

**INTERGOVERNMENTAL AGREEMENT  
(CROSS CREEK / MESA RIDGE / CITY OF FOUNTAIN)  
HALE RESERVOIR AND CROSS CREEK REGIONAL PARK**

This Intergovernmental Agreement (“Agreement”) is made and entered into effective this 30<sup>th</sup> day of November, 2015 (the “Effective Date”) by and between the City of Fountain, Colorado (the “City”), a home rule municipality and political subdivision of the State of Colorado; Cross Creek Metropolitan District (“CCMD”); and Mesa Ridge Metropolitan District No. 1 and Mesa Ridge Metropolitan District No. 2 (collectively “MRMD”). CCMD and MRMD are at times herein referred to collectively as “the Districts”.

RECITALS

A. The City, CCMD and MRMD are duly organized and validly existing political subdivisions of the State of Colorado formed under Title 32 of the Colorado Revised Statutes, with powers which include those enumerated for metropolitan districts set forth in C.R.S. §32-1-1004.

B. Cross Creek Subdivision (“Cross Creek”) is located entirely within the City and the City is the approving authority for the Service Plan of CCMD approved pursuant to Fountain Resolution 03-013 on July 8, 2003 as amended (the “CCMD Service Plan”). Mesa Ridge Subdivision (“Mesa Ridge”) is located within the City pursuant to the Mesa Ridge Annexation Agreement dated August 9, 2005 (the “MR Annexation Agreement”) and the City is the approving authority for the Official Consolidated Service Plan dated September 30, 2004 for MRMD (the “MRMD Service Plan”).

C. Section 12.1 of the City’s Home Rule Charter authorizes the City to enter into intergovernmental agreements. Pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-203, C.R.S., governmental entities may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, and any such contract may provide for the sharing of costs.

D. Pursuant to the CCMD Service Plan as amended CCMD is authorized to provide parks and recreation services within the boundaries of CCMD. The City and CCMD have an agreement providing for the collection of fees for construction of park facilities by the City and payment of park fees to CCMD, for the development of Cross Creek Regional Park (the “Park”). The original Cross Creek Service Plan anticipated that lands within MRMD would be included within CCMD; however, that event did not occur as anticipated. Therefore, CCMD and MRMD entered into an Intergovernmental Agreement dated January 26, 2011 (see Recitals H and I and Exhibit D) to provide for additional funds to support parks and drainage requirements for properties included under the MR Annexation Agreement.

E. Pursuant to the CCMD Service Plan and the *Intergovernmental Agreement between the City of Fountain and Cross Creek Metropolitan District* dated November 14, 2006 (the “CC-City IGA”), the City has collected park fees from properties within Cross Creek (referred to as “plattling fees” under the CCMD Service Plan and “park fees” under the CC-City IGA) where land is proposed for residential use on a per-dwelling unit basis within the boundaries of the District.

F. The original CCMD Service Plan anticipated that the “Developer,” who was then also the owner of the property which was subsequently sold and became Mesa Ridge, was responsible for restoration and/or construction of a water reservoir referred to as the “Hale Reservoir” and all related drainage facilities (collectively the “Reservoir”) within the Park. The City acknowledges that the conditions required of the Developer to install drainage improvements were not fulfilled; rather, the City collected and retains \$560,000 in drainage fees paid by the successor owners of land within the boundary of CCMD. A portion of the drainage funds were previously received and applied to other drainage projects. The remaining drainage fees that have been collected to date for properties appurtenant to the Hale Reservoir site are to be applied to costs of construction of the Reservoir.

G. The Reservoir is intended by the parties to serve both CCMD and MRMD properties, with improvements designed so that it will meet the full spectrum storm water management requirements of both CCMD and MRMD, except for portions of Mesa Ridge which are served by separate facilities accepted by the City for such purposes. The Reservoir will be designed and constructed in compliance with federal and state law and regional and city codes and ordinances, along with City water augmentation requirements.

H. The City acknowledges the Intergovernmental Agreement between CCMD and MRMD dated January 26, 2011 (the “CCMD/MRMD IGA”), wherein the Districts came to the following agreements, in addition to other understandings:

- a. Both parties would participate in the funding of the design, construction, operation and maintenance of the Park, up to a maximum amount of \$2.5 million each.
- b. The owners of Mesa Ridge are to pay a park impact fee to contribute its share of funding of the cost of the design and construction of the Park, including funding required for completion of drainage facilities, including the Reservoir.

I. MRMD has agreed to collect park fees pursuant to the CCMD/MRMD IGA which provides a financial contribution by MRMD to construction of the Park and the Reservoir collected pursuant to the “Resolution of the Boards of Directors of the Mesa Ridge Metropolitan District No. 1 and 2, City of Fountain, County of El Paso, State of Colorado, Adopting a Park Fee” (“MRMD Park Fee Resolution”), incorporated into the CCMD/MRMD IGA (also **Exhibit D** attached hereto) under which MRMD collects park fees and pays those fees directly to CCMD to be held in escrow for construction of the Park and the Reservoir.

J. The City and CCMD recognize that, while the purposes for creation of CCMD (construction and maintenance of landscaping and park amenities within the community) remain valid, many facts and assumptions included in the original CCMD Service Plan have changed. The requirements of this Agreement and other changed circumstances constitute a major amendment to the CCMD Service Plan, which must be modified as stated herein.

K. The City and MRMD recognize that the MRMD Service Plan includes broad language authorizing development and funding, and the activities and transactions contemplated by this Agreement do not constitute a major amendment to the Service Plan requiring modification.

L. The City and the Districts hereby agree that CCMD will contribute in excess of \$2,000,000 toward the design and construction of the Park and Reservoir, from grants and donation and including drainage fees to be collected upon execution of this Agreement as itemized on Exhibit B, attached. CCMD has already provided matching funds and grant money in excess of \$170,000 for design of the Reservoir, is holding funds received from MRMD in a special escrow account for construction of the Park and design and construction of the Reservoir. The City has certain rights pursuant to the CCMD Service Plan as amended which are not triggered or modified by this Agreement, including but not limited to the right to acquire ownership and maintenance responsibilities for some or all of CCMD's assets, including the Park and Reservoir if and when it deems appropriate, in its discretion.

M. The Reservoir is planned pursuant to a decreed water right in the State of Colorado as provided in Civil Action W 1814, Water Division 2, State of Colorado. The City and the Districts hereby acknowledge that the authority for the permitting, construction and physical storage or detention by the dam structure of the Reservoir as a body which stores water for beneficial use and the benefit of the citizens of Fountain resides solely in the Office of the State Engineer of Colorado, Division of Water Resources Office of Dam Safety and the Water Division 2 Division Engineer (the "SEO"). CCMD is solely responsible for obtaining the approvals requisite for the design and construction of the Reservoir and the SEO is the only entity which has authority to approve the design and construction of the reservoir or grant permission to store or detain water therein.

N. To implement these purposes, the City and the Districts desire to enter into an intergovernmental agreement to authorize and approve the transactions described herein, and to authorize, approve, ratify, make findings and take other actions with respect to the foregoing and related matters.

#### AGREEMENT

NOW, THEREFORE, in consideration of the mutual benefits to the parties contained in this Agreement, the receipt and adequacy of which are acknowledged by the parties, the City and the Districts agree as follows:

## I. CROSS CREEK RIGHTS AND RESPONSIBILITIES

The foregoing assertions and definitions in the Recitals are incorporated as an integral part of this Agreement.

1. Park and Reservoir to Be Constructed as Responsibility of CCMD and MRMD. All costs to complete the design and construction, maintenance and operation of the Park and Reservoir shall be the joint and several liability of CCMD and MRMD. Based on preliminary engineering estimates, it is anticipated that the design and construction of the Reservoir will cost approximately THREE MILLION FOUR HUNDRED THOUSAND DOLLARS (\$3,400,000.00 US), with initial estimated costs and revenue sources listed on **Attachment B**, incorporated herein. All parties acknowledge that this is an estimate only and may be revised to reflect updated construction cost numbers. The Reservoir will serve multiple purposes, including but not limited to: a) Contributing to the aesthetic features of the Park, including renovated wetlands; b) Storm water management structure to serve the Districts as stated in the Recitals herein, incorporating existing Pond E and replacing Pond F in the Master Drainage Development Plan; and c) Potentially to provide a non-potable source of turf irrigation water to replace all or most of the potable water currently being used for irrigation subject to collaboration with Fountain Utilities for augmentation of withdrawal of water from the reservoir subject to an Augmentation Agreement substantially in the form of **Attachment C**. The Reservoir is to be completed, with permit requirements fulfilled and final completion approved by the SEO, and with a CCMD Service Plan and the MRMD Service Plan amended to reflect the changes completed and approved on a timely basis as contemplated herein (collectively referred to herein as "Completion"), on or before the fifth anniversary of the Effective Date of this Agreement. In the event of failure to achieve Completion of the Reservoir on a timely basis, all expenditures from the Reservoir Account to be established under this Agreement shall be suspended and the parties shall negotiate in good faith to reach an alternate resolution to meet the drainage requirements and purposes of the Reservoir. If no written agreement for an alternate plan is approved by all parties on or before the sixth anniversary after the Effective Date, then all remaining funds in the Reservoir Account (defined below) shall be repaid to the City to be used by the City to fulfill the drainage and water storage purposes intended for the Reservoir under alternative plans, with the City as final decision-maker after obtaining input from CCMD and MRMD.

2. CCMD to Design and Construct Reservoir. CCMD shall act as the project manager for the Reservoir project, to include all design work, bidding, construction, operation and maintenance of the Reservoir and to act as fiscal agent for the funds requisite to accomplish these objectives. CCMD shall obtain all necessary federal, state, and local permits for construction and maintenance of the Reservoir, and shall construct and maintain the Reservoir in compliance with all applicable federal state and local statutes, laws, ordinances and codes and SEO requirements. The City shall have the right to assume ownership of the Park and the Reservoir at its discretion in the event of failure by CCMD to achieve Completion of the Reservoir on a timely basis, and this right shall be included in the amendments to the CCMD Service Plan. In the event that the City

assumes ownership of the Park or Reservoir at any time, all funds in the Reservoir Account shall be immediately conveyed to the City to be used for completion of construction, operation and maintenance of the Park and the Reservoir.

3. Park Plan to be Approved Simultaneously With This Agreement. A Park Plan for the development of the Regional Park has been prepared and approved by Cross Creek and Mesa Ridge and will be reviewed by the City along with this Agreement. Since the Reservoir is a valuable park amenity, CCMD agrees to maintain future public access to the Reservoir as part of the Park for recreational purposes.

4. Reservoir Funds to be Held in Escrow Account. Park fees and drainage fees have been collected upon development of the Districts in accordance with City Code, this Agreement, the CCMD Service Plan, the MR Annexation Agreement, the CCMD/MRMD IGA, the CC-City IGA and the MRMD Service Plan. Additional sums will be applied for by CCMD in the form of donations and grants. The proposed revenue sources and amounts estimated upon preparation of this Agreement are listed in **Attachment B** attached hereto and incorporated here (collectively referred to herein as the "Grant Funds"). The park fees and drainage fees collected and forwarded to CCMD under this Agreement shall be held by CCMD and not disbursed to pay expenses for the Park and Reservoir until Grant Funds and other project funds have been approved and committed by funding sources sufficient to cover the project costs. The costs of design of the Park and the Reservoir have already been paid by other donations to CCMD. All park fees, drainage fees, grant funds, donations and other revenues collected for purposes of the design, construction, operation and maintenance of the Park and the Reservoir, including all funds currently held in escrow by CCMD (collectively "Reservoir Funds") shall be deposited and held in an escrow account and then disbursed by CCMD only in strict compliance with the covenants and restrictions set forth in this Agreement. CCMD shall receive, hold, and disburse the Reservoir Funds solely for the purpose of constructing the Park and Reservoir. The portion of the Reservoir Funds which were derived from park fees shall be used for construction and installation of Park improvements. The park fees shall be used only for capital improvements and shall not be used for maintenance of the Park, in accordance with City ordinances. The portion of the Reservoir Funds derived from drainage fees shall be used for construction of the Reservoir. CCMD will cause a separate account to be opened and maintained at an FDIC-insured financial institution solely for the purpose of managing and distributing the Reservoir Funds. These funds shall be deemed to be held by CCMD irrevocably in trust for the account and benefit of CCMD, MRMD and the City, subject to a lien on behalf of the City, which lien shall represent surety for payment of all costs incurred for the design and construction of the Reservoir set forth in **Attachment B** pursuant to Code Sec. 16.23.040 and as additional security held by the City for compliance with this Agreement, until the Reservoir is fully constructed, approved and accepted by the SEO. Prior to receipt of the Grant Funds, CCMD shall provide a copy of its annual financial audits to the parties to this Agreement so they can track preparation for the Reservoir and Park development. From and after the date the Grant Funds are received and CCMD begins applying the Reservoir Funds toward the project, CCMD shall provide a detailed accounting of its expenditures to the parties to this Agreement every six months until

Completion of the Reservoir. All payments to contractors shall be subject to withholding for retention in accordance with Colorado statutes related to public financing and construction of public improvements.

