

RESOLUTION NO. 84-16

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:

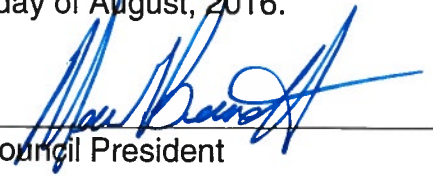
A part of the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 26, T. 13 S., R. 68 W. of the 6th P. M., more particularly described as follows: Commencing at a point whence the NE corner of the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section 26 bears N. 47° 26' E. 1,029 ft.; the point 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.

  
\_\_\_\_\_  
Council President

ATTEST:

  
Sarah B. Johnson, City Clerk



## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into as of July 1, 2016, by and between MARK E. CUSACK ("Mark Cusack"), DANIELA FRANCIS CUSACK a/k/a DANIELA F. CUSACK ("Daniela Cusack"), and THE CITY OF COLORADO SPRINGS, a municipal corporation ("the City"), and supersedes the Mediated Settlement Agreement entered into by and among the Parties on August 29, 2014. Hereinafter, Mark Cusack, Daniela Cusack and the City shall be referred to jointly as "the Parties" and individually as "Party". This Agreement and all deeds, licenses, and easements required herein shall become effective upon City Council's approval of the terms and the land acquisition of the property described in paragraphs B and 1.2 of this Agreement.

### RECITALS

This Agreement is entered into with reference to the following facts:

A. Mark Cusack filed an action in the District Court of El Paso County, Colorado (1) for declaratory relief against the City, and (2) for a decree quieting title, as against Daniela Cusack, to a parcel of land located in the W½ of the SE¼ of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, Colorado located in Ute Pass, west of Colorado Springs, Colorado, and near the town of Cascade, Colorado. 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").

B. The property in dispute in the Lawsuit is an unimproved parcel containing 2.02 acres, more or less, and is legally described as follows:

A part of the W½ of the SE¼ 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 NW¼ of the SE¼ 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 (hereinafter the "Property").

See separately executed Quit Claim Deeds of Mark Cusack and Daniela Cusack collectively attached as **Exhibit A**. Each deed, including its provisions, is attached hereto, incorporated herein, and made a part hereof by reference.

C. In the Lawsuit Mark Cusack claims title to the Property as against Daniela Cusack pursuant to C.R.S. §38-41-101, *et seq.* (Adverse Possession for 18 years) and/or C.R.S. §§38-41-108 and/or 38-41-109 (Payment of Taxes for Seven Years).

D. In the Lawsuit, Mark Cusack claims that, pursuant to a prior conveyance from Anne Cusack Johnson to the City, recorded July 31, 1973, in Book 2609 at Page 180, the City acquired only an easement, and not a fee interest, over and across the Property for the purpose of maintaining a water transmission line.

E. Daniela Cusack claims to be the legal owner of the Property, and denies that Mark Cusack acquired any interest in the Property by adverse possession or otherwise.

F. The City claims that, pursuant to a Warranty Deed from Anne Cusack Johnson, recorded July 31, 1973 in Book 2609 at Page 180, it acquired a fee interest in a 50-foot strip of land dissecting the Property ("the 50-foot strip"). The City denies Mark Cusack's claim that the City acquired only an easement across the Property.

G. The City, on behalf of its enterprise, Colorado Springs Utilities, has a vested interest in protecting and maintaining its water sources and delivery systems.

H. Recognizing the uncertainties and expense of litigation, the Parties hereto desire to settle, adjust, and compromise the claims and disputes between them.

### Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and the payment of the sums herein specified, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, as follows:

#### 1. **Settlement Terms.**

1.1 The Parties are the respective owners of the parcels of real property identified in the attached **Exhibit B**, the boundaries of which parcels came into dispute during the course of the Lawsuit. Therefore, in accordance with C.R.S. § 38-44-112, the Parties hereby engage Luke Johnson, a Colorado Professional Land Surveyor employed by and working on behalf of Colorado Springs Utilities, to establish the location of the common boundary lines between the Parties' respective parcels, as depicted in an informal survey previously conducted by him. The Parties further direct that Luke Johnson shall prepare and file with the Clerk and Recorder of El Paso County, Colorado a formal survey depicting the permanently established common boundary lines between the Parties' respective parcels in accordance with his informal, unrecorded survey.

The Parties hereby agree to accept the boundary lines so located by Luke Johnson as the permanently established, true common boundaries between their respective parcels and, contemporaneously with the execution of this Settlement Agreement, will execute the Boundary Agreement attached hereto as **Exhibit B** and cause the same to be recorded in the real property records of El Paso County, Colorado. The Parties and their heirs, executors, personal representatives and assigns shall thereafter respect the boundary lines so located to the end that each of the Parties will be able to plan and undertake improvements without notice to the other. Inasmuch as Luke Johnson is an employee of the City, the expenses of conducting and recording the survey shall be borne by the City.

The parties agree that by engaging Luke Johnson to establish the permanently established true boundary between their respective parcels, the Parties shall waive any claim of any kind or nature, for themselves, and on behalf of their employees, agents, trustees, heirs, successors and assigns, and fully and finally release and forever discharge Luke Johnson and the City, together with their employees, agents, attorneys, trustees, heirs, successors and assigns from all known or unknown claims, demands, actions, damages, injuries, costs, causes of action and liabilities, legal and equitable, which arise from, relate to or concern the survey and/or boundary agreement establishing the Parties' permanent common boundaries lines.

1.2 Mark Cusack and Daniela Cusack shall, by means of separately executed Quit Claim Deeds, convey to the City all of their rights, title, and interest in and to the Property described in the Recitals, paragraph B (including Exhibit A above) and incorporated herein. Mark Cusack and Daniela Cusack also agree that by conveyance of the Property by Quit Claim Deed, all rights, title, and interest merge with the City's rights, title, and interest in the 50-foot tract of land contained within the boundaries of the Property, as follows:

A strip shaped parcel of land bounded on the Easterly and Westerly ends by the Easterly and Westerly boundaries of that tract described in Book 1646 at Page 570 in the records of El Paso County, Colorado. Said strip of land also being contained between the Northerly boundary of said tract of record and the Southwesterly right-of-way line of U. S. Highway 24 as Constructed under Colorado State Highway project F-017-1(2). All being situated in the Southeast quarter of Section 26, Township 13 South, Range 68 West of the 6th Principal Meridian. Containing 0.16 Acre, more or less. A tract 50 feet in width providing 25 feet on each, and either side of the center line of an existing 30-inch diameter, domestic water transmission line over, under, across, and/or through that parcel of land as recorded in Book 1646 at Page 570 in the records of the County of El Paso in the State of

Colorado. All being a part of the W½ of the SE¼ of Sec. 26, T. 13 S., R. 68 W. of the 6th P. M., more particularly described as follows:

Commencing at a point whence the N. E. corner of the NW¼ of the SE¼ of said Section bears N. 47° 26' E. 1,029 feet; thence S. 4° 00' 00" E. a distance of 433.27 feet to the true point of beginning for the center line description of the pipe line right of way to hereby be described. From the point of beginning thence N. 37° 25' 02" W. a distance of 144.90 feet to the first angle point; thence N. 7° 05' 02" W. a distance of 237.81 feet to the second angle point; thence N. 17° 37' 17" W. a distance of 80.93 feet to the third angle point; thence N. 50° 02' 17" W. a distance of 30 feet to a point of intersection with the Southerly right-of-way fence line of U. S. Highway 24. Also a tract of land 50 feet in width, providing 25 feet on each and either side of the center line of said 12-inch flush line, the center line of said 12-inch flush line being described as follows: Beginning at said second angle point in the foregoing description; thence N. 71° 01' 38" E. for a distance of 80.00 feet, to the point of termination.

See **Exhibit A**, the conveyance of the 50-Foot strip of land (hereinafter "50-foot Strip"). Mark Cusack and Daniela Cusack agree that this 50-foot Strip shall be included in the Quit Claim Deeds executed by each party to this Agreement.

Included in each such Quit Claim Deed shall be a restrictive covenant that neither the Ute Pass Regional Trail nor any other hiking, equestrian or motorized trail shall be located within or on the Property, the 50-foot Strip or any City-owned property that is contiguous to properties owned by Mark Cusack or Daniela Cusack, located in the West ½ of the SE ¼ of Section 26, T.13 S., R.68 W of the 6<sup>th</sup> P.M. , subject to the following exception: The City may grant a license or other permission to construct an extension or segment of the Ute Pass Regional Trail on City-owned property near and roughly parallel to the easterly boundary of the Property and parcels of land currently owned by Daniela Cusack, identified by El Paso County Assessor's Schedule Nos 8326400006 and 8326400009. Such exception shall also include a twenty-five (25) foot wide strip of land located within, along and contiguous to the northern boundary of the Property where it abuts the CDOT right-of-way for Highway 24. The 25-foot strip shall run parallel to the common boundary between the Property and the CDOT right-of-way and shall run along the entire northern boundary of the Property. See **Exhibit C**, map depiction of the subject area (notice: the attached map, Exhibit C, is for general reference and assistance in clarifying the locations described herein. The map is not intended to be and does not provide the precise location of where the Ute Pass Regional Trail will be constructed or where any fencing will be located). Mark Cusack and Daniela Cusack, their heirs, successors and assigns, shall have pedestrian access over and across the Property, together with the unlimited right to access the Property for hiking and recreational use.

1.3 The City agrees to maintain, repair and construct, a six foot tall chain-link fence along the northern boundary of the Property to be placed twenty-five (25) feet in a southerly direction from the point where the CDOT parcel abuts the Property (as described in the above paragraph). Such fence shall begin at the west bank of the French Creek and continue westerly for approximately 125 feet, thence northerly back to the CDOT parcel boundary. If the additional twenty-five (25) foot wide section of the Property (as described in the exception provisions above) is needed to complete an extension or a segment of the Ute Pass Trail, then the City shall construct an addition to the six foot tall chain-link fence which runs the length of the remaining northern section of the Property at a distance of twenty-five (25) feet from the point where CDOT property abuts the Property. Mark Cusack and Daniela Cusack understand and agree that vehicle parking or use of any property not part of the City's Property described herein must be approved by CDOT or the proper owner of such other property. For its part, the City agrees to take reasonable steps to maintain the Property in its natural state, provided that the City may construct other utility lines, apparatus and utility related structures on the Property, so long as such apparatus and structures blend with the natural look of the Property and do not emit noise. The City agrees that under no circumstances shall the Property be used for a public park or public access for any purpose, including, but not limited to, hiking trails, equestrian trails and motorized trails.

1.4 By separate instrument, the City shall give to Mark Cusack and Daniela Cusack, their respective heirs, successors-in-interest and assigns a right-of-way across the existing Colorado Springs Utilities road to the extent it is located on City-owned property for the purpose of access, including vehicular access, to their respective adjacent properties. The existing Colorado Springs Utilities road over which such right-of-way is to be located is identified in the Revocable License and provisions incorporated herein by reference and attached as Exhibit C, as follows.

