

**MONETARY MITIGATION FUND ADVISORY COMMITTEE  
BYLAWS  
(Admendment 1 Dated 9 December 2016)**

**A. Authority.** The Fountain Creek Watershed, Flood Control and Greenway District (“District”), has the authority to establish Bylaws, and pursuant to Article X of the Bylaws of the District (“District Bylaws”), the Board of Directors of the District (“District Board”) has authority to appoint, and did appoint, a Monetary Mitigation Fund Advisory Committee (“Committee”); however, with the District Board’s establishment of the Fountain Creek Watershed Water Activity Enterprise (“Enterprise”), the District Board believes it is more appropriate that the Committee directly serve and report to the Board of Directors of the Enterprise (“Enterprise Board”). Therefore, the District Board hereby places the Committee under the direct authority of the Enterprise Board, the Committee shall be advisory to the Enterprise Board, and the Committee shall continue to have only recommending authority. The Committee shall provide advice and recommendations to the Enterprise Board regarding public policy or expenditure of Monetary Mitigation funds for the benefit of the Fountain Creek Watershed generally, and specifically for the Fountain Creek Corridor. The District Board hereby authorizes the Enterprise Board to provide additional definition and guidance regarding the Committee besides those as defined in these Bylaws by policy statements or resolutions of the Enterprise Board. These Monetary Mitigation Fund Advisory Committee Bylaws (“Committee Bylaws” or “Bylaws”) are adopted by the District Board for the benefit of the Enterprise Board, and the Committee shall be subject to these Committee Bylaws.

**B. Monetary Mitigation Funds**

**B.1 Source of Monetary Mitigation Funds**

In order to mitigate impacts of Colorado Springs Utilities’ Southern Delivery System (SDS) to Fountain Creek in Pueblo County, Colorado Springs Utilities will pay fifty million dollars (\$50,000,000) plus accrued Indexed Revenue to the Enterprise in satisfaction of Condition 6 of Pueblo County 1041 Permit for SDS. Three hundred thousand dollars (\$300,000) has been previously paid to the District for a Flood Control Study. Three hundred thousand dollars (\$300,000) has been previously paid to the District for creation of a Fountain Creek Corridor Restoration Master Plan and to support District operations. In accordance with the Intergovernmental Agreement (pp. 14-15, Para. 2) between Pueblo County and the City of Colorado Springs and its Utility Enterprise CSU (“Stormwater IGA”), executed May 2, 2016, Pueblo County, the City of Colorado Springs, and CSU further mutually agreed to make the SDS Condition 6 Payments to the District or to its Enterprise: “CSU shall make the first annual payment (together with the additional annual indexing amounts) due under Condition 6 of the SDS 1041 Permit for purposes stated therein to the Fountain Creek Watershed, Flood Control and Greenway District or its Enterprise in the amount of \$9,578,485.00. The remaining annual payments shall be made on or before January 15 of the years 2017, 2018, 2019 and 2020 respectively.” On October 28, 2016, at its regular meeting, the Enterprise Board adopted Resolution 2016-02-Watershed Enterprise, General, formally accepting and ratifying acceptance of the initial payment for water activity services from Colorado Springs Utilities and explaining the basis for accepting payments for such

services, pursuant to the Pueblo County 1041 Permit Condition 6 Monetary Mitigation for Fountain Creek impacts and pursuant to Enterprise/Water Activity Enterprise requirements.

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## **B.2 Use of Monetary Mitigation Funds**

The Enterprise may use funds provided by Colorado Springs Utilities only for one or more new projects in the Fountain Creek Watershed between Colorado Springs and the Arkansas River confluence in Pueblo that create a significant and not merely incidental benefit to Fountain Creek within Pueblo County for improvement of water quality, for flood control, or for prevention of erosion and sedimentation. Subject to these criteria, acceptable projects may include:

1. Those projects that have been identified by the United States Corps of Engineers ("Corps") as high priority erosion, sedimentation or flood control projects in a formal Corps recommendation for Fountain Creek;
2. Erosion, sedimentation, flood control or water quality improvement projects identified as part of the Fountain Creek Corridor Restoration Master Plan;
3. Any other sedimentation and erosion control, flood control, including a dam or dams, or stream improvement project that is found to be acceptable by the District.

