

# HAMILTON CREEK METROPOLITAN DISTRICT

## 2005 Debt Service Fund Budget

	2003 Actual	2004 Budget	2004 10 mo YTD	2004 2 mo Estimate	2004 Projected	2005 Budget
<b>BEGINNING FUND BALANCE</b>	(180,616)	(147,098)	(147,098)		(147,098)	(29,517)
<b>REVENUES</b>						
Property tax	275,660	276,513	276,065	448	276,513	275,688
Specific ownership tax	17,163	16,500	14,425	2,750	17,175	17,000
Development fees	0	10,000	0	0	0	5,000
Water tap fees	9,000	9,000	9,000	4,500	13,500	9,000
Water project loan / grant	210,000	2,100,000	0	2,100,000	2,100,000	0
<b>TOTAL REVENUES</b>	511,823	2,412,013	299,490	2,107,698	2,407,188	306,688
<b>EXPENDITURES</b>						
Bond interest	0	0	0	0	0	0
Bond principal	9,000	2,100,000	0	2,100,000	2,100,000	0
Treasurer fees	13,809	13,826	13,847	22	13,869	13,784
Bond administration	8,250	2,000	2,500	0	2,500	0
Bond attorney	39,017	5,000	5,859	0	5,859	0
Bond miscellaneous	9,216	500	500	0	500	0
Transfer to general fund	399,013	143,264	137,360	29,519	166,879	260,525
<b>SUBTOTAL</b>	478,305	2,264,590	160,066	2,129,541	2,289,607	274,309
<b>INCREASE (DECREASE) RESERVES</b>	33,518	147,423			117,581	32,379
<b>INCREASE (DECREASE) EMERGENCY</b>	0	0			0	0
<b>ACCUMULATED RESERVES</b>	(150,498)	(3,075)			(32,917)	(538)
<b>ACCUMULATED EMERGENCY</b>	3,400	3,400			0	0
<b>ENDING FUND BALANCE</b>	(147,098)	325			(29,517)	2,862

This document is a true and accurate copy of the budget for the Hamilton Creek Metropolitan District adopted for 2005 by the Board of Directors on November 30, 2004.

HAMILTON CREEK METROPOLITAN DISTRICT

SEAL

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Kolbjorn Tenfjord, President

# HAMILTON CREEK METROPOLITAN DISTRICT

## 2005 General Fund Budget

	2003 Actual	2004 Budget	2004 10 mo YTD	2004 2 mo Estimate	2004 Projected	2005 Budget
<b>BEGINNING FUND BALANCE</b>	0	0			0	0
<b>REVENUES</b>						
User fees	43,590	44,000	44,831	0	44,831	44,500
Interest	662	300	977	50	1,027	300
Miscellaneous	0	0	0	0	0	0
Transfer from debt fund	399,013	143,264	137,360	29,519	166,879	260,525
<b>TOTAL REVENUES</b>	443,265	187,564	183,168	29,569	212,737	305,325
<b>EXPENDITURES</b>						
Road maintenance	21,782	32,000	42,097	3,000	45,097	32,000
Water system maintenance	301,061	70,000	70,426	4,000	74,426	75,000
Forest maintenance	30,572	10,000	16,963	0	16,963	20,000
Utilities	3,087	3,500	2,499	575	3,074	3,500
Septic system cleaning	11,795	12,500	15,165	0	15,165	16,500
Administration	27,825	31,500	26,250	5,250	31,500	33,000
Audit	2,700	3,000	2,900	0	2,900	3,000
Director fees	1,050	1,500	750	375	1,125	1,500
Insurance	1,601	2,000	1,767	0	1,767	2,000
Legal	195	500	406	0	406	500
Office supplies and postage	1,924	2,500	2,324	400	2,724	2,750
Membership dues	1,126	1,250	915	0	915	1,000
Telephone	927	1,100	691	180	871	900
Miscellaneous	1,545	500	15	75	90	500
Loan repayment / interest	36,075	15,714	0	15,714	15,714	103,175
Capital - road	0	0	0	0	0	0
Capital - water system	0	0	0	0	0	0
Capital - other	0	0	0	0	0	10,000
<b>TOTAL EXPENDITURES</b>	443,265	187,564	183,168	29,569	212,737	305,325
<b>NET INCOME</b>	0	0	0	0	0	0
<b>ENDING FUND BALANCE</b>	0	0			0	0

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HAMILTON CREEK METROPOLITAN DISTRICT