5. Construction and Use of the Reservoir. The Parties acknowledge that the Reservoir must be designed and constructed under the authority of the Colorado State Engineers' Dam Safety Office and such authority is delegated to the Division 2 Engineer. Furthermore, the Parties recognize that under Colorado Water Law, the expansion and increased evaporation of the Reservoir will require augmentation as that term is understood. The City of Fountain has a Plan for Augmentation and Appropriative Right of Exchange as provided in Case No. 85CW100, which provides blanket augmentation for wells within the city limits. CCMD intends to so construct the Reservoir that it will meet the standards of a "well" as that term is understood under Colorado Water Law and will therefore fall within the blanket augmentation plan pursuant to an Augmentation Agreement substantially in the form of **Attachment C**, the "Augmentation Agreement".

6. Cross Creek Service Plan Modifications. CCMD acknowledges and agrees that modifications to the CCMD Service Plan are warranted based on the changed circumstances described herein pursuant to C.R.S. §32-1-207(2)(a) for reasons including, but not limited to, addition to the types of services provided by CCMD, including construction of the Reservoir, and further, to provide for collection of the drainage fees in accordance with this Agreement and the CCMD/MRMD IGA. CCMD shall prepare and present a modified CCMD Service Plan and Regional Park Plan for approval by City Council of the City of Fountain within six months after the Effective Date of this Agreement, unless an alternative schedule is approved by written agreement between the City and CCMD.

7. Consent Required to Modify CCMD/MRMD IGA. CCMD agrees that the CCMD/MRMD IGA (Attachment D) shall not be amended prior to Completion of the Reservoir without the prior written consent of the City. In addition, CCMD shall not reduce its mil levy during the period this Agreement is in effect without prior written consent of the City and MRMD. In the event of any violation of this Article II, Section 3 or Article II, Section 4, the City shall be entitled to suspend any and all payments owed to CCMD pursuant to Article III of this Agreement until funds are authorized and paid to CCMD sufficient to reimburse CCMD for the lost revenues resulting from such change in mil levy.

## II. MRMD RIGHTS AND RESPONSIBILITIES

1. Park Fees and Drainage Fees Collected by Mesa Ridge. MRMD has collected and contributed park fees to CCMD pursuant to the CCMD/MRMD IGA, a copy of which is attached to this Agreement as **Attachment D** and incorporated herein.

A. MRMD has collected and will continue to collect park fees pursuant to the CCMD/MRMD IGA and the MRMD Park Fee Resolution prior to the issuance of building permits upon any residential or commercial lot within the real property referred to herein as the “MR Properties”, which shall mean and refer to all real property located within or served by MRMD, including any additional properties to be annexed, added or developed as part of MRMD from time to time. Any property added to MRMD after the Effective Date of this Agreement shall be subject to this requirement.

B. Park fees which are collected by MRMD for Filings 6 and 7 have been paid to the City in the amount of \$111,780.00. Seventy-five percent (75%) of this sum will be transferred to CCMD to be held in the Reservoir Account under this Agreement to be distributed subject to the terms of this Agreement. The remaining twenty-five percent (25%) shall be held by the City to be used to offset other park impacts imposed by the development of Mesa Ridge.

C. Drainage fees collected by MRMD for Filings 6 and 7 have been distributed and used for separate drainage projects not itemized in this Agreement, to offset impacts from the Mesa Ridge development. Drainage fees have been collected by MRMD for Filings 11, 12, and 13 in the amount of \$ 75,763.81, or such greater amount which is verified as held by MRMD; these drainage fees shall be accounted for and then paid to the City within thirty (30) days after the Effective Date of this Agreement, to be forwarded to CCMD and held in the Reservoir Account and distributed in accordance with this Agreement. Drainage fees shall be collected by MRMD and paid to CCMD on remaining properties that are tributary to Hale Reservoir, as shown in Attachment E. Drainage fees collected from Mesa Ridge properties in the future shall be held and distributed under separate agreements, laws and applicable ordinances.

2. MRMD Funding Sources/Service Plan Amendment. MRMD has adopted a Master Drainage Plan for construction of all drainage improvements necessary to handle on-site development flows to serve Mesa Ridge. The parties agree that the provisions of the MR Annexation Agreement, including but not limited to Section V.E., related to drainage fees and drainage facilities, Section VII.B and C, related to development of parks and payment of Park Fees, and related provisions are consistent with the requirements herein. The MRMD Service Plan authorizes MRMD to undertake water, wastewater, street, safety, park and recreation, drainage, landscaping, mosquito control, and other activities. The MRMD Service Plan also expressly provides that MRMD shall have the power and authority to provide the additional services and to exercise the powers anticipated by this Agreement, and further, to rely on the park fees and drainage fees for the stated purposes to offset the costs of design and construction of the Park and the Reservoir as contemplated by this Agreement. The park fees payable under the CCMD/MRMD IGA and the Resolution Authorizing Park Fees are necessary to fulfill the purposes of the Master Drainage Plan and the MRMD Service Plan related to drainage and park services, and to fulfill the responsibilities of the developers of Mesa Ridge, and are consistent with the drainage requirements under the Annexation Agreement. The City and CCMD have relied upon the CCMD/MRMD IGA for purposes of approving the plans for the Park and the Reservoir, as well as the anticipated funding provided by these agreements.

MRMD and the parties agree that the authority provided by the CCMD/MRMD IGA and the Resolution Authorizing Park Fees shall not be modified until they have fulfilled their requirements under the CCMD/MRMD IGA without the prior written consent of the City. MRMD shall not reduce its mil levy during the period this Agreement is in effect without prior written consent of the City and CCMD. In the event of any violation of this Article II, Section 3 or Article II, Section 4, the City shall be entitled to suspend any and all payments owed to CCMD pursuant to Article III of this Agreement until funds are authorized and paid to CCMD sufficient to reimburse CCMD for the lost revenues resulting from such change in mil levy.

### III. CITY RIGHTS AND RESPONSIBILITIES

1. Funds Payable by City to CCMD. The following funds shall be conveyed to CCMD, to be held and distributed in accordance with this Agreement:

A. The City shall forward \$560,000 in drainage fees collected by the City within thirty (30) days after the Effective Date of this Agreement. The Reservoir Funds held by the City in the approximate amount of \$560,000 are already retained by the City for these purposes, and are budgeted in 2015 and available for conveyance to CCMD.

B. The City shall forward seventy-five percent (75%) of the park fees received from Mesa Ridge Filing No. 8 to CCMD, divided into ten equal annual payments, each payment calculated as follows:  $\$106,345 \times .75 = \$75,758.75$  divided by 10 =  $\$7,587$  per year for a period of 10 years, commencing in 2015. The annual payment for 2015 has been allocated within the budget which has been approved by the City Council. These funds shall be held in the Reservoir Account and distributed subject to the terms of this Agreement. The City shall retain the remaining twenty-five percent (25%) to apply to other parks requirements resulting from by Mesa Ridge development.

C. The City shall forward seventy-five percent (75%) of the park fees collected from Mesa Ridge Filings 6 and 7 ( $\$111,780.00$ ) to CCMD to be held in the Reservoir Account and distributed subject to the terms of this Agreement. ( $\$111,780.00 \times .75 = \$83,835.00$ ) The City shall retain the remaining twenty-five percent (25%) to apply to other parks requirements caused by Mesa Ridge development impacts.

D. Drainage fees received by the City from and after the Effective Date of this Agreement from CCMD or MRMD for properties which are not appurtenant to Hale Reservoir will be retained by the City to be used for other drainage impacts from Cross Creek and Mesa Ridge development impacts. Drainage fees received by the City for properties within Mesa Ridge which are appurtenant to Hale Reservoir shall be forwarded to CCMD to be added to the Reservoir Funds and applied pursuant to this Agreement.

E. The City will remit drainage and park fees required to be forwarded to CCMD on an annual basis. Notwithstanding all of the foregoing, however, the obligation of the City to transfer the additional Reservoir Funds to be received by the



City after the approval of this Agreement and other payment requirements hereunder shall be from year to year only; shall be subject to annual appropriations in the form of budgeted expenditures of the City; shall not constitute a mandatory charge or requirement in any ensuing budget year; and shall not constitute a general obligation or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of any constitutional or statutory limitation or requirement concerning the creation of indebtedness, nor a mandatory payment obligation of the City in any ensuing fiscal year beyond any fiscal year during which this Agreement shall be in effect. In addition, payment of all funds by the City to CCMD shall be subject to compliance with the remaining terms of this Agreement by CCMD and MRMD, including, but not limited to the requirements of Article I and Article II herein, violation of which shall constitute an irrevocable agreement for the City to immediately suspend payments to CCMD, and the City shall be allowed to offset any reduction in revenues in park fees and drainage fees which would have been payable absent the breach against any and all sums owed to CCMD hereunder.

#### IV. GENERAL PROVISIONS

1. Right to Audit. In the event that the City or MRMD makes a written reasonable request for audit, CCMD shall comply, and the expenses for such audit shall be paid by from the Reservoir Funds collected, held or distributed by CCMD.
2. Tabor Expenditures. Funds collected by the City and paid to the District pursuant to the Agreement may be treated as collections for another government under Article X, Section 20 of the Colorado Constitution and will not be included as revenue or and expenditure of the City. All of the revenues described in this Agreement to be used for the Park and Reservoir project are collected and spent for economic development purposes.
3. Default, and Remedies. In the event any party should fail or refuse to perform according to the terms of the Agreement, which default continues for thirty (30) days following notice and demand for correction thereof to the defaulting party by any other party, such party may be declared in default by the other party or parties and shall be served with a written notice by the party declaring the default and specifying the nature thereof, and further the party declaring the default may elect to suspend its compliance with the terms of this Agreement until such action is cured, and may further seek damages or avail itself of any other remedy in law or equity.
4. Third Parties/No Assignment. The Agreement shall not be deemed to confer any right to any person not a party to the Agreement. The City and Districts further agree that the rights and responsibilities of any party to this Agreement may not be assigned by any party without the prior written consent of the other parties hereto.
5. Governing Law/Venue. The laws of the State of Colorado, the Charter and ordinances of the City of Fountain shall govern the construction, interpretation and execution or enforcement of this Agreement. If any action should arise as the result of a breach or default by either party under this Agreement, court jurisdiction shall be

exclusively in the El Paso County District Court for the Fourth Judicial District of Colorado.

6. No Limitation on City Authority. The Agreement is not a limitation on the authority of the City to amend, modify, or repeal any of the City Code referred to in the Agreement nor otherwise limit the authority of the City to change its park fees or drainage fees, nor a limitation upon the City's legislative authority to enact ordinances, resolutions, rules, codes or policies.

7. City and Districts' Obligations Subject to Appropriation. The parties acknowledge that the City's obligations under this Agreement are subject to the annual monetary appropriations by the City. If the City should fail to budget and appropriate funds, then the City's obligations hereunder shall terminate as of the end of the fiscal year for which such funds were last budgeted and appropriated. Notwithstanding the foregoing, however, the City shall remain obligated to transfer and convey funds received from and owed to the Districts pursuant to the terms of this Agreement, which are to be maintained separate and apart from the City's general funds and obligations. Similarly, the Districts shall remain obligated to transfer and convey funds received pursuant to the terms of the CCMD/MRMD IGA or this Agreement pursuant to the terms set forth therein and in this Agreement.

8. Hold Harmless/Governmental Immunity Act Not Waived. In the event any claim is litigated, each party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to each party by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et. seq. The Districts shall neither have, nor exercise any control or direction over the manner and means by which City performs its obligations, except as otherwise stated in this Agreement and the City likewise will have, nor exercise any control or direction over the manner and means by which each District performs its obligations, except as otherwise stated herein. Each party understands and agrees that its employees are not employees of the other. Each party is solely responsible for payment of salaries, wages, payroll taxes, unemployment benefits or any other form of compensation or benefit to its employees under this Agreement. It is specifically agreed between the parties that this Agreement is not intended by any of its terms, provisions, or conditions to create in the public or in any individual member of the public a third party beneficiary relationship, or to authorize any person not a party to this Agreement to maintain suit for personal injuries or property damage pursuant to the terms, conditions or provisions of this Agreement.

