

RESOLUTION NO. 09- 259

**THE BOARD OF COUNTY COMMISSIONERS
OF PUEBLO COUNTY, COLORADO**

**ACCEPTING CERTAIN PAYMENTS BY COLORADO SPRINGS UTILITIES TO THE
FOUNTAIN CREEK WATERSHED, FLOOD CONTROL AND GREENWAY DISTRICT,
TOWARD MONETARY MITIGATION REQUIRED UNDER 1041 PERMIT NO. 2008-002,
CONDITION NO. 6**

WHEREAS, on April 21, 2009, the Board of County Commissioners enacted Resolution No. P & D 09-22, approving Pueblo County 1041 Permit No. 2008-002 With Terms and Conditions for Construction and Use of a Municipal Water Project Known as the Southern Delivery System (“SDS”) within Pueblo County, Colorado. Colorado Springs Utilities (“Utilities”) was the SDS Permit Applicant on behalf of the named project partners. Condition No. 6 of the Permit, entitled Monetary Mitigation for Fountain Creek Impacts, requires the Permit Applicant to pay the sum of Fifty Million Dollars (\$50,000,000.00) in accordance with a specified schedule, to mitigate the impacts of SDS to Fountain Creek in Pueblo County. The express terms of the condition require all such payments to be made to the Fountain Creek Watershed, Flood Control and Greenway District, (“District”); and

WHEREAS, \$300,000.00 of the required monetary mitigation is to be paid by the Applicant in equal annual installments of \$100,000.00 commencing July 1, 2009. The first such payment to the District has been made by the Applicant in accordance with the schedule. Those funds, along with the remaining \$200,000.00, are and will continue to be kept in a separate account by the District and are to be used for the purposes specifically set forth in Condition No. 6. Those funds are not the subject of this Resolution; and

WHEREAS, Colorado Springs Utilities (“Utilities”), an enterprise owned and operated by the City of Colorado Springs, the Lower Arkansas Valley Water Conservancy District (“Lower Ark”), and the District have entered into an Intergovernmental Agreement (“IGA”) effective August 28, 2009. A partially signed copy of the IGA is attached hereto and incorporated herein by reference. A stated purpose of the IGA is the continuing desire of the Lower Ark and Utilities to continue their development of the Fountain Creek Corridor Master Plan (“master plan”) to revitalize Fountain Creek and further to identify and to pursue funding sources to implement the master plan. Another stated purpose of the IGA is to involve the District in future work on the master plan and its implementation and to provide a short-term revenue source to help fund, initially, the District’s staff; and

WHEREAS, the IGA requires Utilities and the Lower Ark to fund, in an amount not to exceed \$100,000.00 each annually, the continued development of the master plan and the identification and pursuit of funding sources to implement the master plan for a period of two years commencing on October 1, 2009; and

WHEREAS, the IGA sets forth an additional commitment and obligation of the Lower Ark and Utilities to provide to the District an amount not to exceed \$100,000.00 each over a two year period. This further commitment is to consist of annual payments by each of the Lower Ark and Utilities of \$50,000.00 to fund, initially, a staff for the District and to pay for related expenses, or both. The additional two year funding commitment as set forth in the IGA also commences on October 1, 2009, and these payments are also to be made payable to the District; and

WHEREAS, under the IGA, the District has agreed, as a condition precedent to the effectiveness of the IGA, to obtain written acceptance by the Pueblo County Board of County Commissioners that the funds referenced herein and in the IGA as are to be contributed by Utilities will be accepted as payments toward the monetary mitigation required by Condition No. 6 of the Pueblo County 1041 Permit; and

RESOLUTION NO. 09-259 (CONTINUED)

WHEREAS, the District and Utilities have requested the Board of County Commissioners to confirm its acceptance in writing of the funds as being in partial satisfaction of the monetary mitigation required by Condition No. 6 of the Pueblo County 1041 Permit; and

WHEREAS, pursuant to Condition No. 6, the funds provided by the Permit Applicant are to be used for one or more new projects in the Fountain Creek Watershed, between Colorado Springs and the Arkansas River confluence in Pueblo, that create a significant and not merely incidental benefit to Fountain Creek within Pueblo County for improvements of water quality, for flood control, or for prevention of erosion and sedimentation; and