SEAL

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Kolbjorn Tenfjord, Presiden

## HAMILTON CREEK METROPOLITAN DISTRICT

### 2005 Budget Message

The Hamilton Creek Metropolitan District operates under a court approved bankruptcy plan agreed to by all bondholders in January 1990 and effective on February 1, 1990. Under the Plan, all revenues collected from ad valorem taxes, water taps, user fees, development fees and interest income go toward the payment of interest on the "New Bonds" after the District has first paid its operating expenses, bond principal and contribution to capital reserves. The District is obligated to make interest payments of 11.25% to the bondholders on June 1 and December 1 of each year only to the extent Debt Service Funds are available. The principal on the Bonds was paid off December 1, 2004. There are no interest payment dates after December 1, 2004.

The District takes the position that the Tabor Amendment is a retrospective law and is not retroactive on the District's Amended Plan for Adjustment of Debt. It is the District's understanding that the spirit and intent of the Tabor Amendment is to prevent governmental entities from unnecessarily raising taxes and creating excessive and unwarranted burdens upon taxpayers. The District shares this philosophy. The District wishes to continue to provide service to its taxpayers in the most efficient and cost effective way possible without placing an unnecessary burden on them. The only viable means of promoting the health and welfare of the District is to proceed under the terms of the Plan.

Services to be delivered. The Hamilton Creek Metropolitan District is organized as a special district. The 2005 budget includes funding to provide water service, septic system pumping, forest management, road maintenance and snow plowing.

System of accounting. The District utilizes a modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized when they are susceptible to accrual, i.e., both measurable and available. Available means collectable within the current period or soon enough thereafter to be used to pay liabilities of the current period. Expenditures are generally recognized under the modified accrual basis of accounting when the related liability is incurred, if measurable.

Fund accounting. The District uses Fund Accounting to segregate monies based on designated uses. The funds are the General Fund for operations, the Debt Fund for bond principal and interest payments, and the Capital Fund for capital improvements as authorized by the bankruptcy ruling. Primary revenues for the General Fund and Capital Fund are transferred as needed to pay operation costs from the Debt Fund.

Presentation of the budget consolidates the General and Capital Funds to a single page to provide a better overall view of the District operations.

Property taxes. The mill levy for 2005 is 40 mills, the amount set by the 1990 bankruptcy ruling. The District's position is that the Tabor Amendment regarding mill levy and revenue restrictions is not retroactive to the court approved Plan.

The assessed valuation of the District is \$6,892,210. Based on the mill levy this will realize \$275,688 in tax revenue. The Summit County Treasurer collection fee of 5% will be \$13,784. The assessed valuation of the properties served by the Metropolitan District declined from a previous year valuation of \$6,912,820.

Development fees. A fee of \$5,000 is collected on the original sale of property from the developer. A \$5,000 fee is also collected on any property on which an assessor unit (as defined and/or approved by Summit County) is built. There currently are 2 remaining lots to be sold by the developer. The 2005 budget anticipates the sale of one lot. No developer lots were sold in 2004.

Water tap fees. Tap fees are collected prior to authorizing a building permit. The budget projects two tap fees at \$4,500 to be sold in 2005. The District has 84 improved lots with 3 residences under construction. There currently are 35 unimproved lots. The District cannot assume all of these properties will be built on as owners may abandon lot lines (subject to approval by Summit County Government), or not build on lots to provide more open space around their property. There were three water tap fees sold in 2004.

Bond interest and principal. The District has no outstanding bond principal after the principal payment on December 1, 2004. The principal payment was funded by US Treasury Strips purchased in 1985 from proceeds from the original bond. The 1990 bankruptcy ruling allows the District to first pay operating expenses, bond principal and reserve a capital fund amount prior to any interest payment. The District is allowed to partially pay the interest due in any year to the extent that funds are available after the above allocations. Interest not paid to the bondholders is referred to as accrued interest and is paid prior to any current interest payments. District worksheets reflect, as of December 1, 2004 the amount of accrued interest due bondholders is \$9,099,538.82. The District presented bondholders with a repurchase plan in 1996 which was accepted by 99 out of 110 bondholders. The District filed in Federal Bankruptcy Court to have the repurchase plan approved as a settlement for all bondholders. The Bankruptcy Court ruled on September 19, 1996 that the District was not able to utilize a Chapter 9 filing for this approval. The ruling of the Bankruptcy Court was appealed to Federal District Court that did not reverse the Bankruptcy Court ruling. The 10<sup>th</sup> Circuit Court of Appeals issued an opinion on May 15, 1998 that held the District would not be able to utilize the Bankruptcy Court as it was not in default. As the 1990 bankruptcy ruling allows the District to operate on a "cash flow" basis, the 10<sup>th</sup> Circuit held the District would never be in default as long as it operated in accordance with the plan. Language in the opinion stated the debt was perpetually escapable from contingencies in the Plan. The 10<sup>th</sup> Circuit found the District to date had operated in accordance with the plan.