A portion of a parcel of land located in the W½ of the SE¼ of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, Colorado, as conveyed to The City of Colorado Springs by instrument recorded at Book 893 Page 381 and Book 915 Page 216, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, more particularly described as follows:

Commencing at the Center ¼ Sec. Cor. of Sec. 26 (a found granite stone, 8" x 4", firmly set, projecting 14" above ground, chiseled "+" on top and "+" on South face), from which the ¼ Sec. Cor. of Secs. 26 and 35 (a found iron pipe, 1" diameter, firmly set, projecting 2" above a mound of stone, 3½' diameter, with a brass cap, 2½" diameter, marked as described in the official record of the dependent resurvey of T. 13 S., R. 68 W., accepted in 1941) bears S 1 degree 35 minutes 09 seconds W, 2,597.18 feet



distance, Thence, along the West line of said W½ of the SE¼ of Sec. 26, S 1 degree 35 minutes 09 seconds W, 747.39 feet distance, and the **Point of Beginning**;

Thence, departing said West line, S 58 degrees 02 minutes 46 seconds E, 72.61 feet distance; Thence, S 72 degrees 07 minutes 18 seconds E, 98.03 feet distance; Thence S 61 degrees 28 minutes 21 seconds E, 81.49 feet distance; Thence S 70 degrees 49 minutes 30 seconds E, 105.99 feet distance; Thence, along a curve to the right, having a radius of 55.00 feet and a central angle of 80 degrees 00 minutes 14 seconds, an arc distance of 76.80 feet; Thence S 9 degrees 10 minutes 44 seconds W, 124.66 feet distance; Thence, S 6 degrees 01 minutes 36 seconds W, 120.43 feet distance; Thence, S 15 degrees 18 minutes 20 seconds E, 60.87 feet distance; Thence, S 2 degrees 37 minutes 05 seconds W, 122.64 feet distance; Thence, S 10 degrees 22 minutes 19 seconds E, 71.13 feet distance; Thence, S 30 degrees 09 minutes 34 seconds E, 117.26 feet distance; Thence, S 16 degrees 07 minutes 31 seconds E, 40.31 feet distance; Thence, S 0 degrees 06 minutes 30 seconds E, 74.40 feet distance; Thence, S 8 degrees 30 minutes 26 seconds W, 155.54 feet distance; Thence, N 86 degrees 35 minutes 56 seconds E, to a point on the West line of a parcel of land as recorded at Book 2654 Page 917, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 52.56 feet distance; Thence, along said West line, S 3 degrees 24 minutes 25 seconds E, to the Southwest corner of said parcel, also being the most Westerly corner of a parcel of land as recorded at Book 2654 Page 918, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 39.75 feet distance; Thence, along the West line of said parcel, S 3 degrees 24 minutes 25 seconds E, to the Southwest corner of said parcel, 50.00 feet distance; Thence, S 86 degrees 35 minutes 56 seconds W, to the Southeast corner of a parcel of land as recorded at Book 2615 Page 128, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 100.86 feet distance; Thence, along the East line of said parcel, N 3 degrees 24 minutes 25 seconds W, 89.75 feet distance; Thence, departing said East line, N 86 degrees 35 minutes 56 seconds E, 17.64 feet distance; Thence, N 8 degrees 30 minutes 26 seconds E, 159.61 feet distance; Thence, N 18 degrees 24 minutes 28 seconds W, 11.23 feet distance; Thence, N 0 degrees 06 minutes 30 seconds W, 67.31 feet distance; Thence, S 34 degrees 07 minutes 51 seconds W, to a point on said East line, 84.62 feet distance; Thence, along said East line, N 3 degrees 24

minutes 25 seconds W, 49.24 feet distance; Thence, departing said East line, N 34 degrees 07 minutes 51 seconds E, 66.54 feet distance; Thence, N 30 degrees 09 minutes 34 seconds W, to a point on said East line, 90.07 feet distance; Thence, along said East line, N 3 degrees 24 minutes 25 seconds W, to the Northeast corner of said parcel, 27.73 feet distance; Thence, along the North line of said parcel, S 73 degrees 53 minutes 53 seconds W, 7.99 feet distance; Thence, departing said North line, N 10 degrees 22 minutes 19 seconds W, 65.82 feet distance; Thence, N 2 degrees 37 minutes 05 seconds E, 121.32 feet distance; Thence, N 15 degrees 18 minutes 20 seconds W, 61.79 feet distance; Thence, N 6 degrees 01 minutes 36 seconds E, 126.91 feet distance; Thence, N 9 degrees 10 minutes 44 seconds E, 125.48 feet distance; Thence, along a curve to the left, having a radius of 25.00 feet and a central angle of 80 degrees 00 minutes 14 seconds, an arc distance of 34.91 feet; Thence, N 70 degrees 49 minutes 30 seconds W, 108.45 feet distance; Thence, N 61 degrees 28 minutes 21 seconds W, 81.15 feet distance; Thence, N 72 degrees 07 minutes 18 seconds W, 98.93 feet distance; Thence, N 58 degrees 02 minutes 46 seconds W, to a point on said West line of said W½SE¼ Sec. 26, 58.73 feet distance; Thence, along said West line, N 1 degree 35 minutes 09 seconds E, 34.77 feet distance, to the **Point of Beginning**, and containing 50,209 square feet of land, more or less.

The direction of each line is with reference to the Colorado Coordinate System of 1983 Central Zone. The distances are reported as horizontal measurement at a mean ground elevation of 6,500 feet above sea level, U. S. survey foot.

See **Exhibit D** (hereinafter "License"). The City agrees that neither the Ute Pass Regional Trail nor any other public hiking, equestrian or motorized trail shall be located within or on the property described in this License to Daniela F. Cusack and Mark Cusack. Mark Cusack and Daniela Cusack, for themselves, their respective heirs, successors and assigns, agree that they shall not permit or allow the Ute Pass Trail or any other public hiking, equestrian or motorized trail to be located on their respective properties situated in the West ½ of the SE ¼ of Section 26, T.13 S, R.68 W of the 6<sup>th</sup> P.M.

1.5 The City and Daniela Cusack acknowledge that there presently exist electrical wires and poles ("electrical service") on and across the Property, which may include a separate parcel owned by Daniela Cusack, the purpose of which is to provide electricity to parcels owned by Mark Cusack. The electrical service was located and constructed for Mark Cusack by Colorado Springs Utilities. Colorado Springs Utilities agrees to provide electrical service via the

wires and poles described above to Mark Cusack's separately owned parcels. Colorado Springs Utilities will maintain the electrical wires and posts. If an easement from Daniela Cusack for the electrical wires and poles becomes necessary, Daniela Cusack will, by separate written instruments, grant an easement therefor to the City. The City retains the right, in the case of emergencies, to cut the electrical wires or take such other steps as may be necessary to resolve the emergency, in which case the City shall be responsible for the cost of restoring service up to Mark Cusack's meter.

A disagreement has arisen between Mark Cusack and the City as to who now owns the power poles and electrical equipment. If the City owns the power poles and associated electrical equipment, and continues to service the area at the time Daniela Cusack desires to bring electricity to her two properties, she will deal directly with the City. If, on the other hand, Mark Cusack owns the poles and associated electrical equipment, Daniela Cusack must reimburse him for a portion of his investment if she wishes to utilize his power poles and/or associated electrical equipment to bring electricity to her two properties. The amount of such reimbursement is to be determined by agreement between Mark Cusack and Daniela Cusack at some future date.

1.6 At some future date, the City may grant a license for the purpose of constructing an extension or segment of a trail system known as the Ute Pass Regional Trail ("the Trail") on City-owned property near and roughly parallel to the easterly boundary of the Property and parcels of land owned by Daniela Cusack. In the event the City grants such a license or other permission for the purpose of constructing the Trail, the City agrees to erect a 3-strand barbless wire fence with 6-foot metal T-posts ("Fence"), said Fence commencing at the northeast corner of the Property connecting to the existing barbed wire fence at the north end of the Property and running along the easterly property line of the Property, then continuing along the easterly property line of a parcel of property owned by Daniela Cusack (El Paso County Assessor's Schedule No. 8326400009) to the northwest corner of a parcel of property owned by Daniela Cusack (El Paso County Assessor's Schedule No. 8326400006), then along the northerly property line of said parcel to the northeast corner thereof, then along the easterly property line of said parcel to the southeast corner thereof, said Fence being approximately 1,260 feet in length (the "Fence"). The City agrees to erect the Fence within a reasonable time after the Trail is constructed and open for public recreational use by the general public. See **Exhibit C**, map depiction of the subject area (notice: the attached map, *Exhibit B*, is for general reference and assistance in clarifying the locations described herein. The map is not intended to be and does not provide the precise location of where the Trail will be constructed or where any fencing will be located).

The purpose of the Fence is to address Mark Cusack's concern that once the Trail is constructed patrons thereof could deviate from the designated Trail path and trespass onto his land. Thus, within a reasonable time after the Trail is constructed and open for public recreational use, the City agrees to install the Fence to deter potential trespassers from crossing onto Mark Cusack's property and/or Daniella Cusack's property. Once the Trail is constructed

and open for public recreational use and the Fence is constructed, the City agrees to maintain and repair the Fence, which responsibility the City may delegate to a third party as a condition for managing public use of the Trail. Such maintenance or repair shall be within reason, meaning the City or its delegatee shall repair or, if needed, replace damaged or broken sections, posts, or component parts which affect the structural integrity of the Fence that prevent it from serving its purpose. Although the City is agreeing to maintain or repair the Fence, the cost(s), including labor and materials, for such maintenance or repair shall be paid by Mark Cusack. The City, or its delegatee, has the option to utilize its internal resources/personnel to maintain or repair the Fence at fair market value for such services and materials or it may contract the work out to the lowest bidder (of not more than three bids). The City, or its delegatee, shall use best efforts, under the circumstances presented at the time, to obtain the most cost efficient method for maintenance or repair costs of the fence.

Mark Cusack may request that the City erect a better fence, in the same location as the Fence described above. This fence shall be erected at Mark Cusack's sole expense and subject to the City's written approval. The City shall not unreasonably withhold approval of a fence Mark Cusack wishes to erect so long as such fence: (1) is demonstrated to be necessary (i.e. people from the Trail are trespassing onto Mark Cusack's property and the requested improved fence is a reasonable means to reduce such trespass activity); (2) blends with the natural look of the area; (3) does not unreasonably interfere with the City's operations in the area; (4) does not result in any costs to the City; and (5) does not cause a substantial barrier that impedes fire, other emergency personnel/equipment, and/or City personnel/equipment from accessing the area. The City agrees to respond to Mark Cusack's request to erect a fence within sixty days.

If an improved fence is erected, the City shall maintain and repair the fence in a similar manner as described above. Such maintenance or repair shall be within reason, meaning the City shall repair or, if needed, replace damaged or broken sections, posts, or component parts which affect the structural integrity of the fence that prevent it from serving its purpose of deterring potential trespassers away from entering the mark Cusack's property or Daniella Cusack's property. Although the City is agreeing to maintain or repair the fence, the cost(s), including labor and materials, for such maintenance or repair shall be paid by Mark Cusack. The City has the option to utilize its internal resources/personnel to maintain or repair the fence at fair market value for such services and materials or it may contract the work out to the lowest bidder (of not more than three bids). The City shall use best efforts, under the circumstances presented at the time, to obtain the most cost efficient method for maintenance or repair costs of the fence.

1.7 Upon the execution of this Agreement, the Quit Claim Deeds referenced in Paragraph 1.2 above, the License for ingress and egress referenced in Paragraph 1.4 above, and, if necessary, the easement or license referenced in Paragraph 1.5-above, the Parties shall cause the Lawsuit to be dismissed with prejudice, each Party to pay its own attorney fees and costs incurred in connection with the Lawsuit.

2. **Release.** The Parties, for themselves, and on behalf of their employees, agents, trustees, heirs, successors and assigns, hereby fully and finally release and forever discharge each other, together with their employees, agents, attorneys, trustees, heirs, successors and assigns from all known or unknown claims, demands, actions, damages, injuries, costs, causes of action and liabilities, legal and equitable, which arise from, relate to or concern the claims asserted in the Lawsuit. The above release is expressly intended to and does waive, release, acquit, and forever discharge any and all subrogated interests, liens, or assignments, which might exist with regard to any claims, including counter claims, released herein.

In addition, Mark Cusack releases any claims for adverse possession or otherwise, that he may have against Daniela Cusack as they relate to any other real property owned by Daniela Cusack in El Paso County.

2.1. The Parties represent and warrant that, other than that which is set forth in the Recitals to this Agreement, they have not filed or caused to be filed or asserted any claim in or with any court or agency based on or related to the Lawsuit or claims and agree that they will not file any claim in or with any court or agency based on or related to the Lawsuit or claims against any Party to this Lawsuit.

2.2. The Parties hereby declare and represent that no other person, firm, or corporation has received any assignment, subrogation, lien, including but not limited to attorney lien, or other right of substitution to the claim or claims made or which could have been asserted, or that to the extent such assignment, subrogation, lien, or other right of substitution exists, the same has been waived, resolved, or otherwise disclosed.