WHEREAS, by written Memorandum to the Board of County Commissioners dated September 21, 2009, Pueblo County's 1041 Permit Administrator has determined that the proposal of Utilities, as set forth in the IGA, to make short-term payments to the District for the continued development of the Fountain Creek Master Plan and to assist with the initial staffing of the District may qualify as a monetary mitigation for Fountain Creek impacts under Condition No. 6 of the Pueblo County 1041 Permit. The Administrator concluded that it is within the discretion of the Board County of Commissioners at the request of the Applicant to determine that credit can be given for funds as monetary mitigation for the development of the master plan to identify projects and to provide, at least, the start-up funding to provide staffing for the District, which is required in order for the District to pursue the projects in the first instance; and

WHEREAS, the Board of County Commissioners, being advised of the determination of the Permit Administrator, agrees with the determination.


NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Pueblo County, Colorado, that the funding commitments of the Colorado Springs Utilities, as set forth in that certain Intergovernmental Agreement between the Lower Arkansas Valley Water Conservancy District, the City of Colorado Springs, and the Fountain Creek Watershed, Flood Control and Greenway District made and entered into and effective August 28, 2009, are accepted as monetary mitigation under Condition No. 6 of the Pueblo County 1041 Permit 2008-002 and shall, when and as paid by Utilities pursuant to the IGA, be credited on a dollar-for-dollar basis toward the monetary mitigation required under 1041 Permit 2008-002, Condition No. 6.

PASSED AND ADOPTED this 29th day of September 2009, in Pueblo County, Colorado.

**THE BOARD OF COUNTY COMMISSIONERS
OF PUEBLO COUNTY, COLORADO**

BY: 
J. E. Chostner, Chairman

ATTEST:

BY: 
Gilbert Ortiz, County Clerk

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE LOWER ARKANSAS VALLEY WATER CONSERVANCY DISTRICT,
THE CITY OF COLORADO SPRINGS, AND THE FOUNTAIN CREEK
WATERSHED, FLOOD CONTROL AND GREENWAY DISTRICT**

This Intergovernmental Agreement is entered into effective the 28th day of August, 2009, by and among the Lower Arkansas Valley Water Conservancy District ("Lower Ark"), the City of Colorado Springs, a home rule city and municipal corporation, on behalf of its enterprise, Colorado Springs Utilities ("Colorado Springs Utilities"), and the Fountain Creek Watershed, Flood Control, and Greenway District ("Fountain Creek District"). These entities are collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties are authorized under C.R.S. 29-1-203 to cooperate and contract with one another to provide the functions, services and funding provided for herein; and

WHEREAS, pursuant to the Intergovernmental Agreement ("IGA") dated March 21, 2007, Lower Ark and Colorado Springs Utilities have each contributed \$300,000.00 over a period of two years, for a total of \$600,000.00, toward the preparation of the Fountain Creek Corridor Master Plan ("Master Plan") to revitalize Fountain Creek; and

WHEREAS, on April 30, 2009 the Fountain Creek District was created to primarily manage, administer, and fund the capital improvements necessary in the Fountain Creek watershed and the Fountain Creek Management Area to: prevent and mitigate flooding, sedimentation, and erosion; improve water quality and otherwise address water quality and water quantity issues; improve drainage, fund the acquisition and protection of open space, develop public recreational opportunities, including parks, trails, and open space; and improve wildlife and aquatic habitat and restore, enhance, establish, and preserve wetlands; and

WHEREAS, Lower Ark and Colorado Springs Utilities desire to involve the Fountain Creek District in future work on the Master Plan, the identification and pursuit of available funding sources, and the implementation of the Master Plan; and

WHEREAS, the Fountain Creek District currently does not have a revenue source to fund its own staff, such as a director, legal counsel, and administrative support; and

WHEREAS, Lower Ark and Colorado Springs Utilities desire to continue their development of the Master Plan, identify and pursue funding sources to implement the Master Plan, and provide a short-term revenue source to help fund initially the Fountain Creek District's staff.

NOW THEREFORE, in consideration of the mutual undertakings contained herein and the mutual benefits to the Parties, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Funding and Completion of the Master Plan.

1.1. Lower Ark, Colorado Springs Utilities, and the Fountain Creek District agree to form a Steering Committee and each appoint one individual to such Steering Committee. If necessary, each Party shall be responsible for compensating its respective representative for work performed in this capacity, as each Party deems appropriate.

