



## RESOLUTION 13-049

### A RESOLUTION APPROVING A FIRST MATERIAL MODIFICATION OF SERVICE PLAN FOR CUMBERLAND GREEN METROPOLITAN DISTRICT

**WHEREAS**, the City of Fountain, El Paso County, Colorado (the “City”) is a political subdivision of the State of Colorado (the “State”), a body corporate and politic, and home-ruled city pursuant to Article XX of the State Constitution; and

**WHEREAS**, Cumberland Green Metropolitan District (the “District”) is a Title 32 quasi-municipal special district; and

**WHEREAS**, the District was required under Section 32-1-202, C.R.S., to submit its Service Plan (the “Service Plan”) to the City for approval prior to providing any services; and

**WHEREAS**, pursuant to Section 32-1-204.5, C.R.S., on August 9, 2005, the City approved the District’s Service Plan; and

**WHEREAS**, since approval of the District’s Service Plan, circumstances have changed and the District’s Board of Directors wishes to modify the Service Plan to accurately reflect those changes; and

**WHEREAS**, pursuant to Section 32-1-207, C.R.S., the proposed modifications to the Service Plan are material in nature and require the District to obtain approval from the City for such modifications; and

**WHEREAS**, pursuant to Section 32-1-207(2), C.R.S., the proposed modifications have been submitted to the City Council; and

**WHEREAS**, the boundaries of the District are wholly contained within the boundaries of the City; and

**WHEREAS**, the City Council had a public hearing on the proposed modifications to the Service Plan on November \_\_, 2013; and

**WHEREAS**, the City Council has considered the proposed modifications, and all the testimony and evidence presented at the hearing.

**NOW, THEREFORE**, be it resolved by the City Council of the City of Fountain, Colorado that:

1. **A. Introduction - Water** – This section of the Service Plan shall be replaced in its entirety and read as follows:

Design and construction, of a complete potable water supply system, including, but not limited to, storage, transmission, and distribution system, consisting of, but not limited to, transmission lines, distribution mains, storage facilities, pumping facilities, and easements and appurtenant facilities. Potable water will be provided by the City of Fountain. All water improvements shall be dedicated to the City of Fountain. If it is acceptable to the City, in the City’s sole discretion, the District, through separate agreement with the City of Fountain, may develop and distribute

water for non-potable irrigation use within the Boundaries of the Cumberland Green Metropolitan District.

2. **A. Introduction – Park and Recreation** – This section of the Service Plan shall be replaced in its entirety and read as follows:

Design, acquire, construct, operate and maintain recreational facilities including, but not limited to, active parks, pocket parks, open spaces, trails, fencing and landscaping. The District's public parks, open spaces, trails, fencing and landscaping may remain the property of the District, but the District shall have the option, with the consent of the City to convey any one or more of such properties to the City upon satisfaction of all customary conveyance and acceptance procedures and requirements and subject to all applicable warranties.

The unimproved open space area will be transferred and conveyed (not dedicated) to the City of Fountain, and that once completed in accordance with City standards and specifications, any regional trail improvements located within the open space areas will also be transferred and conveyed to the City, subject to any and all applicable warranty requirements. All other parks, including pocket parks and any other recreational facilities or improvements constructed or financed by the District, will be owned, operated and maintained by the District.

All District park and recreation facilities will be available to all City residents on the same basis and without discrimination as to fees or charges and, in particular, as to any fee or charge imposed for the use of any park pavilion or other park area.

3. **A. Introduction – Drainage** - This section of the Service Plan shall be replaced in its entirety and read as follows:

Design, acquire, and construct all necessary drainage facilities (offsite and onsite) including, but not limited to, detention ponds, culverts, pipes, channels, swales, and weirs in accordance with an approved City of Fountain drainage plan and in conjunction with adjoining drainage features. All drainage facilities shall be conveyed to the City of Fountain or appropriate regional storm water entity, which shall thereafter maintain the same.

4. **A. Introduction – Other Powers** - The following Paragraph (7) was added to the Service Plan by the City of Fountain, City Council on July 8, 2008 pursuant to Resolution 08-036.

(7) The District is authorized to do limited covenant enforcement in order to enhance and protect the quality, value, aesthetic nature, desirability, and attractiveness of the properties located within the District which covenant enforcement will be limited to (1) funding the cost of covenant enforcement, (2) appointing the members of the Design Review Committee, and (3) appointing the covenant management entity with the condition that the covenant enforcement issues and design review issues shall not be determined by the District but shall be assigned.

The foregoing Paragraph 7 shall be replaced in its entirety and read as follows:

In accordance with Section 32-1-1004(8), C.R.S., review architectural renderings of proposed improvements; approve minor modifications to homes, fences, and landscapes. Enforce community covenants including the ability to fine violators.

5. **D. Infrastructure Analysis – Park and Recreation** - This section of the Service Plan shall be replaced in its entirety and read as follows:

Park and recreation facilities of the District would consist of undisturbed open space, improved park areas, recreation centers, and trails. Again, these improvements would be phased along with the rest of the development and will not be dedicated to the City of Fountain, although the facilities can be used for public use subject to the rules of use as set forth by the Cumberland Green Board of Directors, which shall not discriminate between District residents and non-District residents. Mosquito control as required will also be provided.

The District may apply for or claim any entitlement to funds from the Conservation Trust Fund and Great Outdoors Colorado whose funding is which are derived from lottery proceeds or other funds available from or through other governmental or nonprofit entities for which the City is also eligible to apply. The District will notify the City of its application filing.

6. **D. Infrastructure Analysis – Television Relay and Translation/Cable Television** - This section of the Service Plan shall be replaced in its entirety and read as follows:

The District may design, acquire, construct, complete, install, operate and maintain television relay and translation facilities, cable and communication facilities, fiber optic conduit network, together with all necessary, incidental and appurtenant facilities, land and easements, and all necessary extensions of an improvements to said facilities.

7. **Repealer.** This Resolution supersedes City of Fountain Resolution No. 08-036, adopted on July 8, 2008.

8. **Effective Date.** This Resolution and the proposed modifications to the Service Plan as set forth above are hereby approved and shall become effective at such time as the District and City enter into a separate agreement that provides for the District to maintain, to the City's reasonable satisfaction, that portion of the Jimmy Camp Creek Regional Trail located within or along the westerly boundary of the District; provided that such agreement shall be entered into no later than December 31, 2013, or this Resolution shall be deemed of no force and effect.

Done this 19<sup>th</sup> day of November, 2013.



ATTEST:

Silvia Mascarenas  
Silvia Mascarenas, City Clerk

Gabriel P. Ortega  
Gabriel P. Ortega, Mayor