3. **Different Facts.** The Parties, and each of them, acknowledge that they are fully familiar with the facts and assumptions giving rise to this Agreement, but agree that this Agreement shall remain fully effective and binding as to each of them even if the facts or assumptions turn out to be different from what they now believe them to be.

4. **No Admission.** The Parties acknowledge that this Agreement constitutes the settlement of disputed claims and that entering into this Agreement shall not constitute an admission of fault, wrongdoing, liability, or responsibility by a Party.

5. **Costs and Fees.** Each Party shall pay his, her or its own costs and attorneys' fees in connection with the dispute giving rise to this Agreement, the preparation and execution of this Agreement and any related documents.

6. **No Previous Assignment.** Each Party represents and warrants that it has not assigned or otherwise transferred, or purported to assign or otherwise transfer, to any party, directly or indirectly, voluntarily, involuntarily or by operation of law, any rights, claims or causes of action which it may have against the other Party, or any damages, liabilities, losses

and costs being released by this Agreement. The Parties each agree to indemnify and hold the other harmless from and against all claims, demands, actions, damages, injuries, costs, causes of action and liabilities of any nature suffered or incurred as a result or any assignment or transfer, or purported assignment or transfer, in breach of the representation and warranty contained in this paragraph. The Parties agree that the indemnification and hold harmless provisions of this paragraph apply to the City only to the extent permitted by law and subject to the limitations under the Colorado Constitution, the City Charter, and relevant statutes/ordinances.

7. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of the Agreement, and supersedes all prior agreements, representations, and discussions between the Parties concerning that subject matter. Each Party further declares and represents that, in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement, or other statement not set forth in this Agreement. The parties further agree that the mediation agreement of August 29, 2014 is hereby voided and superseded by this Agreement.

8. **Nonwaiver.** None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

9. **Effect of Subject Headings.** Subject headings in this Agreement are inserted for convenience only, and shall not be construed as interpretations of text.

10. **Gender.** Words used in this Agreement, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

11. **Governing Law.** This Agreement shall be interpreted, governed, and construed under the laws of the State of Colorado.

12. **Amendment.** This Agreement may not be altered or modified by either of the Parties except by an instrument in writing executed by each of them.

13. **Further Assurances.** The Parties agree to cooperate promptly and fully in providing and/or executing such additional documents and taking such other actions as may later be determined to be reasonably necessary to effectuate the provisions of this Agreement.

14. **Review of Agreement; Construction.** The Parties acknowledge that they have read and understood this Agreement and further acknowledge that, in entering into this



settlement, they have been advised by independent attorneys of their choice. Further, each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either Party on the basis that the Party was the drafter.

15. **Attorneys' Fees and Costs.** In the event that any action, arbitration or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses actually incurred in such action, arbitration or proceeding.

16. **Signature Clause.** Each Party represents and warrants that the person who signs below on behalf of that Party has been duly authorized to execute this Agreement on behalf of that Party without the further concurrence or approval of any person, entity or court. This Agreement and all deeds, licenses, and easements required herein shall become effective upon City Council's approval of the terms and the land acquisition of the property described in paragraphs B and 1.1 of this Agreement.

17. **Multiple Originals; Facsimiles.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document binding on all the Parties hereto, notwithstanding that all such Parties are not signatories to the original or the same counterpart. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

18. **Survivability.** Representations, obligations, remedies and warranties contained in this Agreement shall survive the Closing of this Agreement.

19. **Recording.** This Settlement Agreement and Release may be recorded in the Office of the Clerk & Recorder of El Paso County, Colorado.

IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year set forth next to their respective signatures.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Mark E. Cusack

STATE OF \_\_\_\_\_ )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Mark E. Cusack.

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
Daniela F. Cusack

STATE OF \_\_\_\_\_ )  
  )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Daniela F. Cusack.

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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



Daniel J. Higgins  
City of Colorado Springs, on behalf of its enterprise,  
Colorado Springs Utilities' representative

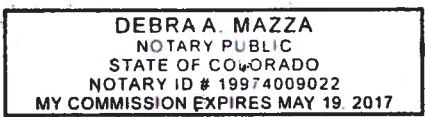
Dated: 9-22-16, 2016

DANIEL J. HIGGINS CHIEF WATER SERVICES OFFICER  
Print name and title

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

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of September  
2016, by Daniel J. Higgins.

Witness my hand and official seal



My commission expires: May 19, 2017

Debra A. Mazza  
Notary Public

City of Colorado Springs

\_\_\_\_\_  
Print name and title

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2016, by \_\_\_\_\_.

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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


Approved as to form:

\_\_\_\_\_  
Attorney for Mark E. Cusack

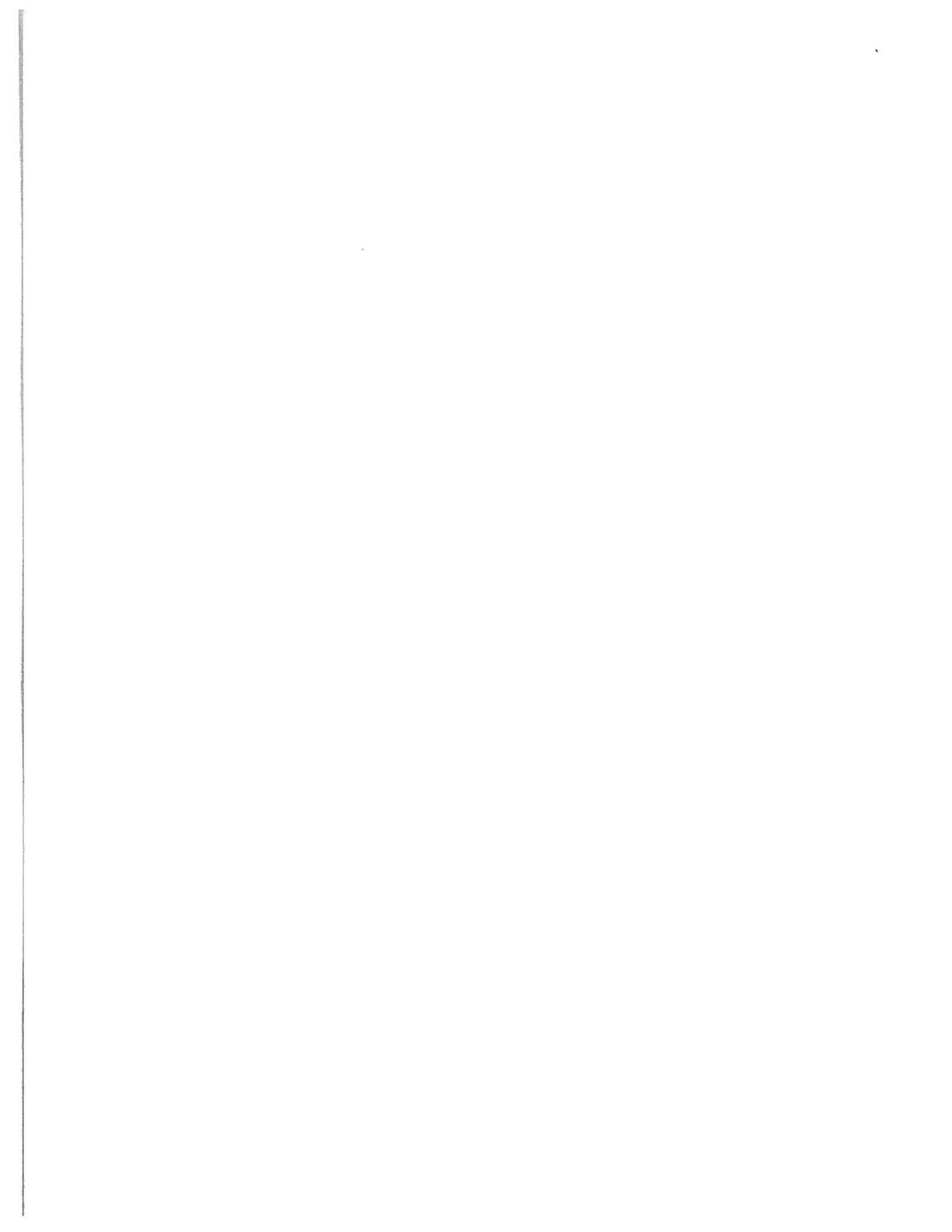
Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Daniela F. Cusack

Date: \_\_\_\_\_

  
\_\_\_\_\_  
City Attorney's Office

Date: 9-22-16



IN WITNESS WHEREOF, the Parties have signed this Agreement as of the day and year set forth next to their respective signatures.

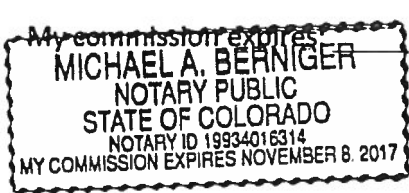
Mark E. Cusack  
Mark E. Cusack

Dated: July 20, 2016

STATE OF Colorado )  
COUNTY OF El Paso )ss.

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of July 2016, by Mark E. Cusack.

Witness my hand and official seal



11-8-2017

Michael A. Berniger  
Notary Public

\_\_\_\_\_  
Daniela F. Cusack

Dated: \_\_\_\_\_, 2016

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2016, by Daniela F. Cusack.