9. Notice. All notices necessary or required under the Agreement shall be in writing and shall be effective upon personal delivery, upon delivery by nationally-recognized overnight delivery service, or three days after being placed in the U.S. mail, postage prepaid and return receipt requested, addressed as follows:

If to City: CITY OF FOUNTAIN  
Attn: City Manager  
116 S. Main Street  
Fountain, Colorado 80817  
Phone: (719) 322-2000

If to CCMD: Cross Creek Metropolitan District  
Attention: Elise Bergsten, Manager  
P. O. Box 1834  
Colorado Springs, Colorado 80901

If to MRMD: Mesa Ridge Metropolitan District No. 1  
Attention: Russ Dykstra  
1700 Lincoln Street, Suite 2000  
Denver, Colorado 80203

Notice given by personal delivery, overnight delivery or mail shall be effective upon actual receipt. The Parties may change any address to which Notice is to be given by giving notice as provided above of such change of address.

10. Severability. It is hereby expressly declared that all provisions hereof and their application are intended to be and are severable. In order to implement such intent, if any provision hereof or the application thereof is determined by a court or administrative body to be invalid or unenforceable, in whole or in part, the determination shall not affect, impair or invalidate any other provision hereof or the application of the provision in question to any other situation. If any provisions hereof or the application thereof is determined by a court or administrative body to be valid or enforceable only if the application is limited, its application shall be limited as required to more fully implement its purpose, and such holding shall not invalidate or render unenforceable any other provision of the Agreement unless such determination renders enforcement of the Agreement inequitable.

11. Headings. Section headings in the Agreement are for convenience only and shall not be used in its interpretation or considered part of the Agreement.

12. Counterparts. The Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have entered into the Agreement as of the day and year first above written.

CITY:

The CITY OF FOUNTAIN, COLORADO  
a municipal corporation  
and Colorado home rule city,



By: *Gabriel Ortega*  
Gabriel Ortega, Mayor

Attest:

*Silvia Hoffman*  
City Clerk


CCMD:

CROSS CREEK METROPOLITAN DISTRICT

BY: Donald F Smith  
11/19/15, as President

MRMD:

MESA RIDGE METROPOLITAN DISTRICT NO. 1

BY:   
\_\_\_\_\_  
Amador Brades, as President

Attachments:

**ATTACHMENT A --- PARK PLAN APPROVED BY CCMD AND MRMD**

**ATTACHMENT B --- COST ESTIMATES**

**ATTACHMENT C --- AUGMENTATION AGREEMENT**

**ATTACHMENT D – CCMD/MRMD IGA WITH ATTACHMENTS AND  
AMENDMENTS**

**ATTACHMENT E --- DRAINAGE MAP INCLUDING ALL MESA RIDGE  
PROPERTIES INCLUDED AND EXCLUDED FROM THIS IGA**

**ATTACHMENT A  
TO  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
CITY OF FOUNTAIN/CROSS CREEK/ MESA RIDGE METROPOLITAN  
DISTRICTS  
December, 2015**

**PARK PLAN APPROVED BY CCMD AND MRMD**



**ATTACHMENT B  
TO  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
CITY OF FOUNTAIN/CROSS CREEK/ MESA RIDGE METROPOLITAN  
DISTRICTS  
December, 2015**

**COST ESTIMATES AND REVENUE SOURCES**

<b>SOURCE OF FUNDS</b>	<b>AMOUNT</b>	<b>TIMING OF PAYMENT</b>
<b><u>Park and Drainage Funds:</u></b>		
CCMD/MRMD- Drainage Fees	\$560,000.00	City pays to CCMD in lump sum within thirty (30) days after Effective Date of this Agreement
MRMD - Drainage Fees Filings 11, 12, 13, 14 & 15, to the extent tributary to Hale	\$75,763.81	(as invoiced 5/16/12) Payable by MRMD to City in lump sum within 30 days after Effective Date of this Agreement
MRMD Park fees--Filing 8, held by City	\$79,758.75	\$106,345 x .75 = \$79,758.75 to be paid by annual payments of \$7,975.87/year, payable to CCMD by City commencing within 30 days after Effective Date of this Agreement
MRMD- Park Fees Fils 6 & 7	<u>\$83,835.00</u>	\$111,780.00 x .75 = \$83,835.00, to be paid by City to CCMD in lump sum within 30 days after Effective Date of this Agreement
<b>Total Park and Drainage fees:</b>	<b>\$ 799,357.56</b>	
<b><u>GRANT FUNDS:</u></b>		
CCMD-Conservation Trust Fund	\$45,000.00	
Water Supply Reserve Account-Basin Grant	\$75,000.00	(application to come)
Water Supply Reserve Account-Statewide Grant	\$200,000.00	(application to come)
CWCB Loan and/or GOCO Grant	<u>2,423,289.00</u>	(application to come)
<b>Total Grant Funds:</b>	<b>\$2,743,289.00</b>	

All funds shall be deposited into the Reservoir Account and maintained and distributed only in accordance with this Agreement.



**ATTACHMENT C  
TO  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
CITY OF FOUNTAIN/CROSS CREEK/ MESA RIDGE METROPOLITAN  
DISTRICTS  
December, 2015**

**AUGMENTATION AGREEMENT**

**AUGMENTATION AND WATER SERVICE AGREEMENT**

This Augmentation and Water Service Agreement ("Agreement") is entered into Oct. 20, 2015, between the City of Fountain, Colorado ("City") and Cross Creek Metropolitan District ("District.")

*Recitals*

WHEREAS, the City is a home rule city that provides municipal water services to its residents, including residents of the District, and others; and

WHEREAS, the District is a quasi-municipal corporation located within the City of Fountain that supplies certain municipal services (including park and recreation services) to its residents; and

WHEREAS, the District wishes to construct, own and operate a non-potable water system for outdoor irrigation at Cross Creek Regional Park; and

WHEREAS, the District wishes to contract with the City for augmentation of depletions associated with its non-potable water system, and for use of treated City water as a supplemental irrigation supply; and

WHEREAS, the City wishes to provide such augmentation and supplemental treated water irrigation supply to the District on the terms and conditions set forth in this Agreement,

NOW, THEREFORE, in consideration of the foregoing and the following terms and conditions, the City and District agree as follows:

1. Non-Potable Water System. The District will design and construct a non-potable water system, including such wells, associated facilities and internal distribution lines as it deems necessary for its non-potable water system that will be used for irrigation at the Cross Creek Regional Park, which is located at 8115 Parkglen Drive, Fountain, CO 80817. The non-potable water system shall be designed and constructed in accordance with and subject to the City's design, materials and construction specifications and approval, at the District's expense, and shall include such metering and measuring devices as the City shall require in order to properly determine augmentation requirements, as well as such devices as the City shall require to prevent cross-connection with and backflow to the City's treated water distribution system.
2. Plans and Approvals. The final plans and specifications for the non-potable water system must be approved by the City. No substantial changes shall be made to the approved final plans and specifications without the City's prior written approval. The District shall contact the City Water Department at least ten (10) working days prior to commencement of

construction to arrange a preconstruction meeting between representatives of the Water Department, the Water Department's inspector, and District's engineer and contractor to review the final plans and any minor modifications thereto, to discuss construction scheduling, arrangements for the advance deposit of the City's construction inspection fees, and any other matters that the parties deem necessary. The District's registered professional project engineer shall inspect and certify the design and installation of the non-potable water system infrastructure, including all cross-connection and backflow prevention devices.

3. Fees. The District shall timely pay all fees imposed by the City in connection with reviewing and approving this Agreement, the design drawings and construction plans, as well as construction inspection fees. An advance deposit for construction inspection fees shall be required at the preconstruction meeting described in paragraph 2 above. The District shall also be responsible for timely acquiring and paying for all permits and permit fees required from entities other than the City as necessary for construction of the non-potable water system.

4. Construction of Non-Potable System. Upon completion of the prerequisites described in paragraphs 2 and 3 above, the District shall proceed with due diligence to construct the non-potable water system in accordance with the plans and specifications and the construction schedule.

5. Inspection of Construction. Construction must be inspected by the City's engineers or other designated personnel prior to burial or final installation. The District shall give the City Water Department reasonable advance notice when the non-potable, lines and/or associated facilities are ready for burial or installation, and the City's engineer or agent shall inspect said mains, lines and/or associated facilities within two working days of such notice. Construction shall be completed in accordance with the construction schedule, subject to any delays due to force majeure. Should construction not be completed within five years of the date of this Agreement, the City may, at its election, terminate this Agreement, and following termination, the City shall have no further obligation to provide augmentation or supplemental treated irrigation water to the District.

6. Water Rights and Augmentation. The District, at its sole cost, shall acquire and adjudicate all water rights required for the non-potable water system, and the City shall augment depletions associated with such water rights, provided, however, that the City's augmentation obligations shall not exceed the lesser of 13.3 acre-feet per year or the amount of water available to the shares of Fountain Mutual Irrigation Company ("FMIC") assigned to the City as described in paragraph 7 below. Notwithstanding the foregoing, and notwithstanding the existence of this Agreement, the District and Cross Creek Regional Park shall be subject to the City's water restrictions and curtailment ordinances, policies and procedures. Other than the water rights for the non-potable system as described herein, neither the District nor any person owning or occupying property within the District shall appropriate, purchase, lease or otherwise acquire any water or water rights or water supplies for use within the District without first obtaining the prior written approval of the City, which may be withheld for any reason.

The City will obtain, at its cost, any necessary water court approval for augmentation by the City of the District's wells associated with the non-potable system, using the FMIC shares and other City augmentation supplies as deemed appropriate by the City. The parties acknowledge that the amount of augmentation water available from the FMIC shares described in paragraph 7 below is expected to be insufficient to allow the non-potable system to legally provide a full irrigation supply for the Cross Creek Regional Park. Water rates charged to the District will reflect any additional augmentation provided by the City, and the City shall provide additional augmentation beyond that provided for in paragraph 7, only if and in the amount the City determines, in its sole discretion, can be provided consistent with its water court decrees, planning objectives and other augmentation commitments. Alternatively, the City and District may mutually agree to file a joint water court application for adjudication of the District's water rights and augmentation by the City, in which case the parties shall also mutually agree upon a method for sharing expenses for such application, including legal and engineering fees. Should the District wish to use the non-potable system before the water court decree has been entered, the District may, at its own cost, seek a temporary substitute water supply from the Colorado State Engineer, provided that the City and the District shall first have agreed on the amount of augmentation water to be provided from City augmentation supplies other than the FMIC shares described in paragraph 7 below.

7. Fountain Mutual Shares. The District has entered into a Lease-Purchase Agreement dated November 16, 2009 for the lease-purchase of 19 FMIC shares from FF Investments, and/or Assigns ("Lease-Purchase Agreement"). Upon execution of this Agreement by all parties, the District will lease the 19 FMIC shares ("FMIC Shares") to the City at no charge, and, upon the District's purchase of any such shares as provided in the Lease-Purchase Agreement, the District will transfer such shares to the City for no additional consideration. The District shall be responsible for all payments required pursuant to the Lease-Purchase Agreement, and all charges, assessments and fees associated with the FMIC Shares prior to transfer of the FMIC Shares to the City. After each transfer of FMIC Shares to the City, the City will be responsible for all charges, assessments and fees imposed by the Fountain Mutual Irrigation Company on the FMIC Shares so transferred.

8. District's Obligations Regarding Non-Potable System. The District shall be solely responsible for, and bear all cost of, constructing, operating, maintaining, repairing, and replacing the non-potable water system, including wells, pipelines, irrigation detention structures, sumps, water pumps, and other facilities and infrastructure constructed by the District. The District shall obtain all required well permits, and shall maintain and timely provide such records and accountings as the City and state water administration officials shall require in connection with the District's water rights and the City's augmentation of such rights.

9. Limitations on Provision of Augmentation. Fountain will provide augmentation water to augment depletions associated with non-potable water use at Cross Creek Regional Park only in the amounts herein provided for, and no expansion of uses,

connections, or water service, other than the supplemental treated water supply described in paragraph 10 is in any way authorized by this Agreement.

10. Supplemental Treated Water Supply. The parties acknowledge that the water rights and augmentation plan to be developed for the non-potable irrigation system will not provide a full irrigation supply for the Cross Creek Regional Park. The City will provide additional metered treated water supplies to allow irrigation of trees, lawns and gardens in Cross Creek Regional Park. The City agrees to provide an adequate supply of treated water to irrigate not more than 30 acres of trees, lawns and gardens at the Cross Creek Regional Park, with a maximum delivery commitment not to exceed 120 gpm, and a maximum volumetric commitment not to exceed 15 acre-feet per year.