**C. Purpose and Responsibility.** The purpose of the Committee is to conduct technical and other investigations, including data collection, as well as analyses, studies, and inspections pertaining to the construction and/or operation of facilities or projects within the Fountain Creek Watershed between Colorado Springs and the confluence of Fountain Creek and the Arkansas River for which Monetary Mitigation funds will be used particularly as such relate to impacts within the watershed upon land use, flood control, drainage, sedimentation, and erosion control and recreation activities. The Committee tasks may include, but are not limited to, the following:

1. Establish a 10-year Capital Project Plan for the improvement of Fountain Creek Corridor. It shall periodically review the 10-year Plan to ensure annual allocations are congruent with the Plan's objectives and advise the Enterprise Board, when necessary, regarding the need to implement projects designed to achieve such objectives.
2. Prepare recommendations regarding the need for and use of additional project funding and identify any additional funding sources. Such review and recommendations shall be submitted in September of each year, or such other time that work sessions are scheduled to consider the Enterprise's proposed annual budget, but shall be advisory only.
3. Evaluate technical, policy, and fiscal issues and provide recommendations to the Enterprise Board, the Executive Director, District staff, and others as directed by the Enterprise Board relating to projects for which Monetary Mitigation funds will be used.
4. Review the spending plan for the Monetary Mitigation Fund (including capital projects and operation and maintenance).

5. Integrate and prioritize recommendations found in the Fountain Creek Vision Task Force Strategic Plan, Army Corps of Engineers Watershed Study, Fountain Creek Corridor Restoration Master Plan and other ongoing Watershed activities.

6. Provide technical review for water activity Enterprise projects.

7. Coordinate with the Technical Advisory Committee ("TAC") and the Citizens Advisory Group ("CAG") on a regular basis.

8. Report to the Enterprise Board at regular meetings or as directed by the Enterprise Board or Executive Director.

**D. Membership.** The Monetary Mitigation Fund Advisory Committee shall be composed of 7 members, including the Executive Director of the District, the Chair of the TAC and the Chair of the CAG; two Pueblo County staff members nominated by the Pueblo Board of County Commissioners; and two Colorado Springs Utilities staff members nominated by the Colorado Springs Utilities Board of Directors. The four nominated members shall be subject to Enterprise Board approval, with a decision thereon to be made at the annual meeting of the Enterprise Board, or in the case of a vacancy, at the time the vacancy nomination is made.

**E. Term.** Each Committee member shall serve a term of one (1) year. Appointments to the Committee shall be made by the District Board at its Annual Meeting. At its Annual Meeting, the District Board may reappoint existing Committee members to an additional one-year term. There shall be no limit to the number of successive terms a Committee member may serve. Committee members serve at the pleasure of the District Board and may be removed at the discretion of the District Board or for cause. The nominating bodies may remove and replace their Committee members at their discretion, but new nominated members shall be subject to District Board approval. Vacancy appointments shall be for the unexpired term of the vacancy.

**F. Alternate Members.** The nominating bodies may nominate, in writing, an alternate Committee member for each primary Committee member to attend meetings if the primary Committee member is unavailable or has a conflict of interest on a particular project or proposal brought before the Committee. Nominated Alternate Committee members shall be appointed to the Committee by the District Board for a one year term, just as primary Committee members. The alternate Committee member may act in the absence or unavailability of the designated primary Committee member. When acting as a Committee member, the alternate Committee member shall be deemed to be a Committee member for all purposes except as follows:

1. If both a primary Committee member and an alternate Committee member of the same seat are present at a meeting of the Committee, the primary Committee member shall have the sole power to vote.

2. An Alternate Committee member may not succeed to the position of Committee member based solely on his/her status as an alternate Committee member, but may be nominated for such position by the nominating body, subject to District Board approval.

**G. Annual Meeting/Sunshine Law Compliance.** The Committee shall hold a regular meeting in January of each year, which shall be the Annual Meeting. At the Annual Meeting, the Committee shall designate the following to comply with the Colorado Sunshine Act of 1972, specifically, the Open Meetings Law, §§ 24-6-401, *et seq.*, as amended:

1. Public place(s) where meeting notices will be posted.
2. Fix the time and place of regular meetings.
3. The custodian of the records.
4. The form of the official record of meetings (audio recording, etc.).
5. Location where minutes and records will be maintained.
6. Official newspaper(s) for publication of required notices (which will be the newspaper(s) designated by the District Board).
7. Order that executive sessions shall be audio recorded (except for attorney/client privileged communications).

**H. Open Meetings Compliance.** All meetings of the Committee, including subcommittee meetings, shall comply with all applicable provisions of the Colorado Open Meetings Law, C.R.S. §§ 24-6-401, *et seq.*, as amended, and shall provide opportunities for public input by, at a minimum, permitting the public to address the Committee in open meetings. Meeting notices/agendas for the Committee and any subcommittee meetings shall be posted in both El Paso and Pueblo Counties at least twenty-four (24) hours prior to the meeting.

