsorship For The Annual Fountain Fall Festival. (S. Huffman)**
- D. Resolution 23-032, A Resolution To Approve Emergency Funding For The Procurement Of A Steel Wheel Compactor To Replace Failed Equipment. (R. McDonald)**

Council Member Duncan asked to remove item 7C for further discussion.

Council Member Rick made a motion to approve Consent Agenda items A, B, and D, seconded by Council Member Cory. All members voted yes (6-0); the motion carried.

8) Old Business

There was no old business to be heard.

9) New Business

A. Consideration Of Items Removed From The Consent Agenda

Item 7C Request For Approval Of An Event Park Permit And Sponsorship For The Annual Fountain Fall Festival.

Council Member Duncan asked the Chamber representatives if there is anything the City could do to help them be more successful. She also inquired about recyclables during the event.

Mayor Thompson read into record the line items costs for the city to support the Chamber at the Labor Day event. The total is \$15,233 in-kind. She stated that she had received calls that people were unable to register for the event and asked why the Chamber is choosing to charge an entry fee for the parade this year.

James Flowers, Chamber President thanked Council for their support and stated that they have not considered having a recycle bin but would look into it. He also noted he was unaware of any website issues.

Heather McDaniel, Chamber Vice-President gave statistics on previous registrations and upcoming activities for this years event. She stated that the Chamber has decided to charge for parade entrance due to the amount of cancellations and then the need to reorganize the event because of those cancellations.

Mayor Thompson asked them to reconsider charging that fee especially to non-profit groups.

Council Member Hinton suggested the fee be kept as a deposit and returned upon entrance.

Mayor Thompson suggested a worksession with Council and Chamber Board to further discuss.

Council Member Rick made a motion to approve the Park permit and sponsorship, seconded by Council Member Cory. All members voted yes (6-0); the motion carried.

B. Resolution 23-030, A Resolution Assigning And Transferring To El Paso County, Colorado All Of The City Of Fountain's 2023 Private Activity Bond Volume Cap Allocation From The State Ceiling For Private Activity Bonds; And Authorizing The Execution And Delivery Of An Assignment And Other Documents In Connection Therewith.

Economic Development Director Bailey noted that this transfer is customary should the city not utilize the activity bonds. She stated the City did not receive any requests for the PAB allocation this year so staff recommends the City's allocation be assigned to El Paso County in order to retain the benefits of PABs in our region and to avoid returning the allocation to the State.

Council Member Hinton made a motion to approve Resolution 23-030, seconded by Council Member Duncan. All members voted yes (6-0); the motion carried.

C. Resolution No. 23-031, A Resolution Of The City Council Of The City Of Fountain, Colorado Authorizing The Hiring Of A-1 Chip Seal To Provide Professional Road Maintenance On 3 Projects In The City

Street Superintendent McDonald reviewed the chip seal project list and noted that FURA will be cost sharing.

Council Member Duncan made a motion to approve Resolution NO. 23-031, seconded by Council Member Cory. All members voted yes (6-0); the motion carried.

D. First Reading Of Ordinance 1791, An Ordinance Submitting To The Registered Qualified Electors Of The City Of Fountain, Colorado At The General Coordinated Election To Be Held On Tuesday, November 7, 2023, The Question Of The Imposition Of A Sales Tax Increase Required To Join The Pikes Peak Rural Transportation Authority

City Attorney Johnson noted that this ordinance has some minor amendments from the copy that was delivered in the packet but has distributed the amended version to Council and stated that historically, the City of Fountain has chosen not to be a regional partner with the PPRTA for several reasons, primarily because the City felt it would not get enough benefit compared to our contribution. With recent changes to the bylaws, the allocation formula was changed. Given these changes and the reality that any property annexed into the City after the creation of PPRTA will have to pay the tax, the City evaluated if it was the right time to join the RTA now.

He reported the City conducted fact finding and surveyed the community and there was positive support for the City to join PPRTA. Upon approval of this ordinance, the City Council will ask the citizens of Fountain to vote increase sales tax by 1%, and join the boundaries of PPRTA and the associated benefits to City street infrastructure.