In 1997 the District was issued an enforcement order by the State of Colorado Health Department to bring fluoride in the water of the District below the 4.0 mg/l maximum contaminant action level. In 1998 the District filed a legal action in Colorado District Court for a declaratory ruling addressing if funds used to meet the statutory regulations were an operating expense and available prior to the payment of interest to Bondholders. In November 1999 the District, in a mediation hearing required by the Court, offered a settlement to the Bondholders of

either \$250,000 per year for five years or one million dollars in 2000 as a full payment of interest due. The principal scheduled for payment in 2004 would have been paid as scheduled. The settlement would have removed the District from bankruptcy and the District would then have been responsible for the cost of the water repair. The Bondholders, represented by the majority bondholder Colorado Bondshares at the hearing, rejected the proposal. The District made a settlement with the State of Colorado agreeing to meet the statutory requirements for fluoride within 18 months of a decision in this action. A two day trial was held February 22<sup>nd</sup> and 23<sup>rd</sup>, 2000. The Court ruled, on June 22, 2000, that the cost of repairing the water system to meet statutory regulations was an operating expense payable prior to interest to the Bondholders per the Plan. The ruling of the Colorado District Court was appealed to the Colorado Court of Appeals. The Colorado Court of Appeals, on August 9, 2001, affirmed in part, reversed in part and remanded the case back to the District Court. The Appeals Court transmitted this ruling on October 15, 2001 to the District Court. The District presented a \$250,000 interest settlement offer at an August 6, 2004 mitigation meeting that was a required element of the District Court trial. The offer was rejected and Colorado Bondshares made no settlement offer. A three day trial was held January 7-9<sup>th</sup>, 2003 to address if the water source of the District was contaminated with fluoride when the Plan was confirmed in 1990 and what the intent of the parties to the Bankruptcy was with regards to continuation of the interest after payment of the principal. No decision has been released by the Court regarding the January 2003 trial. The State of Colorado filed a motion in May 2003 to fine the District \$10,000 for not completing the water system repairs by the agreed upon date. In a hearing held in September 2003 the District Court rejected the motion of the State.

The District completed the structural construction of the water repairs in March 2003. Mechanical construction was completed in May 2003 and the first water from the new source was entered into the system. The District began exclusive use of the new water source in August 2003. The State of Colorado approved construction of the water repairs in February 2003.

There are no interest payment dates after the 2004 principal payment. The District believes its operation in accordance with the 1990 Bankruptcy Plan eliminate any interest payments in 2005 and future years. The Plan does not have any restriction to the amount contributed to the capital fund beginning in 2005. The interest accrual on the outstanding balance of unpaid interest ends with the principal payment per the current court rulings. Since 1995 the District has made offers and settlement proposals to Colorado Bondshares, the litigating bondholder, for reasonable financial settlements to the benefit of all parties that would terminate the excessive legal expenses on both sides. Based on the rejection of all offers by Colorado Bondshares, the District does not believe they are interested in a financial settlement to the litigation.

User fees. District customers in 2005 will be billed a flat rate of \$125 per quarter which includes water usage up to 15,000 gallons per quarter and the pumping of the individual septic system on a regularly scheduled basis. Water usage in excess of the 15,000 gallons, but below 20,000 gallons is billed at \$5 per 1,000 gallons. Water usage in excess of 20,000 gallons per quarter is billed at \$10 per 1,000 gallons. The District will provide service to 84 homes that is projected to realize \$44,500 in user fees for 2005.

Interest and connection fees. The District projects minimal interest income in 2005 due to the expenditures of funds for water repairs and low interest rates. All District funds are held in interest bearing accounts. Funds are transferred to a non-interest-bearing checking account as payment checks are issued.