Treated water will be delivered to the District at a 2" tap located at 8107 Parkglen Drive, Fountain, CO 80817 and will be metered. The District has already paid the tap fee for the treated water tap, but since the District is providing the FMIC shares to the City, the City's water resource fee will be waived. Notwithstanding the foregoing, if the District is unwilling or unable to purchase and provide to the City the 19 FMIC shares described in paragraph 7, the water resource fee will be reinstated and the District will be required to pay said fee as a condition of continued treated water service.

The District shall install and maintain all cross-connection prevention and backflow prevention devices as required by the City, and shall inspect them monthly during the irrigation season to assure that they are in working order, and shall advise the City Water Department of the results of each inspection within three business days of the inspection. In addition, the District will allow the City, at the District's expense, to undertake its own inspections and water quality testing during normal business hours to assure that there is no cross-connection or backflow from the irrigation system to the City's treated water system.

12. No Guarantee. The City is not by this Agreement prejudging, certifying or guaranteeing its ability to provide augmentation or treated water except as provided herein, nor may this Agreement be used as evidence of approval of any land use requests, or as evidence of approval of water service or augmentation for any other purpose, except as provided herein.

13. Service Subject to the City Charter, Codes, Rules, Regulations and Policies. The District shall be bound by, and all water service provided hereunder shall be subject to, all applicable provisions of the Charter of the City of Fountain and the Fountain Municipal Code, including but not limited to rules and regulations promulgated pursuant to Code Section 13.04.070, as well as all other applicable rules, policies or regulations of the City now in effect or as may be hereafter adopted.

14. Rules Regarding Water Use. The District agrees that all provisions set forth herein are rules and regulations governing the use of the non-potable water system, in addition to those described in paragraph 13, and the District agrees that this Agreement shall be recorded as a covenant running with the land. The District agrees to assist the

City in every manner reasonably possible to enforce the City's ordinances, rules and regulations, including curtailment during times of shortage, elimination of any potential cross-connections, and the utilization of water conservation devices as set forth in the Fountain Municipal Code. The District also agrees to prohibit all unnecessary or unreasonable waste of water from the non-potable water system.

15. Liability; Indemnification. The City shall not be liable for any damage or injury that may arise from or in connection with the District's ownership, use, operation, maintenance, repair or replacement of the non-potable water system, including any damage or injury resulting from any runoff, drainage or overflow from the Cross Creek Regional Park, or for any loss or damage associated with the impoundment or any other use of the water by the District. In addition, the City shall have no liability for failure to provide augmentation or treated water hereunder because of a failure of augmentation supplies due to drought, inadequate runoff, poor quality, failure of infrastructure, or other occurrence beyond the reasonable control of the City.

16. Default; Termination; Litigation. In the event that the District fails to perform any of its promises or covenants contained in this Agreement, the District shall be in default, and upon 10 days written notice, the District's rights to receive augmentation or treated water pursuant to this Agreement shall be suspended for such time as the District continues to be in default. If an event of default continues for more than 20 days following notice, the City may, at its discretion, terminate this Agreement, and disconnect the treated water service. In the event that the City violates this Agreement, the District shall give the City 10 days written notice of default. If the City fails to cure the default within that time period, the District may terminate this Agreement, and shall be entitled to re-conveyance of any of the FMIC shares that have been transferred to the City pursuant to this Agreement.

If this Agreement is terminated by a party pursuant to this paragraph as a result of the other party's uncured default, the non-defaulting party shall be entitled to recover, in addition to any other damages to which it may be entitled, the costs (including attorney and expert witness fees) it incurred in obtaining a water court decree and/or State Engineer temporary substitute water supply plan as described in paragraph 6 above; and, if a pending water court case or State Engineer proceeding is dismissed in connection with such termination, any costs and fees associated with the dismissal. If a party is required to institute legal action to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees. Venue for all such actions shall be the District Court, El Paso County, Colorado.

17. Termination Without Cause. This Agreement may be terminated by the District without cause at any time on 30 days prior written notice, but the City shall retain all FMIC shares transferred to it by the District. The City may elect to terminate this Agreement without cause by giving the District 180 days prior written notice of termination, and re-conveying to the District any of the FMIC shares that have been conveyed to the City pursuant to paragraph 7 above. The District acknowledges that if the City terminates this Agreement without cause, and reconveys the FMIC shares, the

District will have insufficient augmentation supplies for all of its augmentation needs. If this Agreement is terminated by either party without cause, the other party shall be entitled to all remedies available to it, and may seek recovery of the costs (including attorney and expert witness fees) it incurred in obtaining a water court decree and/or State Engineer temporary substitute water supply plan as described in paragraph 6 above, and, if a pending water court case or State Engineer proceeding is dismissed in connection with such termination, any costs associated with the dismissal.

18. Notices. Notices required hereunder shall be in writing, and shall be sent by United States Mail, first class postage prepaid, addressed to the party to whom directed at its address set forth below or at such other address as may have been provided by notice pursuant to this paragraph:

A. **CITY OF FOUNTAIN:**

Utilities Director  
CITY OF FOUNTAIN  
116 South Main Street  
Fountain, CO 80817

B. **CROSS CREEK METROPOLITAN DISTRICT:**

Board President  
P.O. Box 1834  
Colorado Springs, CO 80901

19. Other Water Court Proceedings. The City reserves the right to file a change of water rights application concerning any of its water rights including the water rights used for augmentation pursuant to this Agreement, or any other water right owned or acquired by the City. The District expressly agrees that this Agreement does not provide any basis for the District to object to the exercise of the rights reserved to the City in this paragraph, and so long as the District is receiving augmentation or treated water service from the City, the District will not oppose any water court applications filed by the City.

20. Assignment and Amendment. This Agreement and the rights and obligations of a party hereunder shall not be transferred or assigned without the prior written consent of the other party, and any such transfer or assignment without such consent shall be void. Any amendment to this Agreement must be in writing and signed by the parties. The City's augmentation supplies may not be used to augment depletions from any system other than the District's non-potable water system described herein, and the District's non-potable water system may not be used to serve any properties other than the Cross Creek Regional Park without the City's prior written consent. This Agreement is not intended to give, and does not give the District any property rights to City water or water rights.

21. No Regulated Public Utility Status. The parties agree that by this Agreement, the City does not become a regulated public utility compelled to serve other parties similarly situated. The District agrees that neither it, nor its successors or assignees, shall at any time petition the Colorado Public Utilities Commission, the Board of County Commissioners of El Paso County, or any other authority or agency, to acquire jurisdiction over any utility rate set by the City. The parties agree that in the event the City is held to be a regulated public utility, this Agreement shall terminate and be of no further force and effect.

22. Total Agreement. This Agreement supersedes and controls all prior written and oral agreements and representations of the parties and is the total integrated agreement between the parties.

23. Authorization. By signing this Agreement, the parties acknowledge and represent to one another 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.

24. Force Majeure. Neither party shall be held liable for failure to perform the license due to wars, strikes, acts of God, natural disasters, drought or other similar occurrences outside the control of either party, and any deadlines for performance shall be extended by the number of days of duration of the event of *force majeure*.


25. Binding Agreement. Except as herein provided, this license is binding upon the successors and assignees of the parties hereto.

IN WITNESS WHEREOF, we have set our hands and official seals the day and year written above:

**CITY OF FOUNTAIN, COLORADO**

  
Caris A. Mitchell  
10/15/2015

**CROSS CREEK METROPOLITAN DISTRICT**

  
Donald Smith  
October 15, 2015

**ATTACHMENT D  
TO  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
CITY OF FOUNTAIN/CROSS CREEK/ MESA RIDGE METROPOLITAN  
DISTRICTS  
December, 2015**

**CCMD/MRMD INTERGOVERNMENTAL AGREEMENT WITH  
ATTACHMENTS AND AMENDMENTS**

**INTERGOVERNMENTAL AGREEMENT REGARDING  
REGIONAL PARK**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING REGIONAL PARK (the "Agreement") is made and effective this 26<sup>th</sup> day of January 2011, by and between MESA RIDGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("District No. 1"), and CROSS CREEK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Cross Creek"). District No. 1 and Cross Creek are sometimes individually referred to herein as a "Party" and collectively as the "Parties".

**RECITALS**

WHEREAS, the Parties are authorized to contract with one another pursuant to Section 29-1-201, *et seq.*, C.R.S., and Article XIV, Section 18(2)(a) of the Colorado Constitution; and

WHEREAS, District No. 1 was established to provide various services to its residents and the residents of Mesa Ridge Metropolitan District No. 2 ("District No. 2"), including but not limited to the provision of parks and recreation facilities; and

WHEREAS, pursuant to its Service Plan dated July 8, 2003, Cross Creek was established to finance the design, construction, and operation and maintenance of certain neighborhood and regional park and recreation related improvements; and

WHEREAS, Cross Creek intends to construct a regional park that will benefit the residents of Cross Creek, District No. 1 and District No. 2 (the "Regional Park"); and

WHEREAS, the location of the Regional Park is shown on Exhibit A attached hereto, adjacent to and of benefit to District No. 1 and District No. 2 and its property owners and residents; and

WHEREAS, Cross Creek has developed and formally adopted a capital construction plan for the Regional Park (the "Regional Park Plan"); and

WHEREAS, a copy of the Regional Park Plan is attached hereto and as may be amended in the future as Exhibit B and is incorporated herein by reference; and

WHEREAS, District No. 1 intends to participate in certain design and construction costs required to complete the Regional Park, up to a maximum capital contribution of one half of the cost, currently estimated as Two Million Five Hundred Thousand Dollars (\$2,500,000) or the amount of the actual Mesa Ridge Park Fee actually collected for homes west of the future alignment of Powers Boulevard, whichever is lesser (the "Mesa Ridge Contribution"); and



WHEREAS, District No. 1 has resolved to impose a park fee (the "Mesa Ridge Park Fee") within the area subject to the Mesa Ridge Park Fee as set forth in the resolution establishing the same; and

WHEREAS, revenues generated by the Mesa Ridge Park Fee are anticipated to assist District No. 1 with funding the Mesa Ridge Contribution among other park projects within the Mesa Ridge development, as more specifically set forth in this Agreement; and

WHEREAS, the Parties have agreed to equitably fund the continued operation and maintenance of the Regional Park, both during its construction and following its completion, as more specifically set forth in this Agreement; and

WHEREAS, certain real property (generally located west of Powers Boulevard) was excluded from the boundaries of Cross Creek and included within the boundaries of District No. 2 (the "Excluded Property"); and

WHEREAS, a legal description and map of the Excluded Property is attached hereto as Exhibit C; and

WHEREAS, the Parties desire to establish a mechanism whereby District No. 1 will make an annual payment to Cross Creek to assist Cross Creek with the costs of operating and maintaining the Regional Park, plus an annual amount equivalent to the revenues that Cross Creek would have received by levying an operation and maintenance mill levy against the Excluded Property (the "Tax Equivalent Maintenance Fee"); and

WHEREAS, the Parties intend that this Agreement set forth their respective rights and obligations as to Mesa Ridge Contribution and the Tax Equivalent Maintenance Fee.

#### COVENANTS

NOW, THEREFORE, in consideration of the premises, the mutual advantages accruing to the parties, the performance of promises contained herein, and other good and valuable consideration, the Parties agree as follows:

#### SECTION I - FUNDING DESIGN AND CAPITAL CONSTRUCTION OF REGIONAL PARK

1. Mesa Ridge Park Fee Collection and Distribution. District No. 1 shall collect the Mesa Ridge Park Fee in accordance with that certain resolution establishing the same, a copy of which is attached hereto as Exhibit D. District No. 1 shall hold revenues generated by the Mesa Ridge Park Fee in a separate account and may, subject to the discretion of District No. 1's Board of Directors (the "Mesa Ridge No. 1 Board"):

(a) use the same as a primary source of revenue to support revenue bonds or other financing method issued by District No. 1 for the purpose of assisting in the capital

construction of the Regional Park ("Regional Park Revenue Bonds"); or

(b) otherwise use the Mesa Ridge Park Fee to effect a capital contribution or contributions to Cross Creek not exceeding the Mesa Ridge Contribution, in the aggregate as agreed between the parties not to exceed Two Million Five Hundred Thousand Dollars in 2010 dollars.

(c) contribute as matching funds to grants whose purpose is to construct the park or the storm water management facilities within the park.