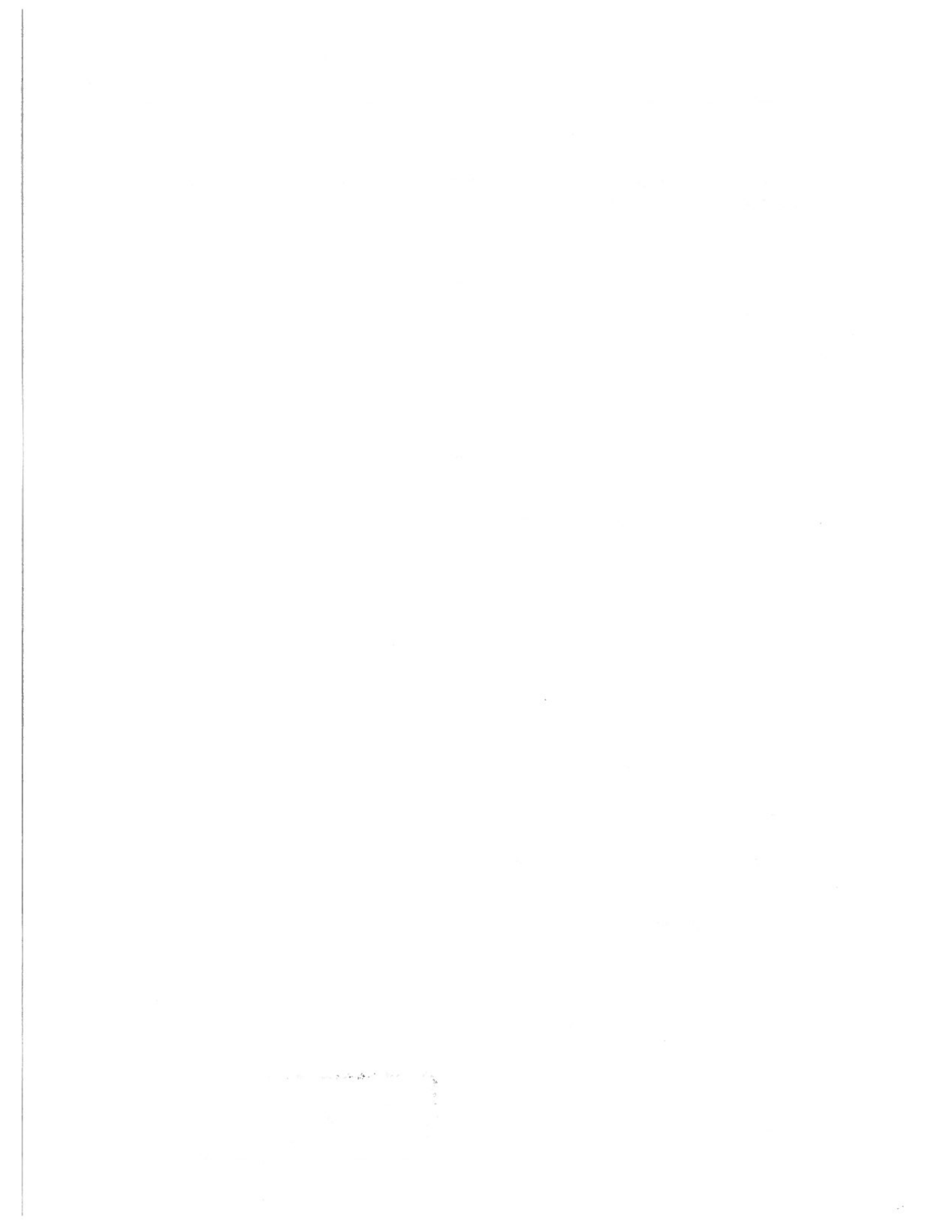
Witness my hand and official seal

My commission expires: \_\_\_\_\_

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







# EXHIBIT A



QUITCLAIM DEED

MARK E. CUSACK ("Grantor"), whose street address is 242 N. Guadalupe, San Marcos, Texas 78666, for good and valuable consideration, including the settlement of Grantor's lawsuit against Daniella F. Cusack and the City of Colorado Springs titled *Mark E. Cusack v. Daniela F. Cusack and the City of Colorado Springs, a Municipal Corporation*, El Paso County Dist. Court, Case No. 2013CV32158, hereby sells and quitclaims to THE CITY OF COLORADO SPRINGS, A HOME RULE CITY AND MUNICIPAL CORPORATION, by and through its enterprise, Colorado Springs Utilities, whose operating street address is 30 South Nevada Avenue, Suite 606, Colorado Springs, Colorado 80901, the below interest, title, and rights that the "Grantor" has or may have in and to the following real property, to wit:

The exact location of the real property is particularly described on Exhibit 1 and Exhibit 2 (Collectively "The Property"), attached hereto and by this reference incorporated herein and made a part hereof. All interest, title, and rights described in Exhibit 2, shall merge with all interest, title, and rights, described in Exhibit 1.

Neither the Ute Pass Regional Trail nor any other hiking, equestrian or motorized trail shall be located within or on the Property, described in Exhibits 1 and 2 or any City-owned property that is contiguous to properties owned by Mark Cusack or Daniela Cusack, located in the West 1/2 of the SE 1/4 of Section 26, T.13 S, R.68 W of the 6th P.M. , subject to the following exception: The City may grant a license or other permission to construct an extension or segment of the Ute Pass Regional Trail on City-owned property near and roughly parallel to the easterly boundary of the Property and parcels of land currently owned by Daniela Cusack, identified by El Paso County Assessor's Schedule Nos 8326400006 and 8326400009. Such exception shall also include a twenty-five (25) foot wide strip of land located within, along, and contiguous to the northern boundary of the Property where it abuts the CDOT right-of-way for Highway 24. The 25-foot strip shall run parallel to the common boundary between the Property and the CDOT right-of-way and shall run along the entire northern boundary of the Property. Grantor reserves unto himself, his heirs and assigns an easement for ingress and egress over and across the Property described in Exhibit 1 and Exhibit 2, and Grantor, his heirs and assigns shall have the unlimited right to access the Property described in Exhibit 1 and Exhibit 2 for hiking and recreational use.

The Grantor reserves no other rights, title or interests. This Quitclaim Deed is part of the settlement agreement, contemporaneously recorded herewith, resolving the above-described lawsuit.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed and delivered by this 20th day of July 2016.

Grantor

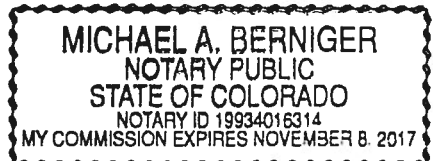
Mark E. Cusack  
By: [Signature]  
Mark E. Cusack

State of Colorado )  
County of El Paso ) ss.

The foregoing instrument was acknowledged before me this 20th day of July 2016, by Mark E. Cusack.

Witness my hand and seal  
My Commission Expires: 11-8-2017

[Signature]  
Notary Public



Acceptance by the City of Colorado Springs:

By: Ronald Evans Carlentine  
Ronald Evans Carlentine  
Real Estate Services Manager

State of Colorado     )  
                                  ) ss.  
County of El Paso     )

The foregoing instrument was acknowledged before me this 9th day of Nov  
2016, by Ronald Evans Carlentine.

Witness my hand and official seal.

My Commission expires: 8/20/17

Crystal L. Scranton  
Notary Public

Approved as to Form:  
City of Colorado Springs  
City Attorney's Office

CRYSTAL L. SCRANTON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20014025329  
MY COMMISSION EXPIRES AUGUST 20 2017

By: [Signature]  
Date: 11/9/2016

## QUIT CLAIM DEED - EXHIBIT 1

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 6<sup>th</sup> 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.

## QUIT CLAIM DEED – EXHIBIT 2

A strip shaped parcel of land bounded on the Easterly and Westerly ends by the Easterly and Westerly boundaries of that tract described in Book 1646 at Page 570 in the records of El Paso County, Colorado. Said strip of land also being contained between the Northerly boundary of said tract of record and the Southwesterly right-of-way line of U. S. Highway 24 as Constructed under Colorado State Highway project F-017-1(2). All being situated in the Southeast quarter of Section 26, Township 13 South, Range 68 West of the 6<sup>th</sup> Principal Meridian. Containing 0.16 Acre, more or less.

A tract 50 feet in width providing 25 feet on each, and either side of the center line of an existing 30-inch diameter, domestic water transmission line over, under, across, and/or through that parcel of land as recorded in Book 1646 at Page 570 in the records of the County of El Paso in the State of Colorado. All being a part of the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 26, T. 13 S., R. 68 W. of the 6<sup>th</sup> P. M., more particularly described as follows:

Commencing at a point whence the N. E. corner of the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section bears N. 47° 26' E. 1,029 feet; thence S. 4° 00' 00" E. a distance of 433.27 feet to the true point of beginning for the center line description of the pipe line right of way to hereby be described. From the point of beginning thence N. 37° 25' 02" W. a distance of 144.90 feet to the first angle point; thence N. 7° 05' 02" W. a distance of 237.81 feet to the second angle point; thence N. 17° 37' 17" W. a distance of 80.93 feet to the third angle point; thence N. 50° 02' 17" W. a distance of 30 feet to a point of intersection with the Southerly right-of-way fence line of U. S. Highway 24.

Also a tract of land 50 feet in width, providing 25 feet on each and either side of the center line of said 12-inch flush line, the center line of said 12-inch flush line being described as follows:

Beginning at said second angle point in the foregoing description; thence N. 71° 01' 38" E. for a distance of 80.00 feet, to the point of termination.

QUITCLAIM DEED

DANIELA FRANCIS CUSACK ("Grantor"), whose street address is, 102 Wilson Place, Santa Monica, California 90405, for good and valuable consideration, including the settlement of a lawsuit titled *Mark E. Cusack v. Daniela F. Cusack and the City of Colorado Springs, a Municipal Corporation*, El Paso County Dist. Court, Case No. 2013CV32158, hereby donates and quitclaims to THE CITY OF COLORADO SPRINGS, A HOME RULE CITY AND MUNICIPAL CORPORATION, On Behalf of its enterprise, Colorado Springs Utilities whose operating street address is, 30 South Nevada Avenue, Suite 606, Colorado Springs, Colorado 80901, the below interest, title, and rights, which the "Grantor" has or may have in and to the following real property, to wit:

The exact location of the real property is particularly described on Exhibit 1 and Exhibit 2 (Collectively "The Property"), attached hereto and by this reference incorporated herein and made a part hereof. All interest, title, and rights described in Exhibit 2, shall merge with all interest, title, and rights, described in Exhibit 1.

Neither the Ute Pass Regional Trail nor any other hiking, equestrian or motorized trail shall be located within or on the Property, described in Exhibits 1 and 2 or any City-owned property that is contiguous to properties owned by Mark Cusack or Daniela Cusack, located in the West 1/2 of the SE 1/4 of Section 26, T.13 S, R.68 W of the 6<sup>th</sup> P.M., subject to the following exception: The City may grant a license or other permission to construct an extension or segment of the Ute Pass Regional Trail on City-owned property near and roughly parallel to the easterly boundary of the Property and parcels of land currently owned by Daniela Cusack, identified by El Paso County Assessor's Schedule Nos 8326400006 and 8326400009. Such exception shall also include a twenty-five (25) foot wide strip of land located within, along, and contiguous to the northern boundary of the Property where it abuts the CDOT right-of-way for Highway 24. The 25-foot strip shall run parallel to the common boundary between the Property and the CDOT right-of-way and shall run along the entire northern boundary of the Property. Grantor reserves unto himself, his heirs and assigns an easement for ingress and egress over and across the Property described in Exhibit 1 and Exhibit 2, and Grantor, his heirs and assigns shall have the unlimited right to access the Property described in Exhibit 1 and Exhibit 2 for hiking and recreational use.

The Grantor reserves no other rights, title or interests. This Quitclaim Deed is part of the settlement agreement, contemporaneously recorded herewith, resolving the above-described lawsuit.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed and delivered by this 3 day of October 2016.

Grantor

Daniela ~~Francis~~ Cusack  
*Frances DC*

By: *[Signature]*  
Daniela ~~Francis~~ Cusack  
*Frances DC*

State of California  
County of Los Angeles ) ss.

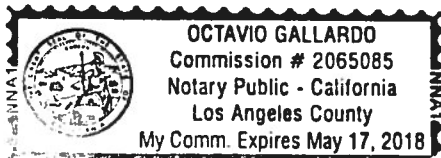
The foregoing instrument was acknowledged before me this 3 day of October

2016, by Daniela ~~Francis~~ Cusack.  
*Frances DC*

Witness my hand and seal

My Commission Expires: May 17, 2018

*[Signature]*  
Notary Public



**The exact location of the real property is particularly described on Exhibit 1 and Exhibit 2, attached hereto and by this reference incorporated herein and made a part hereof. All interest, title, and rights described in Exhibit 2, shall merge with all interest, title, and rights, described in Exhibit 1.**

The City, by accepting this Quitclaim Deed, agrees that neither the Ute Pass Trail nor any other hiking, equestrian or motorized trail shall be located within or on the property describe in **Exhibit 1** and **Exhibit 2** Add language from paragraph 1.3 of settlement agreement here . Daniella F. Cusack, hers heirs, \*\*\* shall have the unlimited right to access the property described in **Exhibit 1** and **Exhibit 2** for hiking and recreational use.

The Grantor reserves no other rights, title or interests. This Quitclaim Deed is part of the Settlement Agreement, attached as **Exhibit 1** and all provisions incorporated by reference herein and made a part hereof, arising from a lawsuit filed by Grantor, to wit: *Mark E. Cusack v. Daniela F. Cusack and The City of Colorado Springs, a Municipal Corporation*, El Paso County District Court, Case number 2013CV32158.

IN WITNESS WHEREOF, Grantor has caused this deed to be executed and delivered by this \_\_\_\_\_ day of \_\_\_\_\_ 2015.

Grantor  
Daniella F. Cusack

By: \_\_\_\_\_  
Daniella F. Cusack

State of \_\_\_\_\_ )  
  ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by Daniella F. Cusack.

Witness my hand and seal

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

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

Acceptance by the City of Colorado Springs:

By: Ronald Evans Carlentine  
Ronald Evans Carlentine  
Real Estate Services Manager

State of Colorado     )  
                                  ) ss.  
County of El Paso    )

The foregoing instrument was acknowledged before me this 9th day of Nov  
2016, by Ronald Evans Carlentine.

Witness my hand and official seal.

