

**AGENDA ITEM SUMMARY**

Agenda Item No: 7.b.

Date: November 5, 2009

To: Board of County Commissioners

From: Jerry Westing - Manager, Public Services Department

Subject: Resolution to Approve and Grant a Non-Exclusive Permanent Easement to Fountain Valley Authority, for Stream Bank Stabilization Facilities located in Fountain Creek Regional Park along the Duckwood Road Area.

SUMMARY (including information on budgeted matters):

Fountain Valley Authority identified a need to enter into a Non-exclusive Permanent Easement consisting of 0.296 acres +/- from property owned by El Paso County for the purposes of constructing stream bank stabilization facilities located in Fountain Creek Regional Park along the Duckwood Road Area. The Public Services Department recommends approval.

BACKGROUND (including information on budgeted matters):

N/A

FINANCIAL IMPLICATIONS (completed only if not currently budgeted, and is an emergency, mandated or grant/unanticipated revenue funding request before the Board for consideration):

Revenue/Funding Sources:	<u>NA</u>
Revenue/Funding Amount:	<u>NA</u>
Subject to TABOR?	NA
Increase to Original Adopted Budget:	NA
Net Cost to El Paso County:	NA
Total Project Cost:	NA

RESOLUTION NO. \_\_\_\_\_

**BOARD OF COUNTY COMMISSIONERS  
COUNTY OF EL PASO, STATE OF COLORADO**

Resolution to Approve and Grant a Non-Exclusive Permanent Easement to Fountain Valley Authority, for Stream Bank Stabilization Facilities located in Fountain Creek Regional Park along the Duckwood Road Area.

**WHEREAS**, pursuant to §§30-11-101(1)(c)-(d), 30-11-102, 30-11-103, and 30-11-107(1)(a) C.R.S., the Board of County Commissioners of El Paso County, Colorado (hereinafter "BOCC") has the legislative authority to make such orders concerning the property belonging to the County when deemed by the Board to be in the best interests of the County; and

**WHEREAS**, Fountain Valley Authority (hereinafter "FVA") identified a need to enter into a Non-exclusive Permanent Easement consisting of 0.296 acres +/- (see, Exhibits A, B, and C), from property owned by El Paso County (hereinafter "EPC") for the purposes of constructing stream bank stabilization facilities located in Fountain Creek Regional Park along the Duckwood Road Area.

**WHEREAS**, the BOCC determined that it would serve the best interests of the public to approve the Non-exclusive Permanent Easement Agreement to effectuate the hereinabove described transaction, a copy of which is attached hereto and incorporated herein by reference, for purposes which include but are not limited to: ingress, egress, installing and performing ongoing inspection, maintenance and repair of stream bank stabilization facilities, which protect its pipeline and appurtenant facilities located in Fountain Creek Regional Park along the Duckwood Road area.

**NOW THEREFORE, BE IT RESOLVED** the Board of County Commissioners hereby approves and grants the Non-exclusive Permanent Easement Agreement, subject to the terms and conditions cited therein and contingent upon formal closing.

**BE IT FURTHER RESOLVED** that Jim Bensberg, duly elected, qualified member and Chair of the Board of County Commissioners, or Sallie Clark, duly elected, qualified member and Vice Chair of the Board of County Commissioners, be and is hereby authorized on behalf of the Board to execute any and all documents necessary to carry out the intent of the Board as described herein.

DONE THIS \_\_\_\_\_ day of \_\_\_\_\_, 2009, at Colorado Springs, Colorado.

BOARD OF COUNTY COMMISSIONERS  
EL PASO COUNTY, COLORADO

ATTEST:

By: \_\_\_\_\_  
County Clerk and Recorder

By: \_\_\_\_\_  
Jim Bensberg, Chairman

## EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between EL PASO COUNTY, by and through the BOARD OF COUNTY COMMISSIONERS OF EL PASO COUNTY, STATE OF COLORADO, a body corporate and politic and a political subdivision of the State of Colorado, hereinafter referred to as the "Grantor," whose street address is 27 E. Vermijo Avenue, 3rd Floor, Colorado Springs, CO 80903, and the FOUNTAIN VALLEY AUTHORITY ("Grantee"), a political subdivision of the State of Colorado whose address is 13250 Ray Nixon Road, Fountain, CO 80817. The Grantor and the Grantee may be collectively referred to herein as the Parties.