(d) The issuance of the Regional Park Revenue Bonds is a matter that will, at all times, remain within the discretion of the Mesa Ridge No. 1 Board of Directors. In no event shall District No. 1 be required to issue Regional Park Revenue Bonds exceeding the Mesa Ridge Contribution in principal amount. The Mesa Ridge Contribution may be made by District No. 1 to Cross Creek in more than one installment. Should District No. 1 desire to make the Mesa Ridge Contribution to Cross Creek in more than one installment, the installment schedule shall be reduced to writing and executed by the Parties in substantially the form set forth in Exhibit E attached hereto, within one (1) year following mutual execution of this Agreement. However, under no circumstances will District No. 1 withhold funds in its possession derived from the Mesa Ridge Park Fee.

2. Use of Mesa Ridge Contribution. The Mesa Ridge Contribution shall be used by Cross Creek solely for the purpose of designing and constructing the Regional Park, and the funds remitted to Cross Creek shall be subject to the further condition that they shall only be used to fund specific items identified with particularity in the Regional Park Plan, as the same may be amended from time to time. District No. 1 agrees to make best efforts to cooperate with Cross Creek for the prompt approval of the Regional Park Plan.

Cross Creek may amend the Regional Park Plan subsequent to the date of this Agreement and any and all such amendments shall be subject to the prior written approval of the Mesa Ridge No. 1 Board of Directors, which approval may not be unreasonably withheld. The general location of the Regional Park is shown on Exhibit A, attached hereto and incorporated herein by this reference. The location of the Regional Park may not vary from that depicted in Exhibit A without the subsequent mutual written agreement of the Parties. Cross Creek shall account for the capital funding and maintenance funding of the Park and shall, upon receipt, deposit the Mesa Ridge Contribution, or any installment thereof, into the established accounts of Cross Creek. Mesa Ridge may request a review of the Regional Park Account, at its own expense, on reasonable notice to Cross Creek.

(a) Withdrawals. Cross Creek may withdraw funds from the Regional Park Account as necessary to pay for costs associated with the design and construction of the Regional Park, as the same become due.

(b) Regional Park Design and Construction. Cross Creek shall be responsible for completing the final design of the Regional Park and constructing the same in

accordance with the Regional Park Plan, such cost or subsequent cost associated with redesign to be included in the overall cost of the Park. Unless accepted for operation and maintenance by the City of Fountain (the "City"), Cross Creek shall be responsible for the continued operation and maintenance of the Regional Park, but District No. 1 will be responsible for a proportionate share of said operations and maintenance costs. Cross Creek shall administer and coordinate any design and construction related activities pertaining to the Regional Park in a diligent, good, workmanlike, and timely manner.

(c) Retention. Cross Creek shall construct or cause to be constructed the Regional Park as it deems appropriate, and shall take actions necessary to fund the construction of the Regional Park (on any particular phase thereof) in accordance with the procedures specified in this Agreement. All payments to contractors shall be subject to withholding for retention in accordance with Colorado law regarding public financing and construction of public improvements.

## SECTION II - FUNDING OPERATIONS AND MAINTENANCE OF REGIONAL PARK

1. Funding the Operations and Maintenance of the Regional Park. The Parties have agreed to jointly fund the operation and maintenance of the Regional Park, beginning on January 2, 2012 as more specifically set forth below. Both Districts hereby agree and acknowledge that the special districts are required to appropriate adequate funds for services rendered prior to engaging those services; therefore,

(a) Cross Creek shall estimate the Annual Operating costs of the Regional Park on or before October 15 and provide the cost estimate to District No. 1. Cross Creek shall exercise care to insure that the completion of capital projects to construct the Park is balance with the annual cost to maintain the improvements.

(b) District No. 1 shall include its share of the Annual Operating costs in its budget estimate for the succeeding year.

(c) When both Districts' budgets are approved and the funds appropriated by their respective boards, District No. 1 shall pay to Cross Creek its share of the Annual Operating Costs quarterly, at the beginning of each quarter of the year, and without set aside, set off or retention, except as provided in Section 2 below.

(Annual Operating Costs shall consist of the variable costs including but not limited to utilities, insurance, snow removal, mowing, turf maintenance, landscaping and facilities upkeep and the replacement costs excluding capital improvements.)

2. Adjustment of the Annual Operating Costs. On or before October 15, Cross Creek will provide District No. 1 an estimate of costs to complete the budget year and a comparison of actual costs to estimated costs. District No. 1 shall adjust the payment of Annual Operating Costs for the succeeding year deducting any credit from the previous year's budget or

payment of additional funds if the estimated costs were less than the actual costs.

3. Tax Equivalent Maintenance Fee Calculation. The parties recognize that a portion of the land within Cross Creek has been excluded from Cross Creek and included in Mesa Ridge. Such transfer is subject to the approval by the City of Fountain of a Service Plan Amendment to the Cross Creek Metropolitan District Service Plan. To compensate Cross Creek for the lost revenues from lands originally within its service area, Mesa Ridge shall pay to Cross Creek additional sums for park operation and maintenance of the Exclusion Property as follows:

Cross Creek shall be responsible for obtaining the final assessed valuation of the Exclusion Property from the El Paso County Assessor not later than December 10 of each year beginning on December 10, 2011. District No. 1 will pay to Cross Creek the Tax Equivalent Maintenance Fee in each year that this Agreement remains in effect, calculated as follows:

Step One:

Total annual operations and maintenance budget for Regional Park/  
(divided by)  
Total projected revenue to be raised by the then-current Cross Creek total mill levy  
  
(equals) = Cross Creek Regional Park maintenance percentage

Step Two:

Cross Creek Regional Park maintenance percentage  
(multiplied by)  
Cross Creek then-current total mill levy (as certified annually by Cross Creek Board)  
  
(equals) = Regional Park Maintenance Mill Levy

Cross Creek shall calculate the ad valorem property tax revenue that would have been generated on the Exclusion Property by the imposition of the Regional Park maintenance Mill Levy on the same, and shall notify District No. 1 of such amount (the "Tax Equivalent maintenance Fee") not later than January 31 of each year. Mesa Ridge shall promptly pay the fee.

**SECTION III - STANDARD PROVISIONS**

1. Enforcement of Contract. The Parties acknowledge and agree that this Agreement may be enforced in law or in equity by a decree of specific performance, damages, or such other legal and equitable relief as may be available to either party.

2. Relationship of the Parties. Nothing contained herein shall be construed or interpreted as creating any relationship among the Parties (including, but not necessarily limited

to, that of a partnership or a joint venture) other than as specifically described herein. No Party shall have the authority to bind the other Party to any agreement, contract, or indebtedness and no Party shall be considered the agent of any other Party to this Agreement. Nothing herein is intended to or waives any Party's immunities at law, including provisions of the Governmental Immunity Act.

3. No Third Party Beneficiaries. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law.

4. Non-waiver of Rights. No failure by a Party to insist upon the strict performance of any term, covenant or agreement contained in this Agreement, no failure by a Party to exercise any right or remedy under this Agreement, and no acceptance of partial payment, shall constitute a waiver of any such term, covenant or agreement, or a waiver of any such right or remedy.

5. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

6. Term. This Agreement shall remain in effect until terminated by mutual written agreement of the Parties.

7. Integration. This Agreement is intended as the complete integration of all understandings between the Parties and constitutes the entire agreement between the Parties with respect to the subject matter herein. No prior or contemporaneous addition, deletion or other amendment to this Agreement shall have any force of effect, unless embodied herein in writing.

8. Modification. Modification or waiver of this Agreement or any covenant, condition or provisions herein shall not be valid unless in writing and duly executed by the Parties.

9. Captions. The headings, sections and paragraphs herein are included only for convenience and reference. If any conflict between any heading and the text of this Agreement exists, the text shall control.

10. Indemnification. Subject to the Colorado Governmental Immunity Act, and without waiving the provisions of the same, the Parties agree that each shall indemnify the others, their officers, employees and agents from and against any claim, damages, losses or expenses which are the result of negligent acts or omissions from their respective officers, employees or agents in connection with this Agreement.

11. Governing Law and Jurisdiction. This Agreement and all disputes arising hereunder shall be governed by the laws of the State of Colorado, and the Parties agree that the venue and jurisdiction over any claim arising from this Agreement shall lie in the District Court of El Paso County.

12. Notice. Any written notice required by this Agreement shall be deemed delivered on the happening of any of the following: (1) hand delivery to the persons at the addresses below; (2) delivery by facsimile with confirmation of receipt to the fax number below (to be followed by the mailing of a copy of said notice); or (3) within three (3) days of being sent certified, first class mail, postage prepaid, return receipt requested addressed as follows:

District No. 1: Mesa Ridge Metropolitan District No. 1  
c/o R.S. Wells LLC  
Attn: Manager  
8390 East Crescent Parkway, Suite 500  
Greenwood Village, CO 80111  
Phone: (303) 779-4525  
Fax: (303) 779-2050

*With copy to:* Grimshaw & Harring, P.C.  
Attn: Russ Dykstra  
1700 Lincoln Street, Suite 3800  
Denver, CO 80203  
Phone: (303) 839-3845  
Fax: (303) 839-3838

Cross Creek: Cross Creek Metropolitan District  
c/o District Management of Southern Colorado  
P.O. Box 1976  
Colorado Springs, CO 80901  
Phone: (719) 598-0230  
Fax: (719) 329-1444

*With copy to:* Cross Creek Metropolitan District  
c/o Susemihl, McDermott & Cowan, P.C. 660  
Southpointe Court, Suite 210  
Colorado Springs, CO 80906  
Phone: (719) 579-6500  
Fax: (719) 579-9339

Each party shall have the right, by giving written notice to the other party, to change the address at which its notices are to be received.

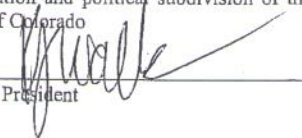
13. No Personal Liability. No official, director, officer, agent or employee of any Party will be charged personally or held contractually liable by or to the other Party under any term or provision of this Agreement or because of any breach thereof or because of its or their

execution, approval, or attempted execution of this Agreement.

14. Counterparts: Facsimile. This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. A facsimile transmitted copy of this Agreement executed by one of the Parties hereto will be accepted as a copy of this Agreement originally executed by such Party.


Made and entered into as of the date first written above.

MESA RIDGE METROPOLITAN  
DISTRICT NO. 1, a quasi-municipal  
corporation and political subdivision of the  
State of Colorado

By:   
President

ATTEST:  
  
Secretary

CROSS CREEK METROPOLITAN  
DISTRICT, a quasi-municipal corporation  
and political subdivision of the State of  
Colorado

By:   
President

ATTEST:  
  
Secretary

EXHIBIT "A"

LEGAL DESCRIPTION:

A tract of land located in the Northeast quarter (NE1/4) of Section 29, Township 15 South, Range 65 West of the 6th P.M., El Paso County, Colorado, being more particularly described as follows:

BEGINNING at the intersection of the Southerly boundary line of the Fountain Mutual Irrigation Channel as recorded in Book 5506 at Page 1290 of the records of said El Paso County and the Northeasterly boundary line of Sneffels Street as described at Reception No. 97048940 of the records of said El Paso County, the following twelve (12) courses are on said Southerly boundary line; thence: 1) N03°52'21"W a distance of 48.30 feet to a point of curve; 2) on a curve to the right having a central angle of 16°17'03", a radius of 360.00 feet for an arc distance of 102.32 feet; 3) N12°24'42"E a distance of 351.27 feet to a point of curve; 4) on a curve to the right having a central angle of 46°10'51", a radius of 20.00 feet for an arc distance of 16.12 feet; 5) N58°35'33"E a distance of 360.62 feet to a point of curve; 6) on a curve to the left having a central angle of 24°15'55", a radius of 260.00 feet for an arc distance of 110.11 feet; 7) N34°19'38"E a distance of 103.21 feet to a point of curve; 8) on a curve to the right having a central angle of 17°50'17", a radius of 160.00 feet for an arc distance of 49.81 feet; 9) N52°09'55"E a distance of 78.21 feet to a point of curve; 10) on a curve to the right having a central angle of 86°49'13", a radius of 50.00 feet for an arc distance of 75.76 feet; 11) S41°00'52"E a distance of 343.09 feet to a point of curve; 12) on a curve to the left having a central angle of 22°14'37", a radius of 220.00 feet for an arc distance of 85.41 feet to the West boundary line of North Fountain Addition No. 15 recorded in Ordinance No. 692 and in Book 5542 at Page 345 of the records of said El Paso County; thence S00°22'20"W on said West boundary line, a distance of 1151.95 feet to the Northerly right-of-way line of Mesa Ridge Parkway as described in Book 6788 at Page 538 of the records of said El Paso County, the following three (3) courses are on said Northerly right-of-way line; thence: 1) S50°45'14"W a distance of 211.69 feet to a point of curve; 2) on a curve to the right having a central angle of 90°00'00", a radius of 100.00 feet for an arc distance of 157.08 feet; 3) N39°14'46"W a distance of 5.12 feet to the Southeast corner of said Sneffels Street, the following four (4) courses are on the Northeasterly boundary line of said Sneffels Street; thence: 1) N39°14'46"W a distance of 223.86 feet to a point of curve; 2) on a curve to the left having a central angle of 11°45'40", a radius of 1040.00 feet for an arc distance of 213.48 feet; 3) N51°00'26"W a distance of 416.18 feet to a point of curve; 4) on a curve to the right having a central angle of 14°23'49", a radius of 340.00 feet for an arc distance of 85.43 feet to the POINT OF BEGINNING and containing 25.065 acres of land, more or less.