Mayor Thompson stated this is a big ask to the community and hopes everyone can participate in the Town Hall meetings.

Council Member Duncan stated that a survey was done with the community and urged the citizens to attend the Town Hall meetings.

Council Member Hinton asked the citizens to invite their friends and neighbors to the Town Hall meetings.

Bryan Johnson, resident, stressed the importance of this item and noting that this is not a final fix for the street issues but that at some point in the future, the Council will need to determine other means to address failing infrastructure.

Street Superintendent McDonald reported that an information page will be put on the website for the community to educate themselves on this item.

Council Member Hinton made a motion to approve Ordinance 1791 on first reading as amended, seconded by Council Member Duncan. All members voted yes (6-0); the motion carried.

10) City Council Agenda Requests

There were no requests.

11) Announcement of Executive Sessions

There were no requests.

12) Adjourn

There being no further business, Mayor Thompson declared the meeting adjourned at 7:52 P.M.

City Clerk

Mayor



Regular City Council Meeting

Consent –7B
Sponsorship/Fountain UP Street
Dance

August 8, 2023

Summary Information

Title:

APPROVAL OF A SPECIAL EVENT PARK PERMIT REQUESTING IN-KIND SPONSORSHIP FROM FOUNTAIN UP.

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:

Fountain UP is committed to continuing local community events to the City of Fountain. Their Third Annual “Nightmare on Main Street” dance with Halloween activities is scheduled to be held Friday October 13, 2023 in front of City Hall.

Attachment: Application

Background Information

The request for sponsorship is allowed under Resolution 17-024.

1. Event permits, approved administratively, shall be reported to Council, as an informational item, at regularly scheduled City Council meetings.
2. Any in-kind sponsorship request over \$500.00 shall be considered by City Council.
3. Any monetary sponsorship request shall be considered by City Council.

Recommendation

Staff recommends approval.

Proposed Motion

Motion to approve shall be included under the consent agenda.

Main St



City Hall



Regular City Council Meeting

Consent – 7C
Approval of PPIR Water Agreement

August 8, 2023

Summary Information

Title:

RESOLUTION 23-033 AUTHORIZING AND APPROVING THE AUGMENTATION AND WATER SERVICE AGREEMENT BETWEEN THE CITY OF FOUNTAIN AND PIKES PEAK INTERNATIONAL RACEWAY, LLC FOR THE SALE OF WELL WATER TO THE PIKES PEAK RACEWAY.

Initiator : Taylor Murphy, Water Resource Manager

Presenter: Taylor Murphy, Water Resource Manager

Legal Review: Yes No

Council Action

Council Information

Report to Council

Summary Overview and List of Attachments:

The City of Fountain owns two (2) wells located on the Pikes Peak Raceway property that have historically been the source of water for the Raceway under a 1996 Agreement. This Agreement provides for the continued operation of the wells and sale of water to the Raceway on updated terms.

Attachments: Augmentation and Water Service Agreement (11 pages)

Background Information

The Pikes Peak International Raceway (PPIR) is an annexed property within the City of Fountain, but it lies approximately 5 miles away from the City’s potable water system. As part of a series of 1996 Agreements when PPIR was developing their property, the City purchased two wells from Colorado Springs Utilities located on lands that were acquired by PPIR. An Agreement was executed between the City of Fountain and PPIR to allow the Raceway to pump, pipe, treat and serve the water from those wells at the Racetrack by paying a cost per Acre-foot to the City. In exchange for that payment the city would provide augmentation water from its water rights portfolio and perform the accounting to keep the well usage legally compliant with the State of Colorado.

PPIR is now pursuing expansion and further development of their property. In anticipation of this growth, and to provide water supply certainty to prospective developers and investors, PPIR and the City desire to update the 1996 Agreement and revise the terms to be reflective of present-day conditions and considerations. The fundamental Agreement still functions the same whereby the Fountain will sell untreated water in the wells to PPIR for use on their property, up to a maximum limit of 100 Acre-feet.

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 authorize and approve Resolution 23-033, approving the Augmentation and Water Service Agreement between the City of Fountain and Pikes Peak International Raceway, LLC.