My Commission expires: 8/20/2017

Crystal L. Scranton  
Notary Public

CRYSTAL L. SCRANTON  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 20014025329  
MY COMMISSION EXPIRES AUGUST 20, 2017

Approved as to Form:  
City of Colorado Springs  
City Attorney's Office

By: [Signature]  
Date: 11/9/16

## QUIT CLAIM DEED – EXHIBIT 1

A part of the W½ of the SE¼ 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 NW¼ of the SE¼ 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.





## QUIT CLAIM DEED – EXHIBIT 2

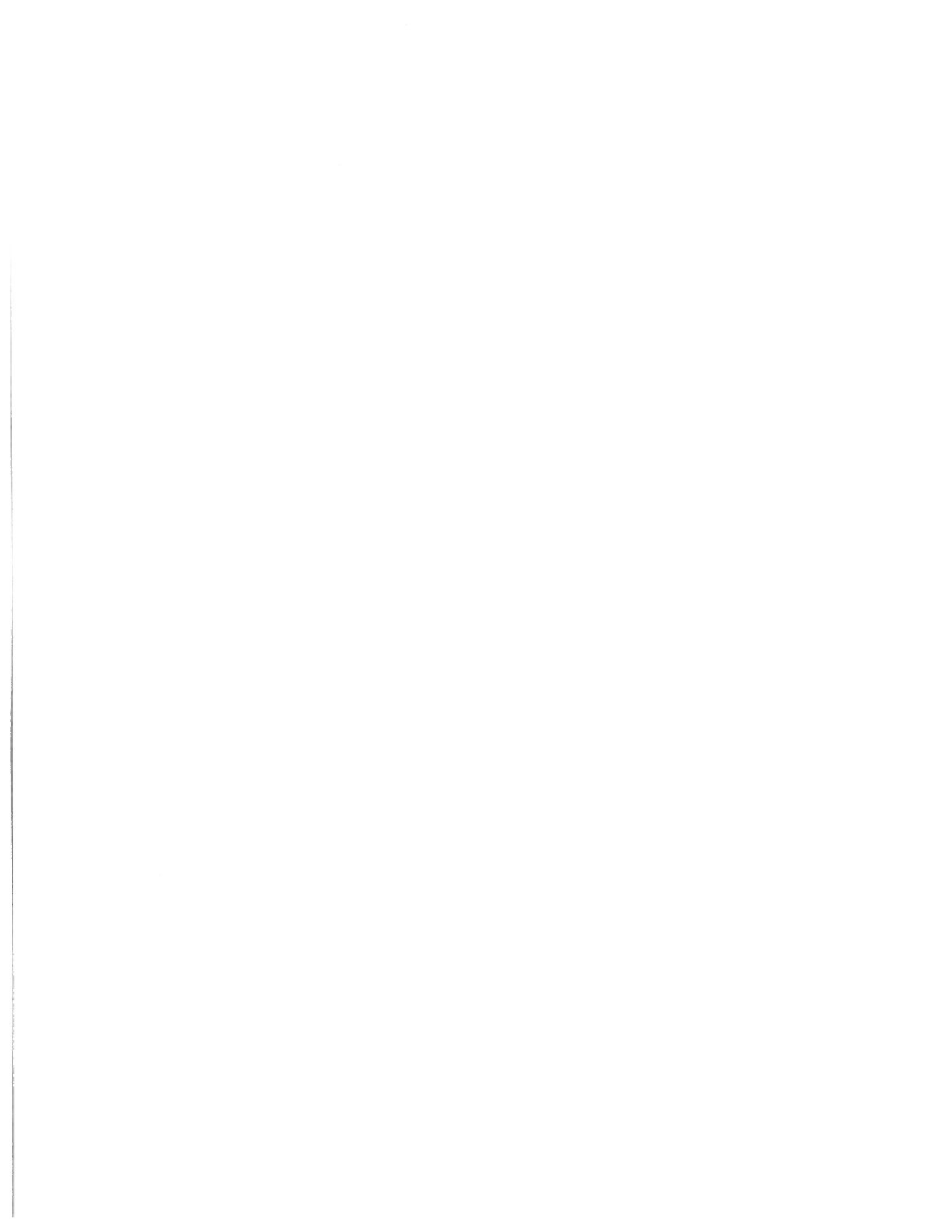
A strip shaped parcel of land bounded on the Easterly and Westerly ends by the Easterly and Westerly boundaries of that tract described in Book 1646 at Page 570 in the records of El Paso County, Colorado. Said strip of land also being contained between the Northerly boundary of said tract of record and the Southwesterly right-of-way line of U. S. Highway 24 as Constructed under Colorado State Highway project F-017-1(2). All being situated in the Southeast quarter of Section 26, Township 13 South, Range 68 West of the 6<sup>th</sup> Principal Meridian. Containing 0.16 Acre, more or less.

A tract 50 feet in width providing 25 feet on each, and either side of the center line of an existing 30-inch diameter, domestic water transmission line over, under, across, and/or through that parcel of land as recorded in Book 1646 at Page 570 in the records of the County of El Paso in the State of Colorado. All being a part of the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 26, T. 13 S., R. 68 W. of the 6<sup>th</sup> P. M., more particularly described as follows:

Commencing at a point whence the N. E. corner of the NW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of said Section bears N. 47° 26' E. 1,029 feet; thence S. 4° 00' 00" E. a distance of 433.27 feet to the true point of beginning for the center line description of the pipe line right of way to hereby be described. From the point of beginning thence N. 37° 25' 02" W. a distance of 144.90 feet to the first angle point; thence N. 7° 05' 02" W. a distance of 237.81 feet to the second angle point; thence N. 17° 37' 17" W. a distance of 80.93 feet to the third angle point; thence N. 50° 02' 17" W. a distance of 30 feet to a point of intersection with the Southerly right-of-way fence line of U. S. Highway 24.

Also a tract of land 50 feet in width, providing 25 feet on each and either side of the center line of said 12-inch flush line, the center line of said 12-inch flush line being described as follows:

Beginning at said second angle point in the foregoing description; thence N. 71° 01' 38" E. for a distance of 80.00 feet, to the point of termination.



# **EXHIBIT B**

## BOUNDARY AGREEMENT

Agreement made as of the \_\_\_\_ day of \_\_\_\_\_, 2016 between and among The City of Colorado Springs, a municipal corporation, Mark E. Cusack, of San Marcos, Texas, and Daniela Francis Cusack, of Los Angeles, California. The City, Mark E. Cusack and Daniela Francis Cusack are jointly referred to as "Parties" and singularly as "Party".

### Recitals

A. Pursuant to a Warranty Deed dated July 30, 1973 and recorded in the real property records of El Paso County, Colorado in Book 2615, Page 128, The City of Colorado Springs, as grantor, conveyed to Mark E. Cusack, et al., as grantees, a parcel of land situated near the Town of Cascade, Colorado (hereinafter "Mark Cusack Parcel 1").

B. Pursuant to a Warranty Deed dated February 7, 1974 and recorded in the real property records of El Paso County, Colorado in Book 2654, Page 917, Anne Cusack Johnson, as grantor, conveyed to Mark E. Cusack, et al., as grantees, a parcel of land situated near the Town of Cascade, Colorado (hereinafter "Mark Cusack Parcel 2").

C. Pursuant to Special Warranty Deeds recorded in the real property records of El Paso County, Colorado at Reception Nos. 206098931, 206098932, 206098933, 206098934, 206098935 and 206098936, Mark E. Cusack became the sole owner of the Mark Cusack Parcels 1 and 2.

D. Pursuant to a Personal Representative's Deed dated May 29, 2016 and recorded in the real property records of El Paso County, Colorado in Book 5080, Page 691, the Personal Representative of the Estate of David F. Cusack conveyed to Daniela Francis Cusack certain parcels of land situated near the Town of Cascade, Colorado (hereinafter "Daniela Cusack Parcels").

E. Pursuant to a lawsuit filed by Mark E. Cusack, entitled: *Mark E. Cusack v. Daniela F. Cusack and the City of Colorado Springs, a Municipal Corporation*, El Paso County Dist. Court, Case No. 2013CV32158 and a subsequent settlement agreement entered into by the parties on [date of execution here] the Parties engaged Luke Johnson (RLS No. 38184), a Colorado Professional Land Surveyor employed by and working on behalf of Colorado Springs Utilities, to conduct a formal survey of the subject parcels and to record the same in the office of the Clerk and Recorder of El Paso County, Colorado.

### Agreement

The Parties, being desirous of resolving and establishing the common boundary lines between their respective parcels, hereby agree on and fix the common boundary lines between their respective parcels as shown on the Luke Johnson survey, attached

hereto as Exhibit A and recorded at Reception No. 216900143 in the real property records of El Paso County, Colorado.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document binding on all the Parties hereto, notwithstanding that all such Parties are not signatories to the original or the same counterpart. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

In witness whereof, the Parties have executed this agreement as of the date first above written.

\_\_\_\_\_  
Mark E. Cusack

Dated: \_\_\_\_\_, 2016

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Mark E. Cusack.

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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

\_\_\_\_\_  
Daniela Francis Cusack

Dated: \_\_\_\_\_, 2016

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Daniela Francis Cusack.

hereto as Exhibit A and recorded at Reception No. \_\_\_\_\_ in the real property records of El Paso County, Colorado.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document binding on all the Parties hereto, notwithstanding that all such Parties are not signatories to the original or the same counterpart. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

In witness whereof, the Parties have executed this agreement as of the date first above written.

Mark E. Cusack  
Mark E. Cusack

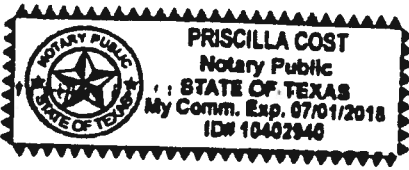
Dated: October 31, 2016

STATE OF Texas )  
 )ss.  
COUNTY OF Hays )

The foregoing instrument was acknowledged before me this 31 day of Oct. 2016, by Mark E. Cusack.

Witness my hand and official seal

My commission expires: 7/1/18



Priscilla Cost  
Notary Public

\_\_\_\_\_  
Daniela Francis Cusack

Dated: \_\_\_\_\_, 2016

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Daniela Francis Cusack.





**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of LOS ANGELES )

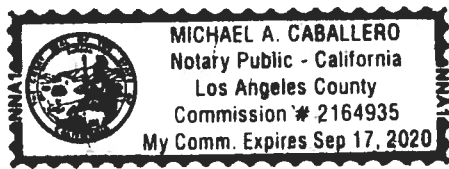
On NOVEMBER 30, 2016 before me, MICHAEL A. CABALLERO, NOTARY PUBLIC,  
Date Here Insert Name and Title of the Officer

personally appeared DANIELA FRANCIS CUSACIC  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: BOUNDARY AGREEMENT Document Date: 11-30-2016  
Number of Pages: 2 Signer(s) Other Than Named Above: NONE

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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

Daniel J Higgins

Dated: 12-13, 2016

City of Colorado Springs, on behalf of its enterprise,  
Colorado Springs Utilities' representative

DANIEL J. HIGGINS CHIEF WATER SERVICES OFFICER  
Print name and title

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

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of DECEMBER 2016, by DANIEL J HIGGINS.

Witness my hand and official seal

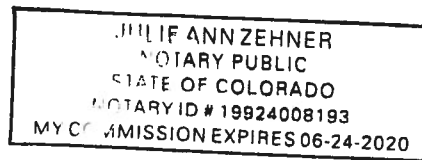
My commission expires: JUNE 24, 2020

Julie Ann Zehner  
Notary Public

City of Colorado Springs

Darlene J Kennedy, REAL

Print name and title        )  
DARLENE J. KENNEDY        ) ESTATE SERVICES MANAGER



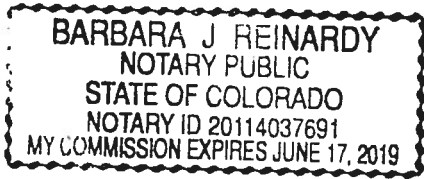
STATE OF COLORADO        )  
  )ss.  
COUNTY OF EL PASO        )

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of December 2016, by Darlene J. Kennedy as Real Estate Services manager, City of Colorado Springs.