### Recitals

WHEREAS, the Grantor owns real property in unincorporated El Paso County which is legally described in Book 5084, pages 538-539 of the records of the El Paso County Clerk and Recorder and in Exhibit A, and is depicted in Exhibit C, both exhibits being attached hereto and incorporated herein by reference ("the Property"), which Property is a part of the Fountain Creek Regional Park; and

WHEREAS, the Grantee owns and operates a water conveyance, treatment, and distribution system comprising real and personal property, including pipelines and appurtenant facilities traversing the Property and an easement described in Book 3278, pages 317-324 of the records of the El Paso County Clerk and Recorder; and

WHEREAS, the Grantee desires to acquire an easement in the Duckwood area of the Property for the purpose of installing and performing ongoing inspection, maintenance and repair of stream bank stabilization facilities which protect its pipeline and appurtenant facilities.

### Agreement

NOW THEREFORE, for and in consideration of the mutual promises contained herein, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties incorporate the above-stated Recitals into this Agreement as if fully stated herein.
2. Grant of Easement; Description of the Premises. The Grantor hereby grants to Grantee and its successors and assigns a perpetual, non-exclusive easement ("Easement") over, upon, under and along that portion of the Property described in Exhibit B, attached hereto and incorporated herein by this reference, and depicted on Exhibit C, for installation and ongoing inspection, maintenance, and repair of stream bank stabilization features (the "Improvements"). Such use of the Easement by Grantee shall not unreasonably interfere with Grantor's or the public's use of the Property as a regional trail, a regional park, or otherwise.
3. Ownership of Improvements. The Grantor agrees that the Improvements installed in, upon or under the Easement shall remain the property of the Grantee. It shall be the Grantee's sole obligation to maintain and make any necessary repairs to the Improvements that it installs in, upon or under the Easement.

4. Grantor's Use of the Premises. The Grantor retains the right to access and make full use of the Property, including the Easement, consistent with the Grantee's use of the Easement as permitted hereunder, for both itself and, to the extent allowed by Grantor, the public. Grantor shall not construct any structure on the Property that interferes with Grantee's use of the Easement.

5. Condition of the Property. The Grantee agrees and understands that it accepts the Easement "AS IS" and without any warranties of any kind or nature, including without limitation any warranties as to the state of the Grantor's title to the Property. Grantee acknowledges that the Property is a public facility and that the Grantor cannot completely control or be responsible for the acts of the public (excluding Grantor's employees, agents, and representatives) within the Property.

6. Workmanship. Grantee shall conduct all activities on the Easement in a neat and workmanlike manner so as not to unreasonably interfere with either the Grantor's or the public's use and enjoyment of the Property, and without cost or liability to the Grantor. Grantee shall take all reasonably necessary measures to protect the Grantor, the Grantor's employees, and the general public from its activities on the Easement.

7. Closing the Trail. Grantee shall not close the Fountain Creek Regional Trail ("Trail") to the public for any purpose without the prior written consent of the Grantor, which shall be obtained from the Grantor's representative designated in paragraph 16 below. Should a temporary detour of the Trail be required, both the installation and removal of such detour shall be at Grantor's direction and at Grantee's expense.

8. Surface Restoration of Land. Except as the Easement is necessarily modified to accommodate the Improvements, Grantee shall repair any physical damage done to the Easement by or resulting from its actions or operations. Grantee shall promptly restore, replace, re-vegetate, or repair the surface of the Easement to the original condition as near as may be reasonably possible. Such restoration, including seed mixture, topsoil, and ground preparation, shall be at the Grantor's direction.

9. Subjacent and Lateral Support. Neither Grantor nor Grantee shall impair the lateral or subjacent support of the Property or the Improvements located on or in the Easement.

10. Mechanics' and Materialmen's Liens. In no event shall Grantee allow any mechanics' or materialmen's liens to attach against the Easement or the Property for materials supplied or work performed at the request of, or for the benefit of, Grantee, and Grantee, to the extent expressly permitted by law, shall indemnify and hold Grantor harmless from any cost or expense incurred by Grantor to release any such mechanic's or materialmen's liens against the Easement or the Property.

11. Grantor Authority; Grantee's Responsibility to Obtain Other Approvals. The Grantor covenants that it has the authority to grant the Easement as set forth herein to the extent the Property is owned by the Grantor. Grantor agrees and understands that it is Grantee's responsibility to obtain any necessary approvals from, and/or address any applicable issues with, the following: adjoining private property owners; the U.S. Army Corps of Engineers regarding

wetlands impacts; the U.S. Fish and Wildlife Service regarding impacts to listed species including, but not limited to, Preble's Meadow Jumping Mouse; and the Regional Floodplain Administrator regarding floodplain issues.

12. Insurance. Grantee represents and warrants to the Grantor that it carries general liability insurance and agrees that during their respective periods of use of the Easement, the Grantee's contractors will carry general liability insurance, worker's compensation insurance and automotive insurance. Prior to its first access to the Easement under this Agreement, Grantee will provide the Grantor with the Certificates of Insurance evidencing the insurance coverage described herein.