Proposed Motion

I move to approve Resolution 23-033 for the Augmentation and Water Service Agreement between the City of Fountain and Pikes Peak International Raceway, LLC.”



RESOLUTION 23-033

A RESOLUTION AUTHORIZING AND APPROVING THE AUGMENTATION AND WATER SERVICE AGREEMENT BETWEEN THE CITY OF FOUNTAIN AND PIKES PEAK INTERNATIONAL RACEWAY, LLC FOR THE SALE OF WELL WATER TO THE PIKES PEAK RACEWAY.

WHEREAS, the Pikes Peak International Raceway (PPIR) is a commercial venture located within the limits of the City of Fountain (City) that cannot feasibly be served by the City's potable water system; and

WHEREAS, PPIR has historically supplied water to its properties by pumping from two City wells located on PPIR land under a 1996 Agreement with the City; and

WHEREAS, PPIR has near-term plans for new growth and development that will provide an economic benefit to the City of Fountain; and

WHEREAS, PPIR desires for the City to continue providing water to the property through its two wells, and the City is desirous to do so with new terms reflective of present-day conditions and changes that have occurred since 1996; and

WHEREAS, the City Council of the City of Fountain desires to execute the Augmentation and Water Service Agreement with PPIR for the continued provision of water into the future.

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 Augmentation and Water Service Agreement with Pikes Peak International Raceway, LLC.**
- 2. The above authorization extends to any related documents necessary to achieve the identified and approved actions for execution of the Agreement and provision of water to PPIR.**

Done this 8th day of August 2023.

Sharon Thompson, Mayor

ATTEST:

Silvia Huffman, City Clerk

AUGMENTATION AND WATER SERVICE AGREEMENT -

Pikes Peak International Raceway Area

This Augmentation and Water Service Agreement (the “Agreement”) is made and entered into as of _____, 2023 (the “Effective Date”), by and between the City of Fountain, Colorado (“City”), and Pikes Peak International Raceway, LLC (“Owner”). The City and Owners may be referred to herein individually as a “Party” and collectively referenced as the “Parties.”

RECITALS

WHEREAS, the Owner has a need for water for use on and development of the Property; and,

WHEREAS, the City acknowledges that the provision of water is important for economic development of the Property, as subsequently defined in this Agreement; and,

WHEREAS, the City owns certain water rights that can be used on the Property, as subsequently defined in this Agreement; and,

WHEREAS, the City is willing to provide augmentation water for use on the Property, as subsequently defined in this Agreement, pursuant to the terms of the Agreement; and,

NOW, THEREFORE, for and in consideration of the foregoing premises and of the mutual promises and conditions set forth below, the Parties agree as follows:

TERMS OF THE AGREEMENT

1. **Recitals and Subject Property Defined:** The Recitals are incorporated as if fully set forth herein. The Property (“Property”) referenced in this Agreement is comprised of the following El Paso County Assessor Parcels:

Parcel #

5700000130, 5700000157, 5700000010, 5700000115, 5700000129,

5700000109, 5700000145, 5700000146, 5700000154

The augmented water is controlled in its entirety by Parcel 5700000157 and shall be distributed to the Property at its sole discretion. Parcels 5700000109, 5700000145, 5700000146 and 5700000154 shall not benefit from the terms of this Agreement without the express written consent of the Owner.

2. **Metro District:** The Owner intends to form a metropolitan district (the Fountain South Metropolitan District, referred to hereinafter as the “District”) to own and operate

various utility and other service systems, including water systems. The Owners intend for the District to be able to function in said role in perpetuity. The Owners intend that the District may overlap City annexed areas and County unincorporated areas. The District and Owner shall collectively be referenced as “PPIR” herein. Until the District is legally formed, all references to PPIR in this Agreement shall constitute and be interpreted as references to the Owner.