**I. Regular and Special Meetings.** The Committee shall meet once a month for a regular meeting or as they otherwise determine or as otherwise directed by the Enterprise Board. Special meetings of the Committee may be called either by the Chairperson or by three members of the Committee or by the Enterprise Board.

**J. Notice of Meetings.** Notice of regular meetings of the Committee shall be provided to the respective members at least twenty-four (24) hours prior to the time fixed for the meeting by sending a copy of the notice to Committee members by United States mail, by fax, electronic mail, telephone, or other electronic means. Notice of special meetings of the Committee shall be provided to the members at least twenty-four (24) hours prior to the time fixed for the meeting by the means identified above.

**K. Quorum and Voting.** A majority of the members of the Committee appointed shall constitute a quorum of the Committee for the transaction of business unless a greater number is set by resolution of the Committee at its Annual Meeting. The affirmative vote of a majority of a quorum of the members present shall be sufficient to conduct the business of the Committee. Each member of the Committee is entitled to one vote. The Chairperson shall only vote in case of a tie vote. Voting shall be required to transact business. If less than a quorum is present at a meeting, the Chairperson or another officer may determine that it is appropriate to consider information and take comments on items on the agenda, but the Committee shall not take any actions. If less than a quorum is present, the Chairperson or another officer may also adjourn the meeting to a different time and place, and in such case, the Chairperson shall notify absent members of the time and place of such adjourned meeting.

L. **Officers.** The Committee shall elect the following officers at its Annual Meeting. Officers shall be elected by a majority vote of a quorum of the members present by an appropriate method as may be determined by the Chairperson.

1. **Chairperson.** The Chairperson shall be the Executive Director of the District and shall preside over all meetings of the Committee and ensure that the meeting is conducted in an orderly and expeditious manner. The Chairperson shall prepare written recommendations as adopted by the Committee for presentation to the Enterprise Board. The Chairperson shall perform all duties incident to the office of Chairperson. The Chairperson may place reasonable time limitations on debate and public testimony, including discussion by members.

2. **Vice Chairperson.** The Vice Chairperson shall assume the duties of the Chairperson in his/her absence.

3. **Secretary.** The Committee shall elect or appoint a Secretary who shall keep a written or recorded record of the minutes of all meetings, ensure that all notices required by law are duly given and posted, shall serve as the custodian of Committee records and shall perform such other functions as may be prescribed by the Committee.

4. **Term.** All Officers of the Committee shall hold office for a term of one (1) year. Officers may be elected to successive terms.

5. **Pro tem Chairperson.** In the event both the Chairperson and Vice Chairperson are absent from the meeting, the members present shall vote for one of their members to act as Chairperson *pro tem* for that meeting.

M. **Conflicts of Interest.** Members of the Committee are subject to the same conflict of interest provisions in Article IV. H. of the District Bylaws and the laws of the State of Colorado.

N. **Attendance/Dismissal of Committee Members.** If a member of the Committee has three (3) consecutive unexcused absences from regular meetings of the Committee, the Chairperson shall review the matter and recommend to the Enterprise Board that such member be dismissed and a new appointment be made to replace that member.

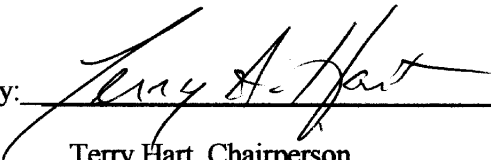
O. **Severability.** If any section, subsection, sentence, clause, or phrase of these Bylaws is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of these Bylaws.

P. **Adoption and Amendments.** These Bylaws shall be adopted by, and shall only be amended by, a simple majority vote of the District Board.

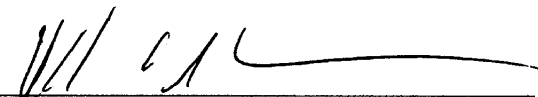
**Q. Governing Law.** These Bylaws shall be governed by and construed in accordance with the constitution and laws of the State of Colorado, and the Act, as all may be amended from time to time. In the case of a conflict between the Bylaws and the Act, the provisions of the Act shall control.

I, TERRY HART, hereby certify that the foregoing Monetary Mitigation Fund Advisory Committee Bylaws (Amendment 1) were adopted as a resolution of the Board of Directors of the Fountain Creek Watershed, Flood Control, and Greenway District by a majority vote of 6 to 0; effective this 9th day of December, 2016.

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

By:   
Terry Hart, Chairperson

**ATTEST:**

By:   
Richard Skorman, Secretary