Prepared By: John L. Bailey, PLS #19586  
for and on behalf of Rockwell Consulting, Inc.  
1955 N. Union Blvd., Suite 200  
Colorado Springs, CO 80909

LOCATED IN A PORTION OF  
THE NE1/4 OF SECTION 29,  
T-15-S, R-65-W OF THE 6th P.M.,  
EL PASO COUNTY, COLORADO

JOB NO. 05-068

PAGE 1 OF 2  
FILE: 05068EXL.DWG  
DATE: 02/21/07

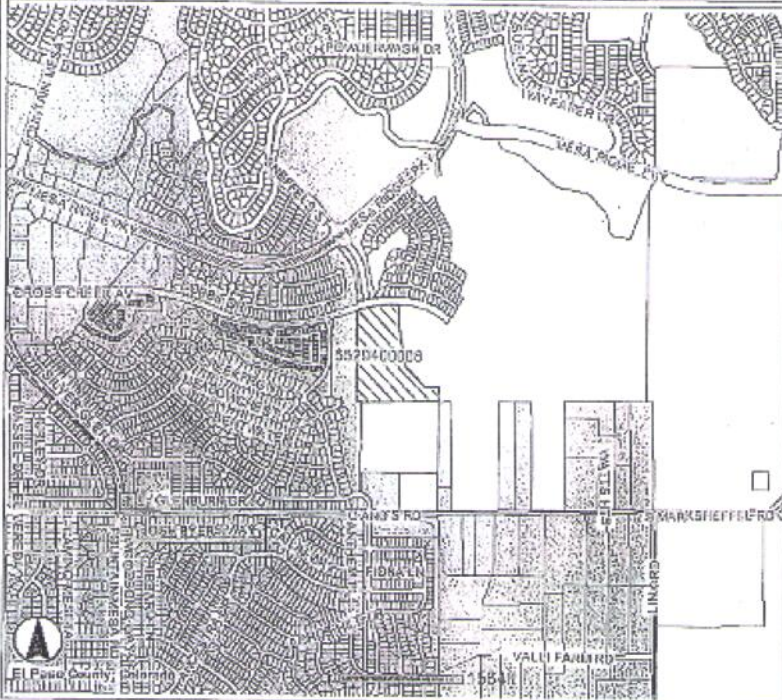




**El Paso County Schedule Information**

Schedule Number: 5529400008  
Schedule Address: 0 29-15-65  
Schedule Owner: CROSS CREEK METROPOLITAN DISTRICT  
Zoned: (Not County Zoned)  
Area: 17.32 Acres

Owner Mailing Address: PO BOX 1976



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**El Paso County Schedule Information**  
 Schedule Number: 5529401006  
 Schedule Address: 7760 C & S RD  
 Schedule Owner: CROSS CREEK METROPOLITAN DISTRICT  
 Zoned: (Not County Zoned)  
 Area: 4.91 Acres

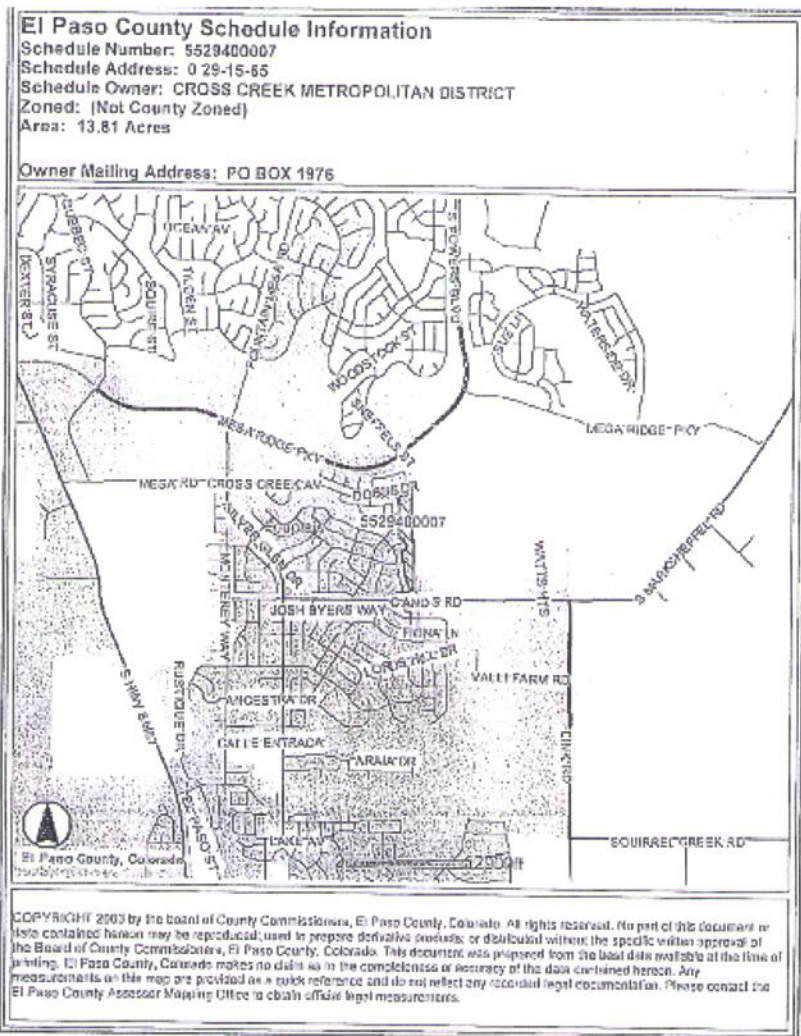
Owner Mailing Address: PO BOX 1975

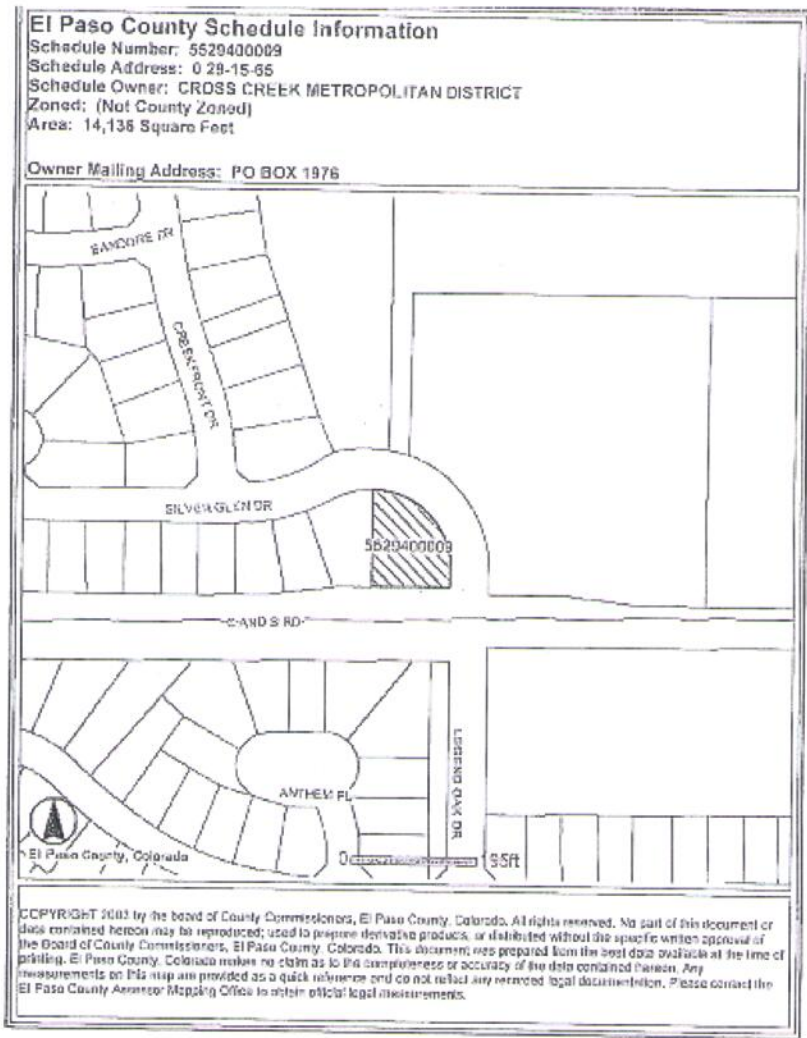
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**El Paso County Schedule Information**  
 Schedule Number: 5529401005  
 Schedule Address: 7750 C & S RD  
 Schedule Owner: CROSS CREEK METROPOLITAN DISTRICT  
 Zoned: (Not County Zoned)  
 Area: 4.34 Acres

Owner Mailing Address: PO BOX 1975

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## EXHIBIT C

### Mesa Ridge Filing No. 6

A tract of land being a portion of the North 1/2 of Section 29, Township 15 South, Range 65 West of the Sixth Principal Meridian, El Paso County, Colorado, being more particularly described as follows:

BEGINNING at the Southeast corner of Lot 8, Markets at Mesa Ridge Filing No. 1 as recorded at Reception No. 200014338 of the records of said El Paso County, the following three (3) courses are on the Easterly boundary line of said Markets at Mesa Ridge Filing No. 1; thence: 1) N00°00'00"W a distance of 150.84 feet; 2) N25°00'00"E a distance of 200.00 feet; 3) N35°00'00"W a distance of 375.00 feet to the Southerly boundary line of the Main Canal of the Fountain Mutual Irrigation Company as described in Book 5992 at Page 1279 of the records of said El Paso County, the following twenty-three (23) courses are on said Southerly boundary line; thence: 1) N50°23'25"E a distance of 70.00 feet to a point of curve; 2) on said curve to the left having a central angle of 45°29'30", a radius of 505.00 feet for an arc distance of 400.96 feet; 3) N04°53'55"E a distance of 95.20 feet to a point of curve; 4) on said curve to the right having a central angle of 57°18'00", a radius of 10.00 feet for an arc distance of 10.00 feet; 5) N62°11'55"E a distance of 151.50 feet to a point of curve; 6) on said curve to the left having a central angle of 26°01'00", a radius of 180.00 feet for an arc distance of 81.73 feet; 7) N36°10'55"E a distance of 31.90 feet to a point of curve; 8) on said curve to the right having a central angle of 80°05'00", a radius of 50.00 feet for an arc distance of 69.89 feet; 9) S63°44'05"E a distance of 167.90 feet to a point of curve; 10) on said curve to the right having a central angle of 88°01'00", a radius of 10.00 feet for an arc distance of 11.87 feet; 11) S04°16'55"W a distance of 123.60 feet to a point of curve; 12) on said curve to the right having a central angle of 27°22'00", a radius of 175.00 feet for an arc distance of 83.59 feet; 13) S31°38'55"W a distance of 7.60 feet to a point of curve; 14) on said curve to the left having a central angle of 50°24'30", a radius of 90.00 feet for an arc distance of 79.18 feet; 15) S18°45'35"E a distance of 59.00 feet to a point of curve; 16) on said curve to the right having a central angle of 12°16'00", a radius of 200.00 feet for an arc distance of 42.82 feet; 17) S06°29'35"E a distance of 88.10 feet to a point of curve; 18) on said curve to the left having a central angle of 138°32'00", a radius of 105.00 feet for an arc distance of 253.88 feet; 19) N34°58'25"E a distance of 192.80 feet to a point of curve; 20) on said curve to the right having a central angle of 24°10'00", a radius of 30.00 feet for an arc distance of 12.65 feet; 21) N58°08'25"E a distance of 90.40 feet to a point of curve; 22) on said curve to the right having a central angle of 111°37'38", a radius of 10.00 feet for an arc distance of 19.48 feet; 23) S09°13'56"E a distance of 39.64 feet to a point on a curve on the Northwesterly boundary line of the Main Canal as described in Book 5506 at Page 1290 of the records of said El Paso County, the following nine (9) courses are on the Southwesterly boundary line of said Main Canal as described in Book 5506 at Page 1290; thence: 1) Southwesterly on said curve to the right having a central angle of 00°25'52", a radius of 1495.00 feet for an arc distance of 11.25 feet, whose chord bears S53°29'41"W; 2) S09°13'56"E a distance of 58.20 feet to a point of curve; 3) on said curve to the left having a central angle of 11°58'41", a radius of 390.00 feet for an arc distance of 81.53 feet; 4) S21°12'37"E a distance of 101.95 feet to a point of curve; 5)