3. **Existing Infrastructure:** The developers of PPIR purchased in 1996 on behalf of the City and the City now owns two wells (Well No. 7 and Well No. 11, collectively referred to herein as the “Wells”) on the Property, located in El Paso County Assessor Parcel #5700000157.
4. **Provision of Water:** The City acknowledges that the provision of water to the Property is important to the economic development of the City in general and to the development, occupancy and use of PPIR. The City agrees to provide augmentation water to support PPIR’s ability to serve the Property via the Wells, in quantities and at usage rates as described herein, and pursuant to the terms of this Agreement. The Parties expressly agree, warrant, and covenant that uses of water pumped from the Wells shall adhere to all restrictions, covenants, limitations, and legal requirements imposed upon the Property and Wells by Colorado Springs Utilities (“CSU”) in the original 1996 Purchase and Sale Agreements, and by any other applicable agreements, permits, judicial decrees, federal, state, local, and administrative laws, statutes, ordinances, rules and regulations, and requirements. The Property shall use Well No. 11 as its primary source, with Well No. 7 serving solely as a source for peaking demand.
5. **CSU Pumping Limit:** The Parties expressly acknowledge, warrant, and agree, regardless of the provisions and augmentation quantities contained within this Agreement, that the combined pumping of the Wells shall not exceed 250 AF annually, as dictated by CSU in the December 6, 1996 Purchase and Sale Agreement with Fountain. Should that pumping limitation be modified or waived by CSU in the future, this Agreement may be amended upon mutual agreement of the Parties to reflect a revised annual pumping limit.
6. **Well Permits:** Well #7 and Well #11 are operated under Colorado Division of Water Resources (“DWR”) Permit #5195-F-R and #047897-F, respectively. Permit #047897-F states that “the maximum annual amount of ground water to be appropriated shall not exceed 100 acre-feet. The combined annual amount of ground water to be appropriated by this well and well no. 5195-F shall not exceed 100 acre-feet.” The Parties expressly acknowledge, warrant, and agree, regardless of the provisions contained within this Agreement, to comply with the permit requirements for Permit #5195-F-R and #047897-F. Should the need for water at PPIR exceed 100 AF-year, the Parties agree to work cooperatively and coordinate with DWR to reasonably attempt to amend, modify, appeal or otherwise pursue remedies to increase the stated permit limits on the Wells, including as set forth in Sections 8 and 18 of this Agreement.

7. **Water Rights:** The City owns certain water rights and sources of sub-surface water supply that can be used within the Property. The City will provide for augmentation water and augmentation accounting for said source of supply water to the Property pursuant to the terms of this Agreement.
8. **Water Augmentation Quantity:** The City will augment the water pumped from the Wells up to a maximum of 100 acre-feet annually except as stated below. Additional augmentation water above 100 acre-feet annually may be provided by the City if the City has water rights available for augmentation. However, nothing in this Agreement obligates the City to provide more than 100 acre-feet of augmentation water annually. This provision does not prevent PPIR from securing their own sources of augmentation water to support additional pumping, provided a decree for that amended augmentation is achieved, and such pumping is in compliance with all applicable DWR permits, CSU restrictions, and any other applicable agreements, permits, judicial decrees, federal, state, local, and administrative laws, statutes, ordinances, rules and regulations, and requirements, as outlined in Sections 4, 5, and 6 of this Agreement.
9. **Water Charge:** PPIR shall pay the City \$566.00 per acre-foot for water provided to the Property from the Wells pursuant to this Agreement, until such time that the City establishes a standard Non-Potable Water charge and Augmentation Water charge. The Non-Potable Water and Augmentation Water charges will replace the \$566.00 per acre-foot charge for the water provided and augmented under this Agreement.
10. **Payment:** On or before January 31 of each year, the City shall issue to PPIR a statement for payment of all water used in the prior year pursuant to this Agreement, to be paid within thirty (30) days of receipt. In the event all or part of a statement is disputed, Owners shall pay the undisputed portion, if any, of the statement and notify the City in writing of the disputed portion of the statement and the basis for the dispute, within thirty (30) days of receipt of the statement. If the Parties are unable to resolve the dispute within thirty (30) days of receipt of the written notice of the dispute by the City, the Parties shall proceed to attempt to mediate the dispute, pursuant to Section 37 of this Agreement, prior to commencing legal action.
11. **Location of use:** Water from the Wells shall only be used on the Property. PPIR will not resell or otherwise permit off-site first use of any water pumped from the City's augmentation sources. If PPIR installs facilities contemplated in Section 17 of this Agreement that allow a second use of the water from the Wells, that water can be used off of the Property and PPIR shall retain any proceeds from the sale of that water.
12. **Tap Fees:** Tap fees will not be charged to PPIR.
13. **Access:** The City has the right to access, observe, and inspect the Wells. A minimum twenty-four (24) hour notice shall be given to PPIR, unless there is a need for immediate emergency access by the City to its Wells, in which event the City shall

make reasonable efforts to provide advance notice to PPIR; the Parties agree that less than twenty-four (24) hour notice to PPIR will constitute sufficient notice in the event of an emergency.

