

RESOLUTION NO. \_\_\_\_\_-16

**A RESOLUTION ACCEPTING THE DONATION OF  
PROPERTY FROM DANIELA F. CUSACK FOR A PUBLIC  
PURPOSE TO THE CITY OF COLORADO SPRINGS**

**WHEREAS**, the City of Colorado Springs (City”) is the fee owner of certain real property located in the West ½ of the SE ¼ of Section 26, T.13 S., R.68 W., of the Sixth Principal Meridian, in Ute Pass, west of Colorado Springs, and near the town of Cascade, Colorado. See **Exhibit A**, map depiction of the subject area; and

**WHEREAS**, Mark Cusack filed an action in the District Court of El Paso County, Colorado (1) for declaratory relief against the City, and (2) for adverse possession and a decree quieting title, as against Daniela Cusack, to a parcel of land located in the same W½ of the SE¼ of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, where the City owns certain property. The lawsuit title is: *Mark E. Cusack v. Daniela F. Cusack and the City of Colorado Springs, a Municipal Corporation*, El Paso County Dist. Court, Case No. 2013CV32158 (“the Lawsuit”); and

**WHEREAS**, the property at issue in the Lawsuit is a 2.07 acre, more or less, rectangular tract located adjacent to Highway 24, and between land owned by the City, legally described in Section 1 below (“Property”). See **Exhibit A**, tract of land depicted as “Donated Property;” and

**WHEREAS**, the parties to the Lawsuit recognized the uncertainties and expense of litigation and therefore desired to settle, adjust, and compromise the claims and disputes between them. The settlement includes the acquisition of the Donated Property by the City of Colorado Springs, which necessarily requires the approval of the settlement terms set forth in the parties Settlement Agreement attached hereto as **Exhibit B**; and

**WHEREAS**, Daniela F. Cusack, through an executed Quitclaim Deed, desires to donate the Property to the City of Colorado Springs; and

**WHEREAS**, Appraiser Bill Park was initially retained by Daniela Cusack to perform an independent appraisal of the Property. Subsequently, Mr. Parks conducted the appraisal on behalf of Mark Cusack without object from Daniela Cusack. Mr. Park valued the Property at \$18,500.00. See **Exhibit B**, Bill Park Appraisal attached hereto.

**WHEREAS**, Mark Cusack signed a separate Quitclaim Deed assigning all his interest and rights in the Property to the City of Colorado Springs; and

**WHEREAS**, the Colorado Springs Utilities support the donation of the Property and acceptance of the Property into City ownership to protect its vested interest in the utilities, water source, delivery system routed to and located on the Property; and

**WHEREAS**, Colorado Springs Utilities recommends authorization and approval for the City's Real Estate Services Manager to enter into a contract, subject to the terms, conditions and restrictions listed below, for donation of the Property to the City of Colorado Springs; and

**WHEREAS**, Pursuant to Section 4.4 of Chapter 4 of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest* requires the City Council to accept a donation of land for public purpose, if the property owner elects to report the donation to the Internal Revenue Service; and

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

Section 1. The Property that is donated to the City of Colorado Springs by Quitclaim Deed is an unimproved tract of land containing 2.07 acres, more or less, and legally described, as follows:

A part of the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 26, T. 13 S., R. 68 W. of the 6th P. M., more particularly described as follows: Commencing at a point whence the NE corner of the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section 26 bears N. 47° 26' E. 1,029 ft.; the point of beginning for the parcel of land to be hereby described. From the point of beginning; thence S. 4° 00' E. 470 feet to a point on the eastern boundary of the tract remaining in the possession of the Cascade Town Company as described in Book 893, Page 382; thence S. 86° 00' W. a distance of 225 feet to a point on the Western boundary of said tract; thence N. 4° 00' W. 450 feet more or less to the northwest corner of said tract; thence easterly 230 feet more or less to the point of beginning. See **Exhibit A**.

Section 2. City Council finds that the property serves the City of Colorado Springs' vested interest in the utilities, water source, delivery system routed to and located on the Property.

Section 3. In accord with *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest*, Chapter 4, Section 4.4, City Council hereby accepts the donation of the Property to the City of Colorado Springs and the terms of the parties Settlement Agreement.

Section 4. In accord with Section 7.7.1802 of the Code of the City of Colorado Springs 2001, as amended, the City's Real Estate Services Manager is authorized to execute all documents necessary to complete, receive, and acknowledge the real estate donation with Daniela F. Cusack and/or Mark Cusack, and if applicable, execute any documentation required by the Internal Revenue Service to evidence the charitable contribution.

**DATED** at Colorado Springs, Colorado, this 23<sup>rd</sup> day of August, 2016.

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Merv Bennett, Council President

ATTEST:

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Sarah B. Johnson, City Clerk