

RESOLUTION NO. 22-19

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS, COLORADO APPROVING A FIRST AMENDMENT OF THE SERVICE PLAN FOR THE PEAK METROPOLITAN DISTRICTS NO. 1 THROUGH 3 TO AUTHORIZE COVENANT ENFORCEMENT AND DESIGN REVIEW AS OPERATIONS AND MAINTENANCE FUNCTIONS

WHEREAS, by Resolution 9-06, the City Council approved the Special District Policy on January 24, 2006, a City Financial Policy Regarding the Use of Districts (the "Policy"), providing for certain financial and other limitations in the use of special districts as an available method in financing public infrastructure; and

WHEREAS, Section 32-1-207, C.R.S., provides that no special district may materially modify its service plan except upon petition to the governing body of the municipality within which the special district lies and adoption of resolution of approval by such governing body; and

WHEREAS, pursuant to the provisions of Title 32, Colorado Revised Statutes, and pursuant to proper notice having been provided as required by law, the City Council held a public hearing and approved the original formation and the Consolidated Service Plan (the "Original Service Plan") for the Peak Metropolitan Districts Nos. 1-3 (the "Districts") by Resolution No. 95-18 adopted on August 28, 2018; and

WHEREAS, the Districts have petitioned the City to approve a First Amendment to the Service Plan ("Service Plan Amendment") to authorize covenant enforcement and design review as operations and maintenance functions of the Districts.

WHEREAS, the Policy contains requirements for the content and limitations associated with new or amended service plans; and

WHEREAS, the Districts submitted for review and City Council reviewed a Service Plan Amendment for the Districts; and

WHEREAS, City Council considered the Service Plan Amendment, as well as all other testimony and evidence presented at the February 12, 2019 City Council meeting to determine whether the Districts' proposed Service Plan Amendment satisfies the requirements of the Policy.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

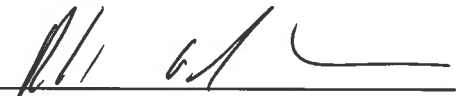
Section 1. The above and foregoing recitals are incorporated herein by reference and are adopted as findings and determinations of the City Council.

Section 2. Council hereby finds that approval of the Service Plan Amendment complies with the Policy and provisions of the Model Service Plans, and remains consistent with the findings made in as part of the original Service Plan approval.

Section 3. The Service Plan Amendment as attached in Exhibit 1 is hereby approved.


Section 4. With the exception of those modifications specifically addressed in the Service Plan Amendment, the Original Service Plan shall remain in full force and effect.

DATED at Colorado Springs, Colorado, this 12th day of February 2019.

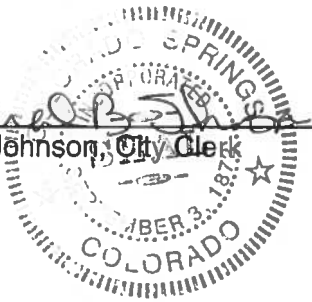


Council President

ATTEST:



Sarah B. Johnson, City Clerk



**FIRST AMENDMENT TO THE
CONSOLIDATED SERVICE PLAN FOR
PEAK METROPOLITAN DISTRICT NO. 1
PEAK METROPOLITAN DISTRICT NO. 2
PEAK METROPOLITAN DISTRICT NO. 3
IN THE
CITY OF COLORADO SPRINGS, COLORADO**

Prepared by
McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203

Approved: February 12, 2019

Initials: MB

Article I. PURPOSE AND INTENT

Peak Metropolitan District Nos. 1, 2 and 3 (the “**Districts**”) were organized and operate pursuant to a Consolidated Service Plan as approved by the City Council of the City of Colorado Springs, Colorado, on August 28, 2018 (the “**Original Service Plan**”).

This First Amendment to the Consolidated Service Plan for Peak Metropolitan District Nos. 1, 2, and 3 (the “**First Amendment**”) authorizes the Districts to provide covenant enforcement and design review services within the boundaries and service area of the Districts.

Additionally, this First Amendment modifies Exhibit D to the Original Service Plan (the “**Amended Exhibit D**”) to specifically authorize the Districts to undertake and provide certain operations and maintenance services more specifically described in the **Amended Exhibit D**.