14. **Annual Planning Meeting:** PPIR and the City will meet at least once annually to discuss the upcoming year's planning, needs, and any significant expansions of the system and or uses.
15. **Well Maintenance:** PPIR, at its own expense, shall equip, operate, and maintain the Wells and all appurtenances, including but not limited to the meters, in good working order.
16. **Existing/Future Infrastructure:** PPIR, shall, at its own and sole expense and responsibility, create, own, manage, construct, operate and maintain water pumping, treatment, storage, distribution, and service systems on the Property that serve the occupants and users within the Property.
17. **Future Infrastructure:** PPIR may construct infrastructure that allows for the reuse of water pumped from the Wells on the Property subject to compliance with all applicable agreements, permits, judicial decrees, federal, state, local, and administrative laws, statutes, ordinances, and rules and regulations, and requirements.
18. **Return Flow Adjustments:** The Wells are augmented under the decree in Colorado Water Court Case No. 2001CW146 ("Decree"). In accordance with Section 21.b.II.3 of that Decree, the Wells generate zero return flow credit from pumped uses. Should either Party desire to modify that return flow quantification in the future, the Parties will work cooperatively to file the appropriate change through Water Court, with the initiating party paying the costs for engineering and legal services. Excess return flow credits generated by any future decree revisions will be allocated by mutual agreement of the Parties at the time of the future water court filing.
19. **City of Fountain – Fountain South Metropolitan District Interconnect:** Currently, the Property's system and the City system are several miles apart and demands by either system do not necessitate redundancy or interconnect; and, the technical, right-of-way, and cost issues make an interconnect impractical. In the future, the Parties agree to work cooperatively towards an interconnect if such becomes mutually beneficial, technically feasible, right-of-way can be acquired at a reasonable cost, and the construction cost of the interconnect is economically feasible for PPIR. The Owner expressly understands and agrees that the City makes no guarantees or representations about the availability of its potable water capacity or its future ability to supply the Property with treated system water at the time of consideration for an interconnection, and that nothing in this Agreement is intended to or shall be interpreted to indicate otherwise. While the City will work cooperatively and in good faith with the District in such case, the Parties expressly agree and understand that nothing in this Agreement shall constitute or otherwise be taken as an obligation by the City to provide an

interconnection or alternate potable supply. Examples that may initiate discussion, but in no way constitute an obligation to require action, among the Parties regarding the potential installation of an interconnect are:

- A. The City system and PPIR system expand to within one (1) mile separation of pipeline(s) of adequate size (minimum 12-inch diameter) to complete an operational interconnect.
 - B. The City desires to utilize the Wells as a source of supply and feed water for use outside of the Property without infringing upon the City Augmentation Allotment to the Property of 100 annual acre-feet.
 - C. The Property's annual Well water use consistently exceeds 90% of 100 acre-feet.
 - D. Other conditions arise under which the Parties mutually desire to complete an interconnect or conversion of the Property's system to City ownership and operation.
20. **Water Quality/Treatment:** Pursuant to this Agreement, the City will sell water to PPIR at the bottom of the Well "as-is", without any representations or warranties concerning the quality or quantity of that water. PPIR shall, at its own and sole expense and responsibility, provide, operate and maintain water treatment methods and systems for potable water as required by Colorado Department of Public Health and Environment ("CDPHE"). PPIR will consult with the City on the proposed installation of any future water treatment systems to be employed on the Property. In the event the CDPHE requires treatment or filtering of the Well water for man-made contaminants not caused by PPIR, the City may, at its discretion, assist PPIR in seeking remedies from the person or entity causing the contamination. If a future interconnect with the City is made for any other reason other than the Property seeking additional water supply, then additional treatment required by CDPHE or the City will be the responsibility of the City. Water testing required by the City beyond that necessary by CDPHE for operation of the Property's system will be the responsibility of the City.
21. **Water System Operation:** The Property or District has a Public Water System Identification Number CO0221715 that is separate and distinct from the City's water system, and PPIR will own and operate the water system in conformance with CDPHE standards for whatever classification is necessary. Currently the system is classified as a "Transient-Non-Community Water System". If growth necessitates, PPIR will maintain adequate operational and monitoring controls to CDPHE standards. The Parties, by mutual agreement, may elect to expand this Agreement by amendment whereby the City takes operational control of the Property's system, even if transfer of ownership of the Property's system has not occurred.