1.2. Upon formation, the Steering Committee will promptly meet to identify tasks that are necessary to complete the Master Plan and potential funding sources available for its implementation, and to develop a plan of action to complete the tasks and pursue the funding sources identified.

1.3. The Steering Committee shall be responsible for the management of all work related to the Master Plan with the approval of the Fountain Creek District Board of Directors. It is the intent and understanding of the Parties that all such management responsibilities will be transferred to the Fountain Creek District upon termination of this Agreement.

1.4. The Lower Ark and Colorado Springs Utilities each agree and commit to fund, in an amount not to exceed \$100,000.00 each annually, the continued development of the Master Plan and the identification and pursuit of funding sources to implement the Master Plan for a period of two years commencing on October 1, 2009. Payments from Colorado Springs Utilities and the Lower Ark pursuant to this

Section 1.4 shall be made payable to the Fountain Creek District in twenty-four (24) equal monthly installments of \$8,333.33 from each entity commencing October 1, 2009. These funds, when paid, shall be held in a separate account from other funds of the Fountain Creek District and may only be used in the manner and for the purposes designated by the Steering Committee, which purposes must meet the requirements set forth in paragraph 1.3 hereof.

2. As an additional commitment and obligation to those provided in Paragraph 1.4 above, the Lower Ark and Colorado Springs Utilities, in order to facilitate the cooperative work on the Master Plan of the Steering Committee, each agree and commit to provide to the Fountain Creek District an amount not to exceed \$100,000.00 each over a two year period. This commitment shall consist of an annual payment by each party of \$50,000.00 to fund initially a staff for the Fountain Creek District, to pay for related expenses, or both. This may include, but is not limited to, expenditures to defray the cost of the salary of a director, the costs of legal counsel, and the costs of any administrative support. The two year period shall commence on October 1, 2009. The annual \$50,000.00 payments from Colorado Springs Utilities and the Lower Ark pursuant to this Section 2.0 shall be made payable to the Fountain Creek District and delivered to the Fountain Creek District on or before October 1st of 2009 and again on or before October 1st of 2010.

3. The Parties hereto agree that the Steering Committee and the Fountain Creek District may only utilize Colorado Springs Utilities' financial contributions under Sections 1.4 and 2.0 of this Agreement on activities that will constitute Monetary Mitigation for Fountain Creek Impacts pursuant to Term and Condition 6 of the Pueblo County 1041 Permit for the Southern Delivery System. The Fountain Creek District, acting through its Board of Directors, agrees, as a condition precedent to the effectiveness of this Agreement, to obtain written acceptance by the Pueblo County Board of County Commissioners, that funds contributed hereunder by Colorado Springs Utilities will be accepted as payments toward the Monetary Mitigation For Fountain Creek Impacts pursuant to Term and Condition 6 of the Pueblo County 1041 Permit for the Southern Delivery System. It is understood and agreed that Colorado Springs Utilities' obligations

hereunder are dependent upon that acceptance by the Pueblo County Board of County Commissioners.

4. The Fountain Creek District shall have sole authority over the expenditure of funds received by the Fountain Creek District pursuant to paragraphs 1.4 and 2.0 of this Agreement.

5. Termination. Any Party may elect to terminate its participation in this Agreement by providing thirty (30) days written notice to the remaining Parties.

6. Severability. Each provision hereof is interdependent upon the others. If any provision is found to be illegal or unenforceable by a court of competent jurisdiction the entire agreement shall no longer be considered to be effective or enforceable.

7. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado.

8. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This Agreement may be executed and delivered by facsimile or electronic transmission with an original to follow.

9. Entire Agreement. This Agreement constitutes the entire agreement among the Parties relative to the subject matter hereof. This Agreement can only be amended by a written agreement signed by all Parties.

10. By their signature hereto, the respective officials attest that they have been given the authority to execute this Agreement on behalf of the governing body of their party.

**LOWER ARKANSAS VALLEY
WATER CONSERVANCY DISTRICT**

COLORADO SPRINGS UTILITIES

By: 

By: _____

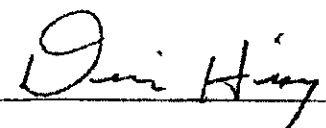
Name: R. Jay Winne

Name: _____

Title: General Manager

Title: _____

**FOUNTAIN CREEK WATERSHED, FLOOD
CONTROL AND GREENWAY DISTRICT**

By: 

Name: Dennis Hisey

Title: Chairman, Board of Directors