13. Grantor Representation. One or more Grantor representatives may be present on the Easement during any of the Grantee's activities under this Agreement.

14. Remedies. In the event of any breach of this Agreement, the non-breaching party may pursue and obtain any and all remedies or causes of action available to it at law or in equity.

15. Waiver. The failure of either party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either party in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

16. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties hereto, and all other representations or statements heretofore made, verbal or written, are merged herein, and this Agreement may be amended only in writing, and executed by duly authorized representatives of the Parties hereto.

17. Severability. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

18. Binding. The Parties hereby agree that the covenants, stipulations, and conditions as stated in this Agreement shall inure to the benefit of and shall be binding upon the heirs, personal representatives, successors and assigns of the Grantor and the Grantee.

19. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages, or to bring any legal action or other proceeding against any party for any breach or other failure to perform this Agreement.

20. Recording; Governing Law. This Agreement shall be recorded by the Grantor in the records of the El Paso County Clerk and Recorder's Office. This Agreement is made and shall be construed under the laws of the State of Colorado.

Made and entered into as of the date first set forth above.

**GRANTEE:**

FOUNTAIN VALLEY AUTHORITY:

By: *G. M. Bostrom, President*  
Name and Title

STATE OF COLORADO    )  
  ) s.s.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this 15<sup>TH</sup> day of OCTOBER, 2009, by GARY M. BOSTROM, as PRESIDENT of the Fountain Valley Authority.

Witness my hand and official seal.

*Barbara A. Schneider*  
Notary Public

My Commission Expires: May 27, 2013

**GRANTOR:**

EL PASO COUNTY, COLORADO

By: \_\_\_\_\_  
Jim Bensberg, Chairman  
Board of County Commissioners  
El Paso County, Colorado

ATTEST:

\_\_\_\_\_  
County Clerk & Recorder

APPROVED AS TO FORM:

*Jeri L. Seago*  
\_\_\_\_\_  
Office of the County Attorney

STATE OF COLORADO    )  
  ) s.s.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, as \_\_\_\_\_ of the Board of County Commissioners, and as attested to by \_\_\_\_\_, County Clerk and Recorder.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## EXHIBIT A

A parcel of land being a portion of the Southwest Quarter of the Southwest Quarter of Section 30 and that part of the Northwest Quarter and the Northwest Quarter of the Southwest Quarter 31, all in Township 15 South, Range 65 West, of the 6<sup>th</sup> P.M., El Paso County, Colorado as described and recorded at Book 5084, Pages 0538-0539 of the Records of said County.

Prepared for and on behalf of Colorado Springs Utilities by:

Jeffery D. Jones, Colorado PLS 28653  
P.O. Box 1103 MC 1814  
Colorado Springs, CO. 80947-1814

## EXHIBIT B

A parcel of land being a portion of the Southwest Quarter of the Southwest Quarter of Section 30, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado. More particularly described as:

**Basis of Bearings:** All bearings are grid bearings of the Colorado State Plane Coordinate System, Central Zone, North American Datum 1983. The basis of grid bearing is the line between the Southwest corner of Section 30, Township 15 South, Range 65 West of the 6<sup>th</sup> P.M., (brass disc in concrete marked LS 2692 – 1987) and the Northwest corner of said Section 30 (brass disc in concrete, 6 inches below ground at south edge of highway on ramp). That bearing being N 00° 02' 14" W.

**Commencing**

at the Southwest corner of said Section 30, thence N 68° 03' 42" E, a distance of 956.26 feet, to the

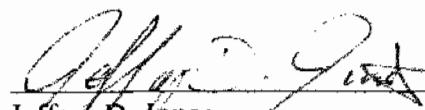
**Point of Beginning,**

thence N 24° 47' 11" W, a distance of 100.03 feet,  
thence N 32° 20' 05" W, a distance of 100.03 feet,  
thence N 57° 39' 55" E, a distance of 96.88 feet,  
thence S 32° 20' 05" E, a distance of 105.72 feet,  
thence S 24° 47' 11" E, a distance of 107.11 feet,  
thence S 65° 12' 49" W, a distance of 96.79 feet, to the **Point of Beginning.**

**Excepting** that portion of an easement as described in Book 3278 Pages 317-324 at the records of said county, which overlaps this description. Considering said exception, this parcel contains 0.296 acres more or less.

**Legal Description Statement:**

I, Jeffery D. Jones, a Licensed Professional Land Surveyor in the State of Colorado, do hereby state that the above legal description and attached exhibit were prepared under my responsible charge and on the basis of my knowledge, information, and belief are correct.