Witness my hand and official seal

My commission expires: June 17, 2019

Barbara J. Reinardy  
Notary Public



## Boundary Agreement- **Exhibit A**

Click 'Retrieve' link(s) below to get your item(s) delivered in Adobe PDF format. Once opened, most PDF viewers then allow Print or Save operations from within their interface.

Click to 'Combine' to generate a single PDF with all items.  
 (Processing time will vary with number of documents/pages.)

[Combine to Print All Items](#)

[Combine to Print All Items for Duplex Printing](#)

Request #	Date Added	Reference #	Document Description	# Pages	Fee	Action
3049104			Receipt			<a href="#">Retrieve</a>
3049100	12/13/2016 09:16 AM	216900143	Image Access (Uncertified Copy): 216900143, Page(s) 2,3	2	\$0.50	<a href="#">Retrieve</a>

### LAND SURVEY PLAT

A PORTION OF THE SE ¼, SECTION 26, T. 13 S., R. 68 W., 6TH P. M., EL PASO COUNTY, COLORADO

#### NOTES:

1. RECD. DATA MODIFIES OCCASIONAL LINES WHICH SUPPORTS THE BOUNDARY LOCATION.
2. THE BOUNDARY CORNER WAS OBSERVED ON THE PLAT TITLED "CORNER RANGE, 10 DIT. OF RECORDS INFORMATION, THE NOT. ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO. THE BOUNDARY CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO. THE BOUNDARY CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO.
3. ON OCTOBER 21, 1988, ADJ. S. MARSHALL WALKER MADE A TRIP TO THE DISTRICT CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO, AND OBSERVED THE CORNER. THE CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO.
4. ON OCTOBER 21, 1988, ADJ. S. MARSHALL WALKER MADE A TRIP TO THE DISTRICT CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO, AND OBSERVED THE CORNER. THE CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO.
5. THE LAND SURVEY PLAT DOES NOT CONSTITUTE A TITLE SEARCH AT COLORADO PUBLIC UTILITIES TO DETERMINE WHETHER ANY RIGHTS OF WAY OR RECORD COLORADO PUBLIC UTILITIES DO NOT PASS TO SHOW ALL RIGHTS OF WAY AND EASEMENTS.
6. THE PURPOSE OF THIS SURVEY WAS TO SETTLE A BOUNDARY DISPUTE BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO, AND THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO. THE BOUNDARY WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO.
7. THE BOUNDARY CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO. THE BOUNDARY CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO.
8. A BOUNDARY CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO. THE BOUNDARY CORNER WAS OBSERVED ON THE PLAT DATED 7/15/11 BY THE PUBLIC RECORDS DIVISION OF EL PASO COUNTY, COLORADO.

#### LEGAL DESCRIPTIONS:

##### PARCEL A:

THAT PARCEL, DESCRIBED AS FOLLOWS:  
COMMENCED AT THE ACCEPTED CORNER POSITION FOR THE CENTER EAST 1/4 SECTION CORNER, SECTION 26, TOWNSHIP 13 SOUTH, RANGE 68 WEST, 1/4 P.M., EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO.

##### PARCEL B:

THAT PARCEL, DESCRIBED AS FOLLOWS:  
COMMENCED AT THE ACCEPTED CORNER POSITION FOR THE CENTER EAST 1/4 SECTION CORNER, SECTION 26, TOWNSHIP 13 SOUTH, RANGE 68 WEST, 1/4 P.M., EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO.

##### PARCEL C:

THAT PARCEL, DESCRIBED AS FOLLOWS:  
COMMENCED AT THE ACCEPTED CORNER POSITION FOR THE CENTER EAST 1/4 SECTION CORNER, SECTION 26, TOWNSHIP 13 SOUTH, RANGE 68 WEST, 1/4 P.M., EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO.

##### PARCEL D:

THAT PARCEL, DESCRIBED AS FOLLOWS:  
COMMENCED AT THE ACCEPTED CORNER POSITION FOR THE CENTER EAST 1/4 SECTION CORNER, SECTION 26, TOWNSHIP 13 SOUTH, RANGE 68 WEST, 1/4 P.M., EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO, AND CONTAINS 90.00 SQUARE FEET OF LAND, MORE OR LESS, BEING THE NORTHWEST CORNER OF SAID PARCEL, 414, EL PASO COUNTY, COLORADO.



WATER SERVICES DIVISION/PERM/ASM/LBS  
LEON YOUNG SERVICE CENTER  
1521 HANCOCK EXPRESSWAY  
COLORADO SPRINGS, CO 80903  
(719) 449-4800

NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, SHALL ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

DATE OF SURVEY: 12/09/16  
BY: [Signature]  
TITLE: SURVEYOR  
STATE: COLORADO  
EXPIRES: 12/09/17



SURVEYOR'S CERTIFICATION:  
I, the undersigned, a duly licensed Professional Engineer in the State of Colorado, do hereby certify that this survey was made by me or under my direct supervision, and that I am a duly licensed Professional Engineer in the State of Colorado. I certify that the information furnished herein is true and correct to the best of my knowledge and belief.

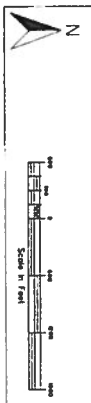
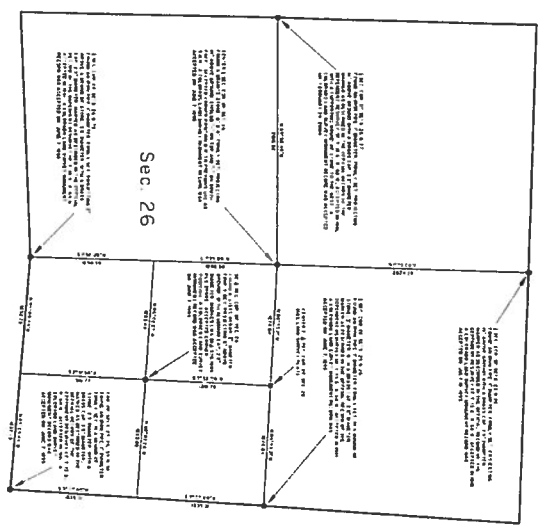
A PORTION OF THE SE ¼, SECTION 26, T. 13 S., R. 68 W., 6TH P. M., EL PASO COUNTY, COLORADO

LAND SURVEY PLAT

216900143  
12/09/16

SHEET 2 OF 2

SECTION BREAKDOWN



LEGEND

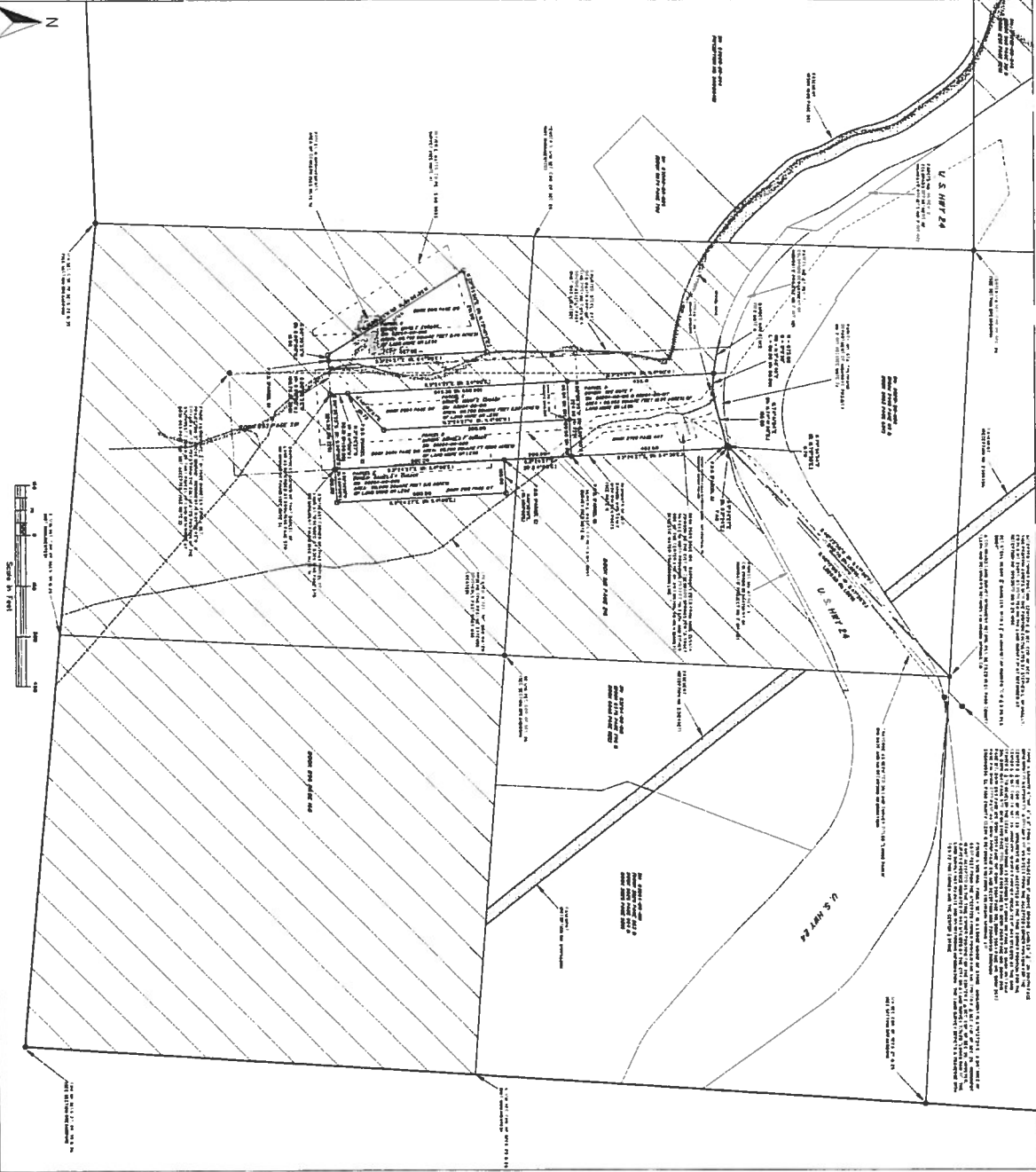
- ROAD STEEL REBAR, 6"Ø DIAMETER, WITH 2" ALUMINUM CAP, MARKED 8833 (SEE NOTE 4)
- SET STEEL REBAR, 6"Ø DIAMETER, WITH 2" ALUMINUM CAP, MARKED "A.S. 3884"
- SET MONUMENT AS DISCLOSED
- ROAD MONUMENT AS DISCLOSED
- ☑ CITY OF COLORADO SPONSORED PROJECT

**Base of Bearings:** The direction of each line is with reference to the Colorado Geomatics System of 1983 Central Zone.