22. **Reporting:** Water use and monitoring will be reported by PPIR as follows:
- A. Meter reads: The more often of weekly or as required by CDPHE or DWR.
 - B. Water Quality: As required by CDPHE.
23. **Monitoring:** Water Quality Reporting will be maintained by PPIR in accordance with its CDPHE Water System Monitoring Plan.
24. **Fire Suppression:** The City hereby authorizes the use of Well water for the suppression and prevention of fires located on or off the Property. PPIR shall notify the City immediately when they are aware Well water is being utilized to suppress or prevent a fire not on the Property, and the City shall similarly notify PPIR if the City of Fountain Fire Department is involved in efforts to suppress or prevent fires using Well water. Only to the extent permitted by Colorado law and approved by DWR to not require City augmentation of the use, Well water utilized for the suppression or prevention of fires located on or off the Property shall not be deducted from the PPIR's annual allotment. Subject to Colorado law and determination of DWR on the augmentation requirements for well pumping associated with fire prevention, the City shall not charge PPIR for any Well water utilized to suppress or prevent a fire unless the cost of said water is reimbursed to PPIR by an entity utilizing the water. Within thirty (30) days of Well water being used to suppress or prevent a fire, PPIR shall notify the City in writing as to the amount of water used for fire suppression or prevention if it initiates, allows third party use of the water or is ordered by a governmental entity to make Well water available, and similarly the City shall notify PPIR of the amount if it initiates or allows the use of Well water for fire suppression or prevention.
25. **Property/District Operation:** PPIR shall be permitted to recoup from users on the Property amounts PPIR paid for:
- A. Well water;
 - B. Costs to own, manage, construct, operate and maintain the water system;
 - C. Costs and fees incurred by PPIR to install and operate the Interconnect;
 - D. Connection, service start, service stop, service reconnect fees, late payment fees and other customary fees as determined by PPIR for Property occupants or water users to connect to the water system and use Well water; and
 - E. Any other costs, fees, and tap fees PPIR incurs to provide water to the Property, its occupants, water users.

26. **Successors:** The Owner and the District include any of their successors in title or rights of use and occupancy to any of the Property.
27. **Entire Agreement:** This Agreement formalized between the Owner and the City, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes the December 19, 1996 Agreement between the Parties for the provision of water. The Parties expressly acknowledge, understand, and agree that this Agreement does not supersede but rather is subject to the legal requirements of the original 1996 Purchase and Sale Agreements with CSU, any by any other applicable agreements that may exist regarding the City's water rights involving non-Parties to this Agreement, and any applicable judicial decrees or permits.
28. **Authorization:** By signing this Agreement, the Parties acknowledge and represent that all procedures necessary to validly contract and execute this Agreement have been performed and that the persons signing for each Party are duly authorized to do so, and each Party represents that this Agreement is a valid and enforceable obligation of such Party.
29. **Force Majeure:** The respective duties and obligations of the Parties hereunder shall be suspended while and so long as performance hereto is prevented by strikes, disturbances, riots, fire, severe weather, government action, war acts, acts of God, or any other cause similar or dissimilar to the foregoing which are beyond the control of the Party from whom the affected performance was due.
30. **Binding Agreement:** Except as herein provided, this Agreement is binding upon the successors and assignees of the Parties hereto. Neither Party may transfer, assign or otherwise convey its rights or obligations under this Agreement without the prior written consent of the other Party.
31. **Notices:** Any and all notices or other communications provided for in this Agreement shall be given in writing by registered or certified mail, return receipt requested, directed to the address shown below, unless notice of a change of address is furnished. The addresses for notices may be changed by written notice given to the other Party in the aforesaid manner. Notice may also be sent via e-mail delivery and shall be effective upon confirmation of receipt of the email.