on said curve to the right having a central angle of  $47^{\circ}26'19''$ , a radius of 40.00 feet for an arc distance of 33.12 feet; 6)  $S26^{\circ}13'42''W$  a distance of 72.43 feet to a point of curve; 7) on said curve to the left having a central angle of  $39^{\circ}03'36''$ , a radius of 120.00 feet for an arc distance of 81.81 feet; 8)  $S12^{\circ}49'54''E$  a distance of 450.75 feet to a point of curve; 9) on said curve to the left having a central angle of  $25^{\circ}33'56''$ , a radius of 165.00 feet for an arc distance of 73.62 feet; thence  $S51^{\circ}36'10''W$  a distance of 249.32 feet; thence  $N83^{\circ}39'05''W$  a distance of 54.69 feet an angle point in the Northerly right-of-way line of Mesa Ridge Parkway as described in Book 6788 at Page 538 of the records of said El Paso County, the following three (3) courses are on said Northerly right-of-way line; thence: 1)  $N89^{\circ}09'32''W$  a distance of 80.00 feet to a point on a curve; 2) Southwesterly on said curve to the right having a central angle of  $90^{\circ}00'00''$ , a radius of 100.00 feet for an arc distance of 157.08 feet, whose chord bears  $S65^{\circ}50'28''W$ ; 3)  $N89^{\circ}09'32''W$  a distance of 690.94 feet to the Point of Beginning, containing 28.083 acres of land, more or less.

MESA RIDGE SUBDIVISION FILING NO. 5

A SUBDIVISION OF A PORTION OF THE NORTH 1/4 OF SECTION 28, T18N34P, R13E, SOUTHWEST 1/4 OF NE 1/4 OF T18N34P, CITY OF FOUNTAIN, EL PASO COUNTY, COLORADO

FOR ALL ACTS IN YOUR PRESENCE...

THE STATE OF COLORADO, COUNTY OF EL PASO, DISTRICT OF CANTON...

IN WITNESS WHEREOF...

IN WITNESS WHEREOF...

IN WITNESS WHEREOF...

IN WITNESS WHEREOF...

IN WITNESS WHEREOF...

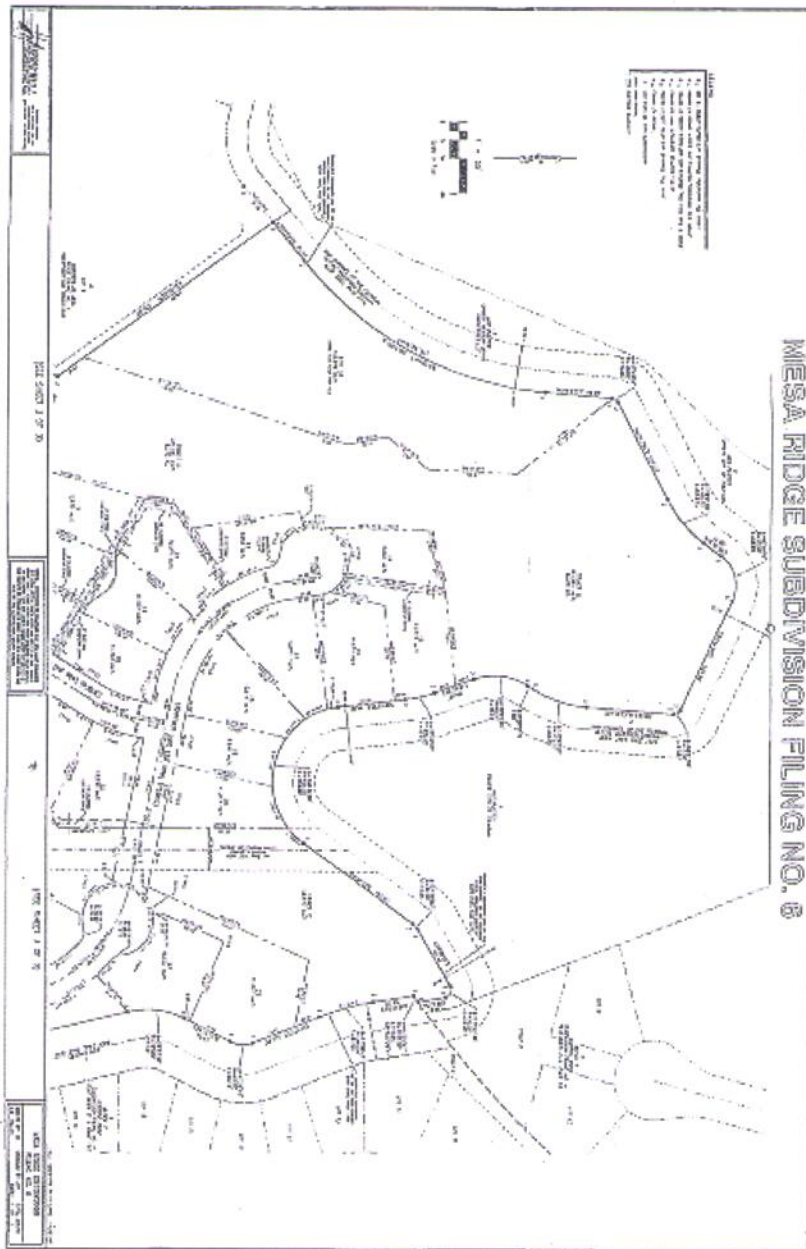


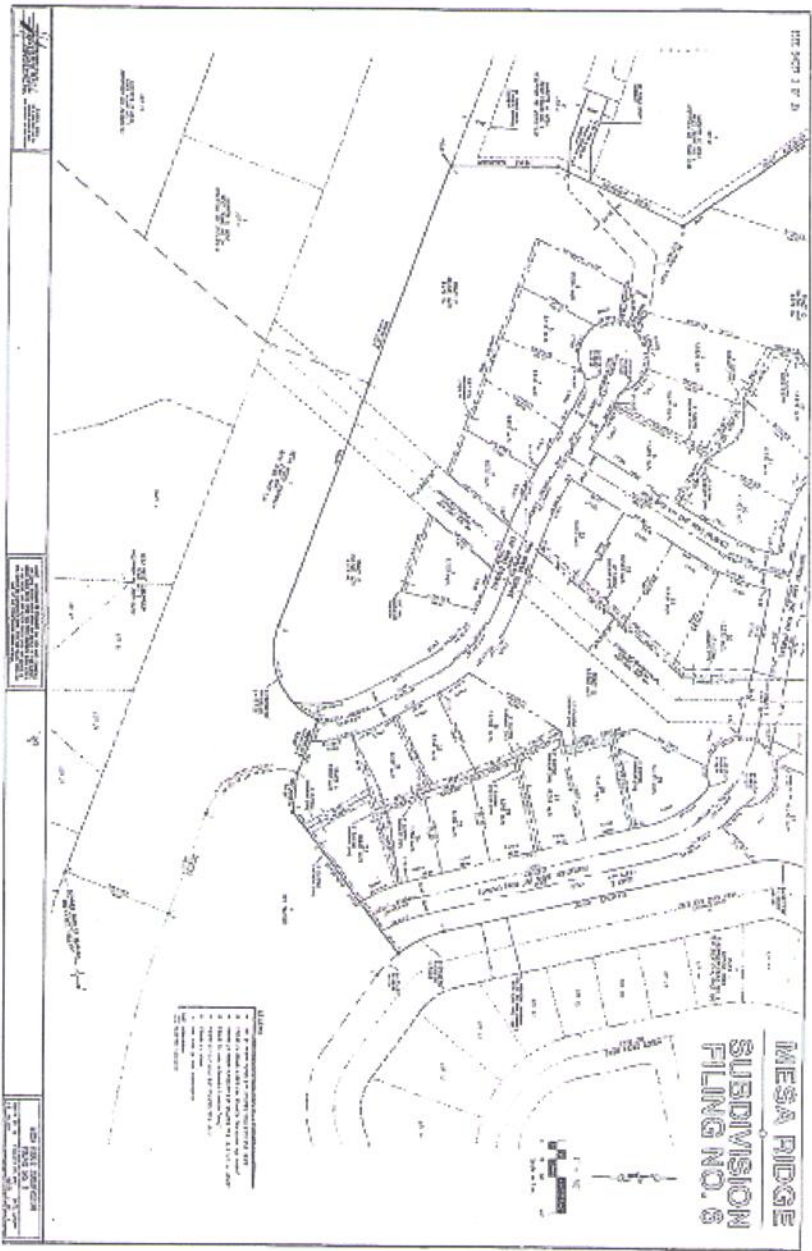
THE STATE OF COLORADO, COUNTY OF EL PASO, DISTRICT OF CANTON...

IN WITNESS WHEREOF...

IN WITNESS WHEREOF...

Administrative filing information including recording date, time, and fees.





**Mesa Ridge Filing No. 7**

A tract of land being a portion of the North 1/2 of Section 28, Township 15 South, Range 65 West of the Sixth Principal Meridian, El Paso County, Colorado, being more particularly described as follows:

BEGINNING at the Eastern most corner of Mesa Ridge Subdivision Filing No. 6 as recorded at Reception No. 208712745 of the records of said El Paso County, a point on a curve, on the Southerly boundary line of the tract of land described in Book 5506 at Page 1290 of the records of said El Paso County, the following eight (8) courses are on the Southerly and Easterly boundary line of said tract of land; thence: 1) Southeasterly on a curve to the left having a central angle of  $14^{\circ}54'06''$ , a radius of 165.00 feet for an arc distance of 42.91 feet, whose chord bears  $S45^{\circ}50'53''E$ ; 2)  $S53^{\circ}17'56''E$  a distance of 119.23 feet to a point of curve; 3) Easterly on said curve to the left having a central angle of  $52^{\circ}22'33''$ , a radius of 150.00 feet for an arc distance of 137.12 feet; 4)  $N74^{\circ}19'31''E$  a distance of 175.64 feet to a point of curve; 5) Northeasterly on said curve to the left having a central angle of  $38^{\circ}21'18''$ , a radius of 165.00 feet for an arc distance of 110.45 feet; 6)  $N35^{\circ}58'13''E$  a distance of 284.27 feet to a point of curve; 7) Northerly on said curve to the left having a central angle of  $39^{\circ}50'34''$ , a radius of 420.00 feet for an arc distance of 292.06 feet; 8)  $N03^{\circ}52'21''W$  on said Easterly line and the Easterly line of the tract of land described in Book 5727 at Page 101 of the records of said El Paso County, a distance of 181.75 feet to a point on a curve, the following five (5) courses are on the Northeasterly and Southeasterly right-of-way line of Sneffels Street right of way as described at Reception No. 57048940 of the records of said El Paso County; thence: 1) Southeasterly on a curve to the left having a central angle of  $14^{\circ}23'49''$ , a radius of 340.00 feet for an arc distance of 85.43 feet, whose chord bears  $S43^{\circ}48'32''E$ ; 2)  $S51^{\circ}00'26''E$  a distance of 416.18 feet to a point of curve; 3) Southeasterly on said curve to the right having a central angle of  $11^{\circ}45'40''$ , a radius of 1040.00 feet for an arc distance of 213.48 feet; 4)  $S39^{\circ}14'46''E$  a distance of 223.86 feet to a common corner of said Sneffels Street and the Northerly right of way of Mesa Ridge Parkway as described in Book 6788 at Page 538 of the records of said El Paso County; 5)  $S50^{\circ}45'14''W$  on said common line, a distance of 80.00 feet to a point on a curve, being the most Southerly right of way corner of said Sneffels Street, the following four (4) courses are on the Northerly right-of-way line of said Mesa Ridge Parkway; thence: 1) Southwesterly on said curve to the right having a central angle of  $94^{\circ}51'59''$  ( $94^{\circ}52'00''$  of record), a radius of 100.00 feet for an arc distance of 165.57 feet, whose chord bears  $S08^{\circ}11'14''W$  to a point of compound curve; 2) Westerly on said curve to the right having a central angle of  $55^{\circ}13'15''$  ( $55^{\circ}13'14''$  of record), a radius of 1520.00 feet for an arc distance of 1464.95 feet ( $1464.94'$  of record); 3)  $N69^{\circ}09'32''W$  a distance of 148.93 feet to a point of curve; 4) Northwesterly on said curve to the right having a central angle of  $90^{\circ}00'00''$ , a radius of 100.00 feet for an arc distance of 157.08 feet to an angle point on the Southerly boundary of said Filing No. 6, the following three (3) courses are on the Southeasterly boundary line of said Filing No. 6; thence: 1)  $S83^{\circ}38'05''E$  a distance of 54.69; 2)  $N51^{\circ}36'10''E$  a distance of 249.32 feet to the Point of Beginning, containing 18.248 acres of land, more or less.