**The distances are reported as horizontal measurement of a mean ground elevation of 7,400 feet above sea level, U.S. Survey Feet.**

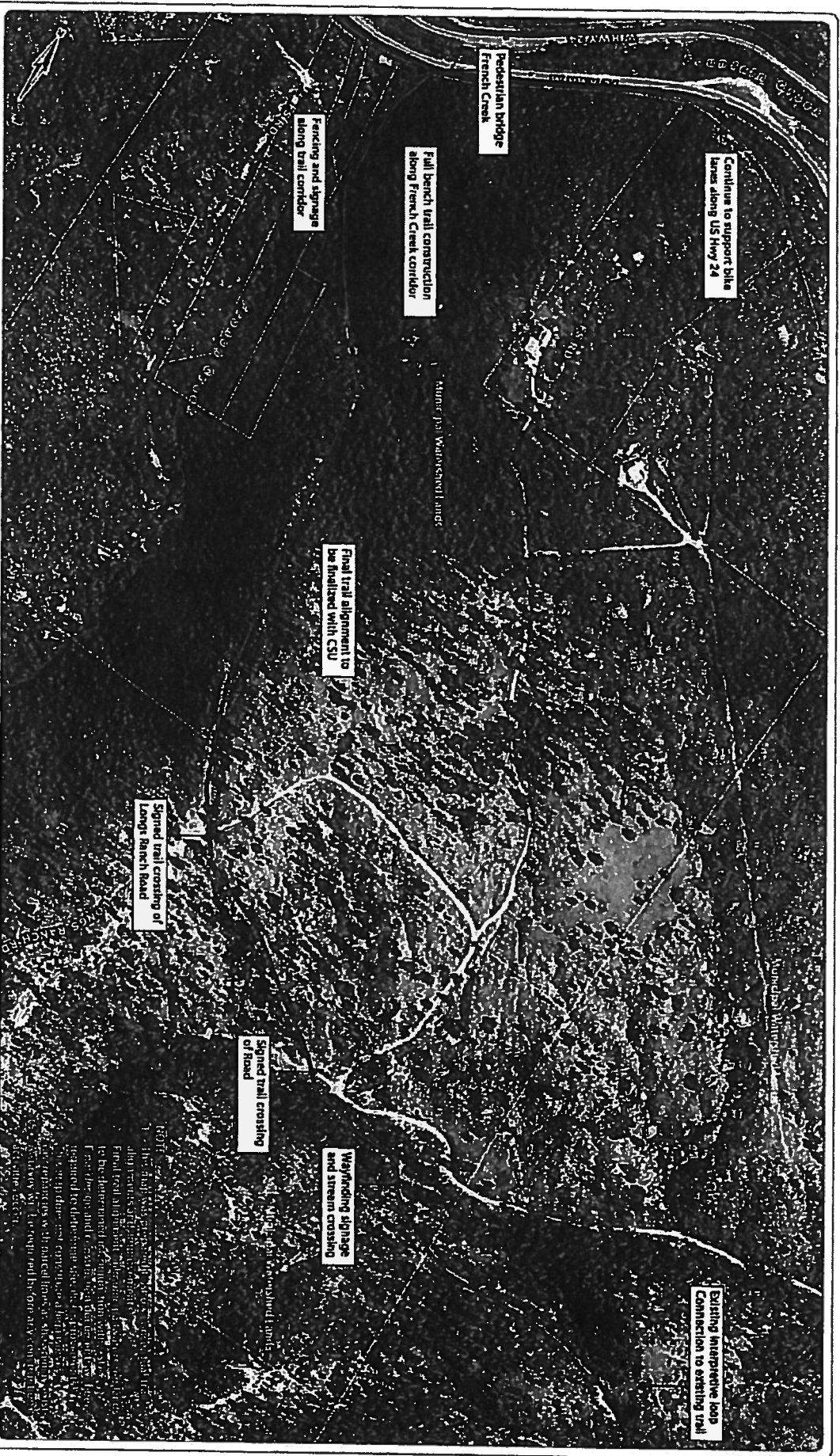
**The direction and length of all lines were determined by Global Positioning System (GPS) observations made by employe' indications and distances measured with a Total Station.**

Colorado Springs Utilities  
8150 S. WOODLAND AVENUE, SUITE 100, COLORADO SPRINGS, CO 80905  
719.575.3000  
www.csu.com



# **EXHIBIT C**





Scale = 1:3,000



### Fountain Avenue / Chipita Park Road - Map 5 Preferred Alternative Alignment - Aerial Photo (2014)

**NOTE:**  
1. The map may give the impression that the trail alignment is a single, continuous line. In reality, the trail alignment is a series of segments that will be constructed and signed as separate projects. The trail alignment shown on this map is a conceptual alignment and is not intended to be used for construction purposes without the approval of the Tarrant County Parks Department. The map is for informational purposes only and does not constitute a contract or any other legal document. The map is subject to change without notice.



# EXHIBIT D

# REVOCABLE LICENSE FOR USE OF CITY PROPERTY

For The Benefit of Daniela F. Cusack and Mark E. Cusack

1. The City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation ("City"), hereby grants to Daniela F. Cusack and Mark E. Cusack (collectively "Licensees") a revocable license ("License") to use the City property described and shown on **Exhibit A**, depicted on **Exhibit B**, with a graphic representation of the property on **Exhibit C**, collectively attached hereto and made a part hereof (hereinafter referred to as the "Licensed Property"). This License is solely for the purpose of accessing Licensees' respective adjacent properties that are surrounded by the City's Licensed Property, as shown and depicted in **Exhibits A, B, and C**. Licensees shall have the right to enter upon the Licensed Property for the purposes above, and no other purpose.

2. The term of this License shall be for twenty-five (25) years commencing July 1, 2016, through June 30, 2041, unless sooner revoked in writing by the Real Estate Services Manager, the Mayor or designee, authorized City or Colorado Springs Utilities' designee, or as otherwise provided in this License. The City understands that Licensees' respective properties are "land-locked" and surrounded by the City's Licensed Property. If the City revokes this License, it shall, prior to any such revocation, provide Licensees with a successor license granting another method of reasonable access to Licensees' respective properties. At the end of each twenty-five year license term, this License, or successor license, as the case may be, shall automatically begin a new twenty-five year revocable license term under the same provisions set forth herein. No party shall be required to take affirmative steps or action to create a new revocable license period at the end of each term.

3. This License is given subject to all easements or other encumbrances upon the Licensed Property. The City shall retain the right to make full use of the Licensed Property, including but not limited to use of such Licensed Property for any utility lines, drainage, or otherwise, except for such use as might unreasonably endanger or interfere with the rights of Licensees in accessing their respective, adjacent properties. The City retains the right to enter upon the Licensed Property at any time and to service all utilities or other City facilities located in or thereon, and the right to utilize the Licensed Property for City purposes. Licensees will not injure or interfere with, now or in the future, any of the City's existing or future facilities or other license or easement rights. All costs in connection with either Licensee's activities are at its sole cost and expense of the Licensee causing or creating such expense.

4. By accepting this License, Licensees expressly agree for themselves, their successors and assigns, that they will not interfere in any way with the City's primary purpose and use of the Licensed Property. Each and every one of the benefits and burdens of this License shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto.

5. Licensees shall not commit any nuisance or cause any waste on the Licensed Property. Licensees shall not annoy, disturb, or be offensive to anyone on the Licensed Property. Licensees shall repair or reimburse the City for the reasonable cost of repair for any physical damage to the Licensed Property or any utilities, structure, apparatus, or appurtenances on the Licensed Property done by or resulting from actions, omissions or operations of Licensees, their successors, heirs and assigns, employees, contractors, or representatives to the Licensed Property and/or any of the City's existing or future facilities or improvements, whether within or outside of the Licensed Property. Such reimbursement shall be made by the party causing the damage.

6. Licensees shall maintain the Licensed Property in a clean and neat condition at all times, including removal of garbage, pet refuse, and other debris. Licensees shall not restrict the City's access or

use of the Licensed Property in any manner whatsoever. Licensees shall not construct any fence, facility, structure, apparatus, and appurtenances on the Licensed Property without written consent from the City.

7. Licensees shall have the right to assign or otherwise transfer this License or any right or obligation hereunder to their heirs, successors, and assigns without the prior written consent of the City.

8. It is the intent of the parties that this License shall be deemed to run with the Licensed Property.

9. This License is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado. Licensees shall insure that they and their Licensee's employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and local laws and regulations as now written or hereafter amended.

10. The City hereby expressly disclaims any warranty of title with respect to the Licensed Property. Licensees are relying on their own investigations as to the adequacy of the Licensed Property described herein for its use under this License. Without limiting the foregoing, the grant of rights set forth herein are subject to all easements, restrictions, reservations, and rights of way of record. The City further disclaims any warranty with respect to the physical condition of the Licensed Property described herein, including, without limitations, the fitness of such Licensed Property for any particular purpose and/or the condition of the soils contained therein. Licensees acknowledge that they are accepting their right to use the Licensed Property described herein on an as-is, where-is, and with all faults basis.

11. Licensees agree that they shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Licensee's intentional or negligent conduct in the use of the Licensed Property.

12. The parties acknowledge and agree that this License is in the nature of a license as defined in the Colorado Springs, Colorado, City Charter for the use of City Licensed Property. As such, this License is expressly subject to section 10-100 of the Charter of the City of Colorado Springs, and is expressly revocable by the City Council at any time; provided that, upon any such revocation the City shall, in accordance with the terms of Paragraph 2 above, provide to Licensees reasonable alternative access to their respective properties.

13. This License is further subject to section 10-60 of the Charter, which limits the term of this License to 25 years.

14. Nothing in this License shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

15. Any notices required under this License shall be sent to the parties by United States Certified Mail, return receipt requested, to the persons and addresses below.

For the City:

For the Licensees:

Colorado Springs Utilities	Daniela F. Cusack	Mark E. Cusack
Attn.: Engineering Support	102 Wilson Place	242 N. Guadalupe
111 S. Cascade Avenue	Santa Monica, California 90405	San Marcos, Texas 78666
Colorado Springs, CO 80903		
Telephone: 719.668.4667	Telephone:	Telephone: 512-392-7700
Facsimile:	Facsimile:	Facsimile:

16. This License represents the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing signed by the City and Licensees.

Executed by Colorado Springs Utilities:

By: DANIEL J. HIGGINS  
(print name)

By: *Daniel J Higgins*  
(sign name)

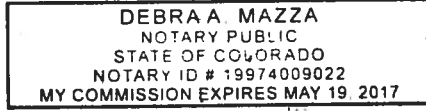
CHIEF WATER SERVICES OFFICER  
(position with CSU)

Date: 9-22-16

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

The foregoing instrument was acknowledged before me this 22<sup>nd</sup> day of September 2016, by *Daniel J. Higgins*.

Witness my hand and official seal



My commission expires: May 19, 2017

*Debra A. Mazza*  
Notary Public

Approved as to form:

*Bethany Bungen*  
City Attorney's Office

Date: 9-22-16

10

# Revocable License Exhibits

## Exhibit A Real Property Description

A parcel of land located in the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, Colorado, as conveyed to The City of Colorado Springs by instrument recorded at Book 893 Page 381 and Book 915 Page 216, El Paso County Clerk and Recorder records, Colorado Springs, Colorado.

## Exhibit B License Area Description

A portion of a parcel of land located in the W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, Colorado, as conveyed to The City of Colorado Springs by instrument recorded at Book 893 Page 381 and Book 915 Page 216, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, more particularly described as follows:

Commencing at the Center  $\frac{1}{4}$  Sec. Cor. of Sec. 26 (a found granite stone, 8" x 4", firmly set, projecting 14" above ground, chiseled "+" on top and "+" on South face), from which the  $\frac{1}{4}$  Sec. Cor. of Secs. 26 and 35 (a found iron pipe, 1" diameter, firmly set, projecting 2" above a mound of stone, 3 $\frac{1}{2}$ ' diameter, with a brass cap, 2 $\frac{1}{2}$ " diameter, marked as described in the official record of the dependent resurvey of T. 13 S., R. 68 W., accepted in 1941) bears S 1 degree 35 minutes 09 seconds W, 2,597.18 feet distance, Thence, along the West line of said W $\frac{1}{2}$  of the SE $\frac{1}{4}$  of Sec. 26, S 1 degree 35 minutes 09 seconds W, 747.39 feet distance, and the **Point of Beginning**;

Thence, departing said West line, S 58 degrees 02 minutes 46 seconds E, 72.61 feet distance;

Thence, S 72 degrees 07 minutes 18 seconds E, 98.03 feet distance;

Thence S 61 degrees 28 minutes 21 seconds E, 81.49 feet distance;

Thence S 70 degrees 49 minutes 30 seconds E, 105.99 feet distance;

Thence, along a curve to the right, having a radius of 55.00 feet and a central angle of 80 degrees 00 minutes 14 seconds, an arc distance of 76.80 feet;

Thence S 9 degrees 10 minutes 44 seconds W, 124.66 feet distance;

Thence, S 6 degrees 01 minutes 36 seconds W, 120.43 feet distance;

Thence, S 15 degrees 18 minutes 20 seconds E, 60.87 feet distance;