TO THE CITY:

City of Fountain
Attn: Dan Blankenship, Utilities Director
116 S. Main St, Fountain, CO 80817
Email: dblankenship@fountaincolorado.org

TO OWNERS:

Attn: Bob Boileau
16650 Midway Ranch Rd, Fountain, CO 80817
Email: bob@ppir.com

With copy to:
Jeff Kahn
Lyons Gaddis
PO Box 978
Longmont CO 80502-0978

32. **No Indemnification by City:** The Parties understand and agree that the City, Council, officials, officers, directors, agents, and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, protections or defenses provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City. In accord with the restrictions of the City Charter and Colorado Constitution, nothing in this Agreement shall be construed as, or is intended to create, any indemnification or holding harmless of Owners and or PPIR by the City. Neither Party shall be the agent of the other or liable for the obligations of the other. In the event claims, costs, expenses, losses or damages are caused by the joint or concurrent negligence of Owners and City, they shall be borne by each Party in proportion to its own negligence.
33. **Breach of This Agreement:** The Parties agree that in the event of a breach of this Agreement by a Party, the non-breaching Party has the right to seek legal and equitable damages and/or remedies arising out of the breaching Party's breach of any provision of this Agreement, including the right to plead this Agreement as a defense, as a counterclaim or cross-claim.
34. **No Third-Party Rights:** This Agreement is intended solely for the mutual benefit of the Parties, and is not intended to benefit any other person or entity. It is not intended that any provision of this Agreement be used by any other person or entity, including but not limited to Property occupants or water users, to impose any obligation, duty, or standard of care upon either of the Parties.
35. **Amendments and Waivers:** No change or modification of any part of this Agreement shall be valid unless the same shall be in writing and signed by both Parties. No waiver of any provision of this Agreement shall be valid unless in writing and signed by the Party against whom it is charged. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the non-defaulting Party. Failure on the part of any Party to complain of any act or failure to

act or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

36. **Term and Termination:** This Agreement shall commence on the Effective Date and shall continue in perpetuity unless terminated by mutual agreement of the Parties or terminated by order of a Court with jurisdiction over the parties and the matter.
37. **Mediation:** If a dispute arises relating to this Agreement and is not resolved, the Parties shall first proceed in good faith to submit the matter to mediation prior to commencing legal action. The Parties will jointly appoint an acceptable mediator and will share equally in the cost of the mediation. Mediation shall occur in El Paso County, unless the Parties agree to a different location. The obligation to attempt to mediate a dispute relating to this Agreement, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one Party to the other at the Party's last known address. **Severability:** If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect. The invalidity or unenforceability of any particular part, term or provision of this Agreement shall not affect the other parts, terms or provisions of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
38. **Governing Law and Venue:** This Agreement shall be governed by and construed according to the laws of the State of Colorado, without regard to such state's choice of law principles. In the event of litigation between the Parties, venue shall lie in the Colorado Water Court when applicable and appropriate, or, if venue in state trial courts is appropriate, the Parties agree that venue in state trial courts for any action to enforce or interpret this Agreement 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.
39. **No Presumption:** 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.

40. **Headings:** The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

41. **Execution and Counterparts:** This Agreement may be executed in one or more counterparts, all of which together shall constitute only one agreement.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement as of the date first above written.

CITY OF FOUNTAIN, COLORADO

By: _____

Name: _____

Title: _____

ATTEST:

By: _____
Silvia Huffman, City Clerk

OWNERS: PIKES PEAK INTERNATIONAL RACEWAY, LLC, a Colorado limited liability company, and its subsidiaries

By: _____
Guy Kathe

Title: Manager of Pikes Peak International Raceway, LLC



Regular City Council Meeting

New Business –9A

Items removed from Consent Agenda

August 8, 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"