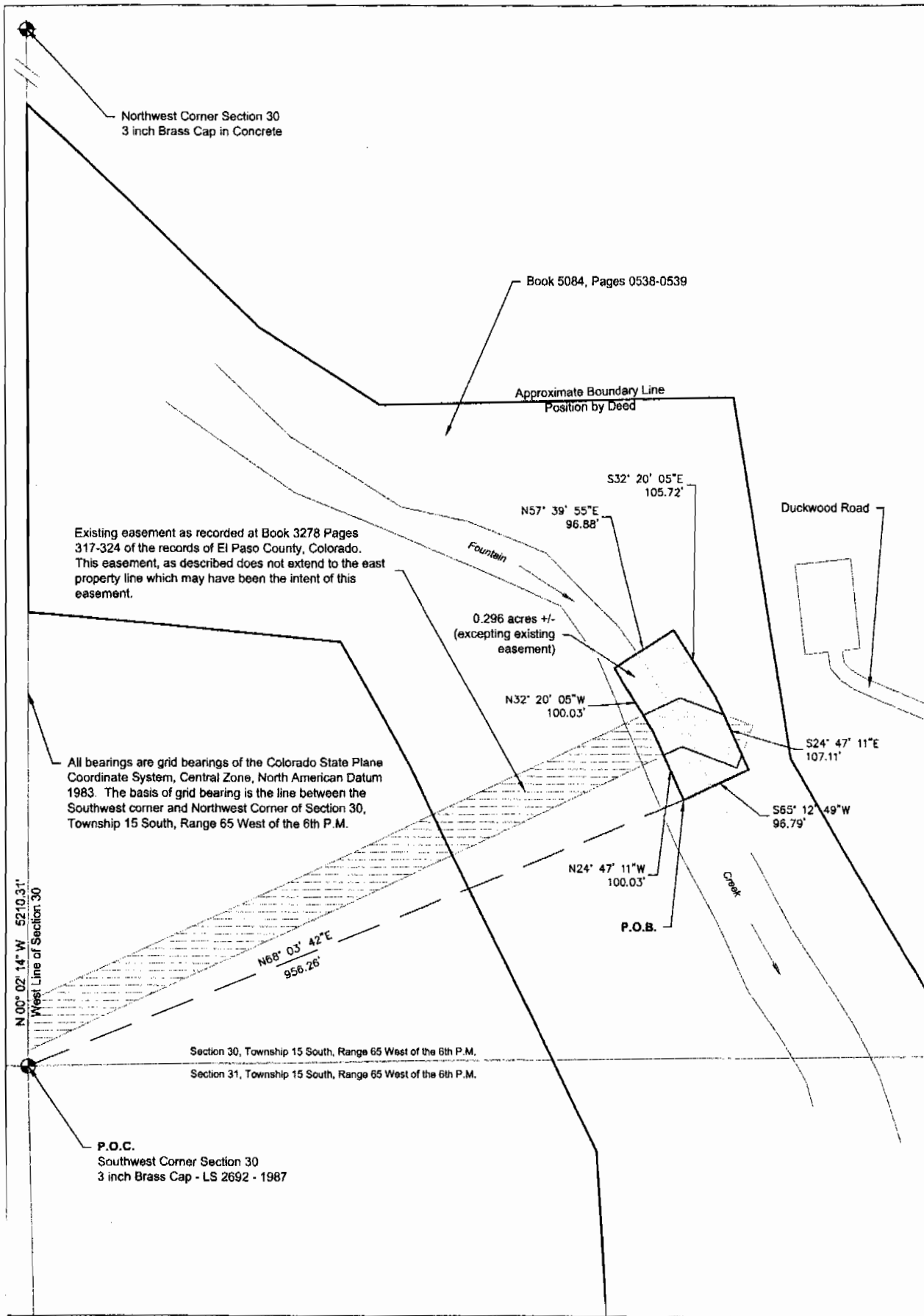


Jeffery D. Jones  
Colorado P.L.S. 28653

For and on Behalf of Colorado Springs Utilities.

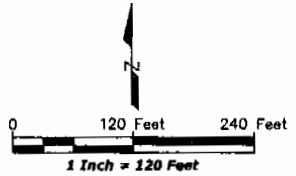
Date 9-18-2009






**Colorado Springs Utilities**  
It's how we're all connected

Planning & Engineering Resource Management  
1521 Hancock Expressway  
Colorado Springs, Colorado 80947



# Exhibit C

Drawn By: Gary Rust	Date: July 22, 2009
Checked by: Jeff Jones	Revised: September 18, 2009

Note: This sketch does not represent a monumented land survey. It is only intended to depict the location of the accompanying written legal description.