Tract A, Mesa Ridge Filing No. 4 as recorded at Reception No. 206712221, of the records of El Paso County, Colorado, containing 0.735 acres of land, more or less.

# MESA RIDGE SUBDIVISION FILING NO. 7

A SUBDIVISION OF A PORTION OF THE NORTH-WEST QUARTER OF SECTION 18, TOWNSHIP 15 NORTH, RANGE 25 WEST OF THE 6TH P.M., CITY OF EDWARDS, CO. PASO COUNTY, COLORADO



**FROM ALL LOTS IN THESE PRESENTS**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**BY ATTEST:**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**WITNESSES:**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**WITNESSES:**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**DESCRIPTORS**  
The above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**DESCRIPTORS**  
The above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**DESCRIPTORS**  
The above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

## WITNESSES

**WITNESSES:**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**WITNESSES:**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

**WITNESSES:**  
I, the undersigned, do hereby certify that the above described subdivision is in accordance with the provisions of the laws of the State of Colorado, and that the same has been approved by the Board of Commissioners of the City of Edwards, Colorado, and that the same is being filed for record in the public records of the County of Paso, Colorado, for the purpose of creating a public record of the same.

EDWARDS, COLORADO  
PASO COUNTY, COLORADO  
RECORDED  
INDEXED  
FILED  
MAY 15 1917  
PASO COUNTY CLERK

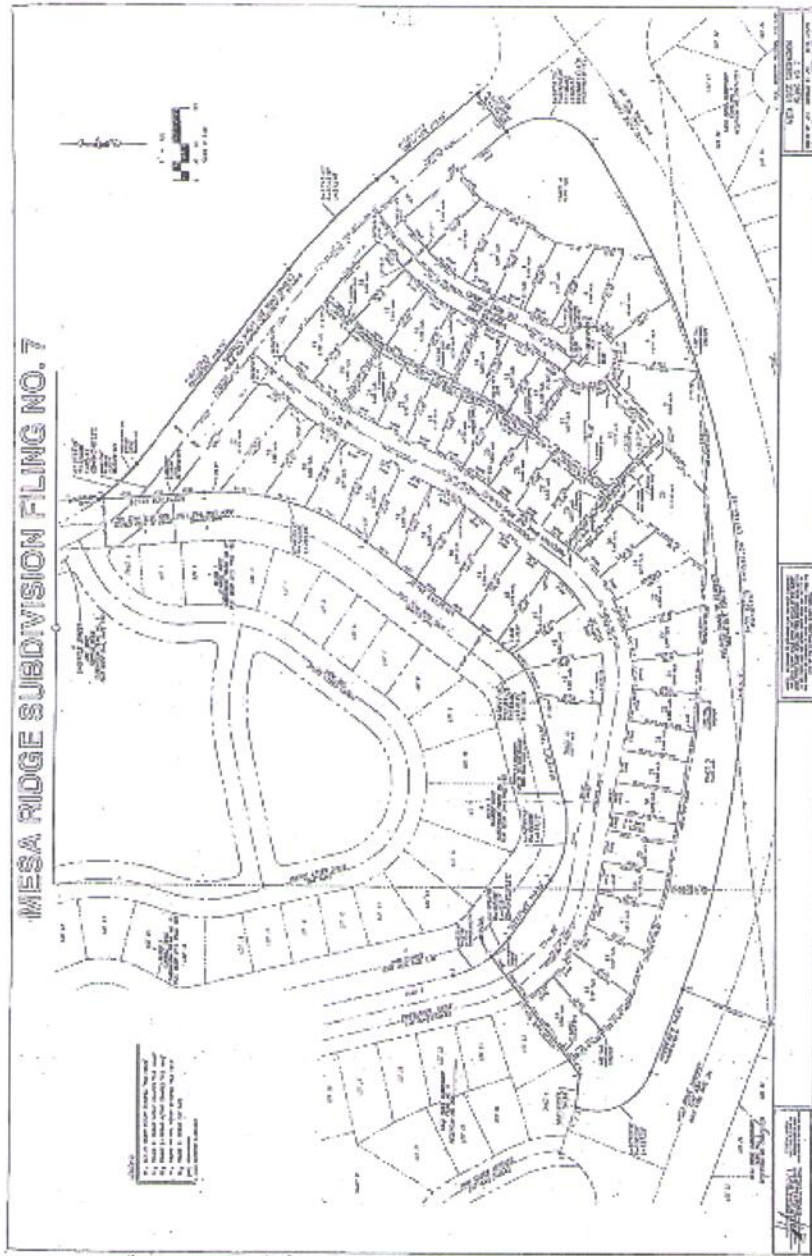




EXHIBIT D

RESOLUTION AUTHORIZING MESA RIDGE PARK FEE

A RESOLUTION OF THE BOARDS OF DIRECTORS OF THE MESA RIDGE METROPOLITAN DISTRICT NOS. 1 AND 2, CITY OF FOUNTAIN, COUNTY OF EL PASO, STATE OF COLORADO, ADOPTING A PARK FEE

WHEREAS, the Mesa Ridge Metropolitan District Nos. 1 and 2, City of Fountain, County of El Paso, Colorado (the "Districts"), are quasi-municipal corporations and political subdivisions of the State of Colorado; and

WHEREAS, the Districts were formed to assist in the provision of certain public infrastructure to a master planned residential community known as Mesa Ridge, including certain street, water, wastewater, storm drainage, park and recreation-related improvements, and other improvements as more particularly described in the Districts' Service Plan; and

WHEREAS, District No. 1 anticipates entering into an intergovernmental agreement with the Cross Creek Metropolitan District ("Cross Creek") related to financing a regional park to benefit the current and future residents of both Cross Creek and the Districts (the "Park Improvements"); and

WHEREAS, the Districts are authorized pursuant to Section 32-1-1001(1)(g)(i), C.R.S. to fix fees and penalties for services or facilities provided by the Districts; and

WHEREAS, the Districts' Service Plan, as the same was approved by the Board of County Commissioners of El Paso County, contemplates that the Districts may finance, design, construct and install the Park Improvements to serve the future inhabitants of the Property (defined below); and

WHEREAS, the Districts' Service Plan authorizes either of the Districts to impose fees to assist with the financing of the Park Improvements; and

WHEREAS, certain property described on Exhibit 1 attached hereto and incorporated herein by this reference will be benefited by the Park Improvements (the "Property"); and

WHEREAS, it is the intention of District No. 2 that one (1) Fee be paid per Unit (defined herein); and

WHEREAS, the Districts desire to adopt this Resolution to assure that builders are required to pay the Fees necessary to assist with the financing of the Park Improvements, and to otherwise clarify procedures for payment of Fees.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARDS OF DIRECTORS OF THE MESA RIDGE METROPOLITAN DISTRICT NOS. 1 AND 2 AS FOLLOWS:

1. The Boards have determined, and do hereby determine that it is in the best interests of the Districts and their respective future property owners and inhabitants to exercise their power granted by statute to establish a Mesa Ridge Park Fee (the "Fee(s)") to be imposed upon the Property.

2. The Fee shall be assessed on each Unit constructed within the boundaries of the Property, and shall be considered due and payable to District No. 1 at such time as the City of Fountain or other governmental entity then having jurisdiction issues a building permit for the Unit(s) on which a Fee is assessed. Nothing in this Resolution shall prohibit a developer or builder from prepaying the Fee for a Unit prior to the time a building permit is issued.

3. The Fee shall be imposed at the rate shown in the schedule below, beginning upon the effective date of this Resolution. A "Unit" means a residential unit to be constructed on a lot as shown on a recorded plat for the Property or any portion thereof, which has been subdivided for the construction of a detached single family dwelling unit, attached single family dwelling units, or multi-family dwelling units.

**Mesa Ridge – Mesa Ridge Park Fee Schedule**

<u>Lot Type</u>	<u>Fee</u>
Detached Single Family	\$1,863.30 per Unit, or such other amount as then imposed and collected by the City of Fountain as its park fee
Attached Single Family / Multi Family	\$1,863.30 per Unit, or such other amount as then imposed and collected by the City of Fountain as its park fee

4. In the event the City of Fountain ceases to impose and collect a "park fee," District No. 1 shall, after posting public notice of a special meeting in accordance with law, conduct a public hearing to set the amount of the Fee. In no event shall the City's decision to cease imposing or collecting a park fee affect the validity of the Fee established by this Resolution.

5. Any unpaid Fees shall constitute a statutory and perpetual lien against the Property pursuant to Section 32-1-1001(1)(j)(I), C.R.S., such lien being a charge imposed for the provision of the services and facilities to the Property. The lien shall be perpetual in nature as defined by the laws of the State of Colorado on the Property and shall run with the land. This Resolution shall be recorded in the offices of the Clerk and Recorder of El Paso County, Colorado.

6. Failure to make payment of the Fees due hereunder shall constitute a default in the payment of such Fees. Upon a default, interest shall accrue on such total amount of Fees due

at the rate of twelve percent (12%) per annum and District No. 1 shall be entitled to institute such remedies and collection proceedings as may be authorized under Colorado law, including but not limited to foreclosure of its perpetual lien. The defaulting property owner shall pay all costs, including attorneys' fees, incurred by District No. 1 in connection with the foregoing. In foreclosing its lien, District No. 1 will enforce the lien only to the extent necessary to collect unpaid fees, interest and costs.

7. Judicial invalidation of any of the provisions of this Resolution or of any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstances, shall not affect the validity of the remainder of this Resolution, unless such invalidation would act to destroy the intent or essence of this Resolution.

8. Inquiries pertaining to the Fees may be directed to the Districts' general counsel at: Grimshaw & Haring, P.C., 1700 Lincoln Street, Suite 3800, Denver, Colorado 80203.

RESOLUTION APPROVED AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2008.

MESA RIDGE METROPOLITAN DISTRICT  
NO. 1

By: 

Chairperson and President

Attest:

  
Secretary

MESA RIDGE METROPOLITAN DISTRICT  
NO. 2

By: 

Chairperson and President

Attest:


  
Secretary



EXHIBIT E

PAYMENT SCHEDULE - REGIONAL PARK

Mesa Ridge Metropolitan District No. 1 shall remit the Mesa Ridge Contribution to Cross Creek Metropolitan District upon receipt of the funds, but no less than quarterly:

2008

Total: \$2,500,000.00

Approved this \_\_\_ day of \_\_\_\_\_, 200\_\_.

MESA RIDGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

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

ATTEST:

\_\_\_\_\_  
Secretary

CROSS CREEK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

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

ATTEST:

\_\_\_\_\_  
Secretary

EXHIBIT E

PAYMENT SCHEDULE - REGIONAL PARK

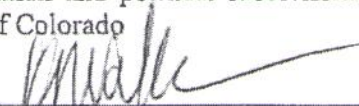
Mesa Ridge Metropolitan District No. 1 shall remit the Mesa Ridge Contribution to Cross Creek Metropolitan District upon receipt of the funds, but no less than quarterly:

2008

**Total:** \$2,500,000.00

Approved this \_\_\_ day of \_\_\_\_\_, 200\_\_.

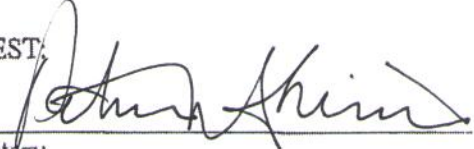
MESA RIDGE METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado

By:   
President

ATTEST:  
  
Secretary

CROSS CREEK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By:   
President

ATTEST:  
  
Secretary

**ATTACHMENT E  
TO  
INTERGOVERNMENTAL AGREEMENT BETWEEN  
CITY OF FOUNTAIN/CROSS CREEK/ MESA RIDGE METROPOLITAN  
DISTRICTS  
December, 2015**

**DRAINAGE MAP**