Article II. AMENDMENT

A. Article I, A. Article I, Section A of the Original Service Plan is hereby deleted and replaced in its entirety with the following:

“A. Purpose and Intent.

The Districts are independent units of local government, separate and distinct from the City, and, except as may otherwise be provided for by State or local law or this Service Plan, their activities are subject to review by the City only insofar as they may deviate in a material matter from the requirements of the Service Plan. It is intended that the Districts will provide a part or all of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the Districts. The primary purpose of the Districts will be to finance the construction of these Public Improvements.

This Service Plan authorizes the Districts to own, operate, and maintain certain Public Improvements more specifically described in **Amended Exhibit D**, attached hereto and incorporated herein by reference. The Districts are not being created to provide ongoing operations and maintenance services other than those specifically set forth in **Amended Exhibit D** to this Service Plan. In addition, in accordance with Section 32-1-1004(8), C.R.S., the Districts shall also have the power to provide covenant enforcement and design review services within the boundaries of the Districts if the declaration, rules and regulations, or any similar document containing the covenants to be enforced for the area within the District name the District as the enforcement or design review entity.”

B. Article V, A. Article V, Section A of the Original Service Plan is hereby deleted and replaced in its entirety with the following:

“A. Powers of the Districts and Service Plan Amendment

The Districts shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the Districts as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Operations and Maintenance Limitation. The purpose of the Districts is to plan for, design, acquire, construct, install, relocate, redevelop, and finance the Public Improvements. The Districts shall dedicate the Public Improvements to the City or other appropriate jurisdiction or owners' association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code. The Districts shall not be authorized to operate and maintain any part or all of the Public Improvements after such dedication, including park and recreation improvements, unless the provision of such ongoing operation and maintenance is specifically identified in Amended Exhibit D. In accordance with Section 32-1-1004(8), C.R.S., the Districts shall also have the power to provide covenant enforcement and design review services within the boundaries of the Districts if the declaration, rules and regulations, or any similar document containing the covenants to be enforced for the area within the Districts name the Districts as the enforcement or design review entity. The Districts shall have the power to provide covenant enforcement and design review services only if revenues used to provide such services are derived from the area in which the services are furnished. The Districts shall have the ability to impose fees and charges for purposes identified in the covenants, for the purpose of enforcing the covenants. In the City's sole discretion, an intergovernmental agreement between the City and the Districts may be required in order to better describe the conditions under which these permitted services will be provided by the Districts. If the Districts are authorized to operate and maintain certain park and recreation improvements set forth in Amended Exhibit D, any fee imposed by the Districts for access to such park and recreation improvements shall not result in non-District Colorado Springs residents paying a user fee that is greater than, or otherwise disproportionate to, similar fees and taxes paid by residents of the Districts. However, the Districts shall be entitled to impose an administrative fee as necessary to cover additional expenses associated with non-District Colorado Springs residents to ensure that such costs are not the responsibility of the Districts' residents. All such fees shall be based upon the determination of the District(s) imposing such fee that such fee does not exceed a reasonable annual market fee for users of such facilities. Notwithstanding the foregoing, all parks and trails shall be open to the general public including non-District Colorado Springs residents free of charge.”

C. Exhibit D. Exhibit D to the Original Service Plan is hereby deleted and replaced in its entirety with Attachment A, which shall be Amended Exhibit D attached to this First Amendment.

D. All provisions of the Service Plan not expressly modified by this Amendment remain unchanged and in full force and effect.

E. In the event of any express conflict of inconsistency between the terms of the Original Service Plan and this First Amendment, this First Amendment shall control and govern.

ATTACHMENT A

AMENDED EXHIBIT D TO THE SERVICE PLAN

Description of Permitted Services to be Provided by the Districts

<u>Description of Services</u>	<u>IGA Required (Yes or No)</u>
Street Maintenance, including without limitation, snow removal	No
Landscape Maintenance, including without limitation, maintenance and repair of open space, trails and streetscape	No
Operation, maintenance and administration services related to covenant enforcement and design review	No