Road maintenance. The District contracts for snow removal on the roads and paved driveways within the District. The contract for the upcoming winter season is based on an hourly rate of \$100 per hour. A minimum of \$700 per month is payable from November through April 15th. There is an additional fee for any sand used on the roads. The basis of the road maintenance budget is:

Snow removal	\$ 22,000
Road repairs	<u>10,000</u>
TOTAL	\$ 32,000

Water maintenance. The District contracts operation of the water system to a licensed water operator. The contract includes routine water testing as required by the State of Colorado and overall supervision of the operation of the District's wells, water tank and distribution system. Specialized water testing, semi-annual operations maintenance, line inspections and maintenance requests from the District are billed separately. The District has used surface water from Hamilton Creek as the exclusive source of water since August 2003. Allocation of the water maintenance budget is:

Operations contract	\$ 15,000
Routine maintenance & repair labor	23,000
Chemicals, testing and supplies	5,000
System repairs – site improvement	20,000
System repairs – other	4,000
System repairs - compressor	<u>8,000</u>
TOTAL	75,000

During 1997 the District received an enforcement order from the Colorado Department of Health due to the District's water supply exceeding the 4.0 mg/l level for fluoride. All testing of ground water since 1997 for fluoride levels in the water provided by the District reflected levels in excess of 4.0 mg/l. The District has had engineering studies done by several firms since 1997 to determine the best solution available. Testimony in the Colorado District Court action in February 2000 by Rothberg, Tamburini & Winsor estimated the cost to exceed one million dollars. Subsequent design work indicated the expense could exceed two million dollars. The District has considered at least five different solutions utilizing water sources within and outside the District. The District constructed an access road and drilled a well in Hamilton Creek in the summer of 2001. The well did not produce water. The District proceeded with the alternate plan to utilize surface water from Hamilton Creek. Construction was halted in the fall of 2001 pending final permitting from the Army Corp of Engineers and the United State Forest Service.

Previously the District had estimated the cost of providing equipment to treat surface water at \$1.5 million. In 2002 the District had revised engineering completed to access the Creek in a manner satisfactory to all regulatory agencies and to install temporary bag filtration equipment. Most of the temporary bag filtration equipment would be utilized in a permanent pump station to be constructed that may use microfiltration equipment for treatment. Construction of the temporary facility was completed in 2003 and is currently in use. The water meets all State standards, including fluoride. Total cost of the project has been spread over several years and designs, but has been completed at a cost less than \$1 million.

Forest Maintenance. Substantial portions of the area served by the Metropolitan District are forested. The values of property within the District would be strongly affected by loss of forested areas. The District charter directs forest management as part of the activities to be provided. The District in 1998 had an investigation of the forested areas by a forest management company. They indicated the forest presently was in good condition and there was currently no evidence of pine beetle infestation. The report recommended the District follow a long-term forest management program including selective thinning, spruce tree seedling planting and selective chemical treatment of diseased trees. The District uses the forest management company to survey the area at least twice per year to identify diseased trees. Approximately 50 trees were marked in the fall of 2004 for removal in 2005 prior to July. The leading cause of the problem trees is likely the result of drought stress. The 2005 budget reflects continuing the collection of dead trees from the forested areas, removal of diseased trees and continued work on the long-term forest maintenance plan.

Utilities. The utility billing is for the cost of electricity to run the well pump and heat the pump house. The cost will fluctuate based on the water volume used by the District and the season. The new surface water system has more utility costs than the prior ground water system.

Septic pumping. The District is following a schedule of pumping individual septic systems on a three-year cycle. It is anticipated this schedule may be modified in the future to reflect the year round occupancy of some District residents. A total of 32 septic systems were pumped in 2004. There are 22 systems scheduled for pumping in 2005.

Administration. Services provided by the administrator include billing, financial statements, financial management, budget preparation and the general supervision of District operations.

Audit. The CPA firm of Hiratsuka & Schmitt, L.L.P. prepared the 2002 audit for the District. They are contracted for the 2004 audit. Hiratsuka & Schmitt specializes in governmental audits and are considered experts in government accounting.

Director fees. The District compensates directors \$75 for each board meeting attended. There are five directors and quarterly meetings.

Insurance. The District is a member of the Special District insurance pool that provides competitive rates on property, content, liability and public officer insurance.

Office supplies and postage. Costs are for billing, correspondence postage, Consumer Confidence Report preparation, web site maintenance and office supplies. The District web site has public information available including budgets, board minutes and the annual audit.

Membership dues. The District belongs to the Special Districts Association of Colorado. The Association provides newsletters, seminars and lobbying efforts on behalf of special districts. Also, the insurance for the District is through a liability pool organized by the Special District Association. Membership cost is based on the District budget. The District also belongs to the Rural Water Association. This Association provides specialized information for small public water suppliers, training seminars and an annual trade show attended by representatives of the District.

Miscellaneous expenses. Bank fees and other minor expenses not allocated to other areas.

Capital fund. The District is anticipating \$10,000 for construction of a resident postal box collection area(s) in 2005. The funding for capital projects is from the capital reserve fund as designated by the bankruptcy ruling. The District has prepared a separate summary of the capital reserves funding and allocation. 1996 was the last year of funding the capital reserve fund under the bankruptcy agreement. The reconciliation of the funds by the District indicates a \$55,000 balance at the end of 2004.

The District in 1993 made bond interest payments in excess of the available cash after the allocation to the capital reserve fund. Future year bondholder interest payments would need to be reduced by this amount to fully fund the capital reserves. A separate summary of the bond interest allocation has been prepared.

There are no restrictions on contributions to the capital fund in 2005 per the Bankruptcy Plan.

Bond attorney and administration fees. The District has no bond legal fees or bond administration fees for 2005. Historically, all prior trial court decisions have been appealed by one of the parties to the case. Depending on the nature of any continuing litigation in 2005, it is possible costs may be incurred.

**HAMILTON CREEK METROPOLITAN DISTRICT**  
**RESOLUTION TO ADOPT BUDGET AND APPROPRIATE REVENUES**

A RESOLUTION SUMMARIZING EXPENDITURES AND REVENUES FOR EACH FUND AND ADOPTING A BUDGET FOR THE HAMILTON CREEK METROPOLITAN DISTRICT, COLORADO, SETTING THE MILL LEVY AND APPROPRIATING SUMS OF MONEY FOR THE 2005 CALENDAR YEAR.

WHEREAS, the Board of Directors of the Hamilton Creek Metropolitan District has appointed Robert D. Polich, District Administrator, to prepare and submit a proposed budget to the Board of Directors at the proper time; and;

WHEREAS, Mr. Polich has submitted a proposed budget to this Board on November 30, 2004, for its consideration, and;

WHEREAS, the 2004 valuation for assessment for the Hamilton Creek Metropolitan District as certified by the County Assessor is \$6,892,210 and;

WHEREAS, upon due and proper notice, published in accordance with the law, the proposed budget was open for inspection by the public at a public place, a public hearing was held on December 8, 2004, and interested taxpayers were given the opportunity to file or register any objections to the proposed budget.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE HAMILTON CREEK METROPOLITAN DISTRICT, COLORADO:

Section 1. That the budget as submitted and attached as Exhibit A is approved and adopted as the budget of the Hamilton Creek Metropolitan District for 2005.

Section 2. That the budget approved and adopted shall be signed by the President of the District and made a part of the public records of the District.

Section 3. That for the purpose of meeting all bonds and interest of the Hamilton Creek Metropolitan District during the 2005 budget year, there is levied a tax of 40.000 mills upon each dollar of the total valuation for assessment of all taxable property within the District.

Section 4. That the President is hereby authorized and directed to immediately certify to the County Commissioners of Summit County, Colorado, the above mill levies for the Hamilton Creek Metropolitan District.

Section 5. That the sums set forth in the budget are appropriated from the revenue of each fund, to each fund, for purposes stated.

Adopted November 30, 2004.

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Kolbjorn Tenfjord, President

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Attest:

**HAMILTON CREEK METROPOLITAN DISTRICT**

**CERTIFICATION OF TAX LEVIES**

To: County Commissioners of Summit County, Colorado

This is to certify that the tax levy to be assessed by you upon all property within the limits of the Hamilton Creek Metropolitan District, based on a total assessed valuation of \$6,892,210 for the year 2004, as determined and fixed by the Board of Directors on November 30, 2004 is:

Hamilton Creek Metropolitan District General Obligation Bond Series 1985, 11.25%; Addendum Additional Provisions by the United States Bankruptcy Court; December 1, 2004.

Debt Service Fund	40.000 mills	\$ 275,688
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Pursuant to the Order of the United States Bankruptcy Court approving the District's Amended Plan for Adjustment of Debts, all ad valorem tax revenues, as well as any other sources of revenues, including developer's fees, users' fees and tap fees are to be deposited into the District's Debt Service or Capital Fund for the purposes of paying the new bond principal and interest. The District is allowed to transfer enough money from this fund to the General Operating Fund for the purpose of meeting operating expenses. The Order also sets the District's mill levy at 40.000 mills for 2005.

You are hereby authorized and directed to extend this levy upon your tax list.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Hamilton Creek Metropolitan District, this 30th day of November 2004.

HAMILTON CREEK METROPOLITAN DISTRICT

SEAL

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Kolbjorn Tenfjord, President