Thence, S 2 degrees 37 minutes 05 seconds W, 122.64 feet distance;

Thence, S 10 degrees 22 minutes 19 seconds E, 71.13 feet distance;

Thence, S 30 degrees 09 minutes 34 seconds E, 117.26 feet distance;

Thence, S 16 degrees 07 minutes 31 seconds E, 40.31 feet distance;

Thence, S 0 degrees 06 minutes 30 seconds E, 74.40 feet distance;

Thence, S 8 degrees 30 minutes 26 seconds W, 155.54 feet distance;



Thence, N 86 degrees 35 minutes 56 seconds E, to a point on the West line of a parcel of land as recorded at Book 2654 Page 917, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 52.56 feet distance;

Thence, along said West line, S 3 degrees 24 minutes 25 seconds E, to the Southwest corner of said parcel, also being the most Westerly corner of a parcel of land as recorded at Book 2654 Page 918, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 39.75 feet distance;

Thence, along the West line of said parcel, S 3 degrees 24 minutes 25 seconds E, to the Southwest corner of said parcel, 50.00 feet distance;

Thence, S 86 degrees 35 minutes 56 seconds W, to the Southeast corner of a parcel of land as recorded at Book 2615 Page 128, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 100.86 feet distance;

Thence, along the East line of said parcel, N 3 degrees 24 minutes 25 seconds W, 89.75 feet distance;

Thence, departing said East line, N 86 degrees 35 minutes 56 seconds E, 17.64 feet distance;

Thence, N 8 degrees 30 minutes 26 seconds E, 159.61 feet distance;

Thence, N 18 degrees 24 minutes 28 seconds W, 11.23 feet distance;

Thence, N 0 degrees 06 minutes 30 seconds W, 67.31 feet distance;

Thence, S 34 degrees 07 minutes 51 seconds W, to a point on said East line, 84.62 feet distance;

Thence, along said East line, N 3 degrees 24 minutes 25 seconds W, 49.24 feet distance;

Thence, departing said East line, N 34 degrees 07 minutes 51 seconds E, 66.54 feet distance;

Thence, N 30 degrees 09 minutes 34 seconds W, to a point on said East line, 90.07 feet distance;

Thence, along said East line, N 3 degrees 24 minutes 25 seconds W, to the Northeast corner of said parcel, 27.73 feet distance;

Thence, along the North line of said parcel, S 73 degrees 53 minutes 53 seconds W, 7.99 feet distance;

Thence, departing said North line, N 10 degrees 22 minutes 19 seconds W, 65.82 feet distance;

Thence, N 2 degrees 37 minutes 05 seconds E, 121.32 feet distance;

Thence, N 15 degrees 18 minutes 20 seconds W, 61.79 feet distance;

Thence, N 6 degrees 01 minutes 36 seconds E, 126.91 feet distance;

Thence, N 9 degrees 10 minutes 44 seconds E, 125.48 feet distance;

Thence, along a curve to the left, having a radius of 25.00 feet and a central angle of 80 degrees 00 minutes 14 seconds, an arc distance of 34.91 feet;

Thence, N 70 degrees 49 minutes 30 seconds W, 108.45 feet distance;

Thence, N 61 degrees 28 minutes 21 seconds W, 81.15 feet distance;



Thence, N 72 degrees 07 minutes 18 seconds W, 98.93 feet distance;

Thence, N 58 degrees 02 minutes 46 seconds W, to a point on said West line of said W½ SE¼ Sec. 26, 58.73 feet distance;

Thence, along said West line, N 1 degree 35 minutes 09 seconds E, 34.77 feet distance, to the **Point of Beginning**, and containing 50,209 square feet of land, more or less.

The direction of each line is with reference to the Colorado Coordinate System of 1983 Central Zone. The distances are reported as horizontal measurement at a mean ground elevation of 6,500 feet above sea level, U. S. survey foot.

Legal description statement:

I, Luke R. Johnson, 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.

---

Luke R. Johnson, Colorado PLS 38184  
For and on behalf of Colorado Springs Utilities



# REVOCABLE LICENSE FOR USE OF CITY PROPERTY

For The Benefit of Mark E. Cusack

1. The City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation ("City"), hereby grants to Mark E. Cusack ("Licensee") a revocable license ("License") to use the City property described as "Area of Concern" shown on the Land Survey Plat Recorded on December 13, 2016, Reception number 216900143, and attached hereto as **Exhibit A**, (hereinafter referred to as the "Licensed Property"). This License is granted to supplement the Boundary Agreement, attached hereto as **Exhibit B**, that was executed by the parties to a lawsuit filed by Mark E. Cusack, entitled: *Mark E. Cusack v. Daniela F. Cusack and the City of Colorado Springs, a Municipal Corporation*, El Paso County Dist. Court, Case No. 2013CV32158 and a subsequent settlement agreement entered into by the parties. This License is solely for the purpose of permitting Licensee to keep his existing electrical outlets, two (2) water pumps, and an underground septic tank (collectively "Improvements") in their current location and to maintain these Improvements. Licensee shall have the right to use and enter upon the Licensed Property for the purposes above, and no other purpose.

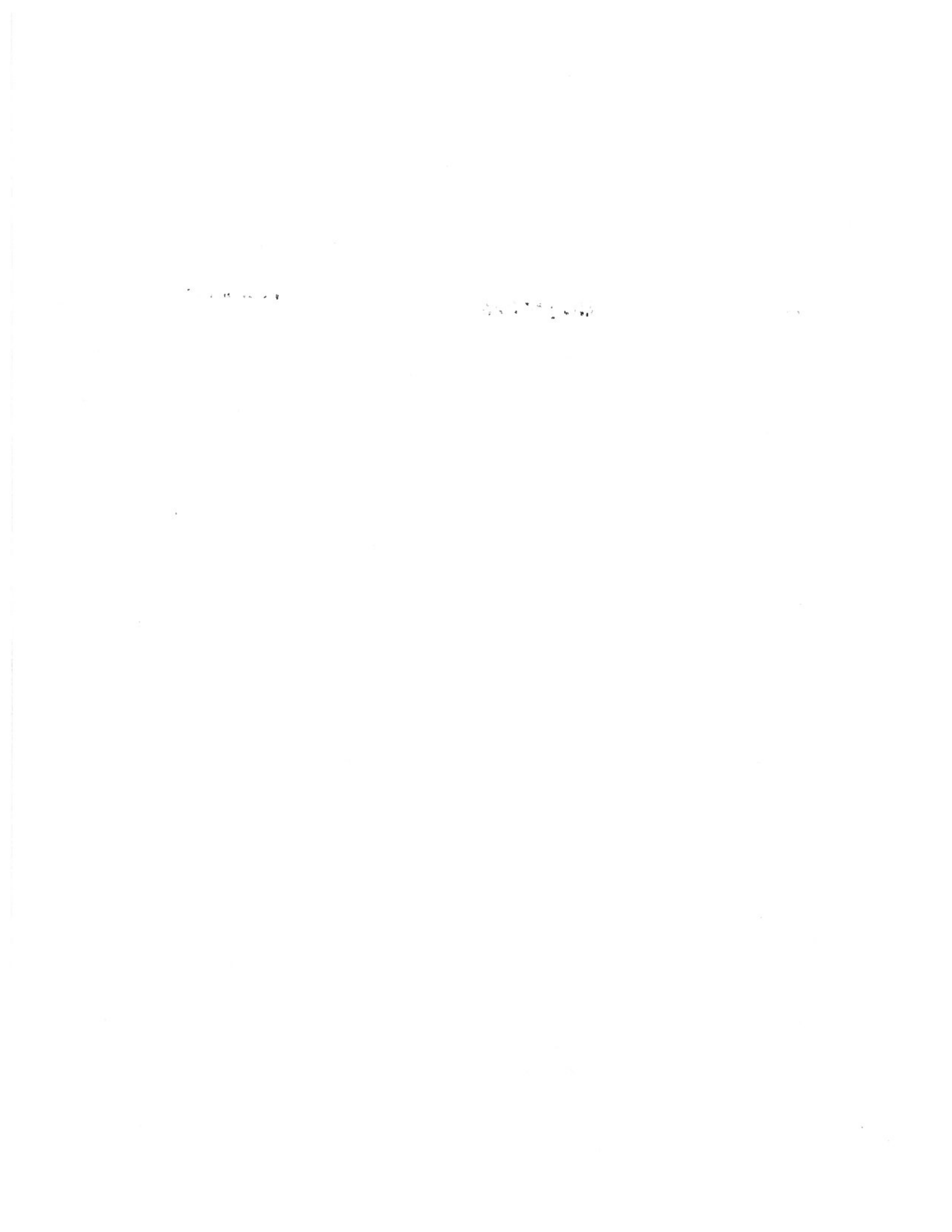
2. The term of this License shall be for twenty-five (25) years commencing November 4, 2016, through November 3, 2041, unless sooner revoked in writing by the Real Estate Services Manager, the Mayor or designee, authorized City or Colorado Springs Utilities' designee, or as otherwise provided in this License. At the end of each twenty-five year license term, this License, or successor license, as the case may be, shall automatically begin a new twenty-five year revocable license term under the same provisions set forth herein. No party shall be required to take affirmative steps or action to create a new revocable license period at the end of each term.

3. This License is given subject to all easements or other encumbrances upon the Licensed Property. The City shall retain the right to make full use of the Licensed Property, including but not limited to use of such Licensed Property for any utility lines, drainage, water right corridor, or otherwise. If, at any time, the City desires to use the Licensed Premises, or any part thereof, then the City may revoke this License and Licensee shall, at Licensee's sole cost and expense, remove any Improvement requested by the City. The City retains the right to enter upon the Licensed Property at any time and to service all utilities or other City facilities located in or thereon, and the right to utilize the Licensed Property for City purposes. Licensee will not injure or interfere with, now or in the future, any of the City's existing or future facilities or other license or easement rights. All costs in connection with Licensee's activities are at his sole cost and expense of Licensee.

4. By accepting this License, Licensee expressly agrees for himself, his successors and assigns, that they will not interfere in any way with the City's primary purpose and use of the Licensed Property. Each and every one of the benefits and burdens of this License shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto.

5. Licensee shall not commit any nuisance or cause any waste on the Licensed Property. Licensee shall not annoy, disturb, or be offensive to anyone on the Licensed Property. Licensee shall repair or reimburse the City for the reasonable cost of repair for any physical damage to the Licensed Property or any utilities, structure, apparatus, or appurtenances on the Licensed Property done by or resulting from actions, omissions or operations of Licensee, their successors, heirs and assigns, employees, contractors, or representatives to the Licensed Property and/or any of the City's existing or future facilities or improvements, whether within or outside of the Licensed Property.

6. Licensee shall maintain the Licensed Property in a clean and neat condition at all times, including removal of garbage, pet refuse, and other debris. Licensee shall not restrict the City's access or use of the



Licensed Property in any manner whatsoever. Licensee shall not construct or install any fence, facility, structure, apparatus, or appurtenances on or under the Licensed Property. License shall not increase the size of or increase the number of any electrical outlet, water pump, or septic tank which extends beyond Licensee's boundary as depicted in **Exhibit A**. Licensee shall not move any electrical outlet, water pump, or septic tank located on the Licensed Premises unless it is for the sole purpose of removing such Improvement from the Licensed Premises. Licensee shall not use any part of the Licensed Premises for storage of any material or thing, including, but not limited to firewood, building materials, or camping equipment. If Licensee or Licensee's heirs, successors, or assigns sell the property contiguous to the Licensed Premises, then this License shall immediately and automatically revoke, requiring Licensee to remove all electric outlets, water pumps and the septic tank from City property.

7. Licensee shall have the right to assign or otherwise transfer this License or any right or obligation hereunder to his heirs, successors, and assigns without the prior written consent of the City.

8. It is the intent of the parties that this License shall be deemed to run with the Licensed Property.

9. This License is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado. Licensee shall insure that they and their Licensee's employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and local laws and regulations as now written or hereafter amended.

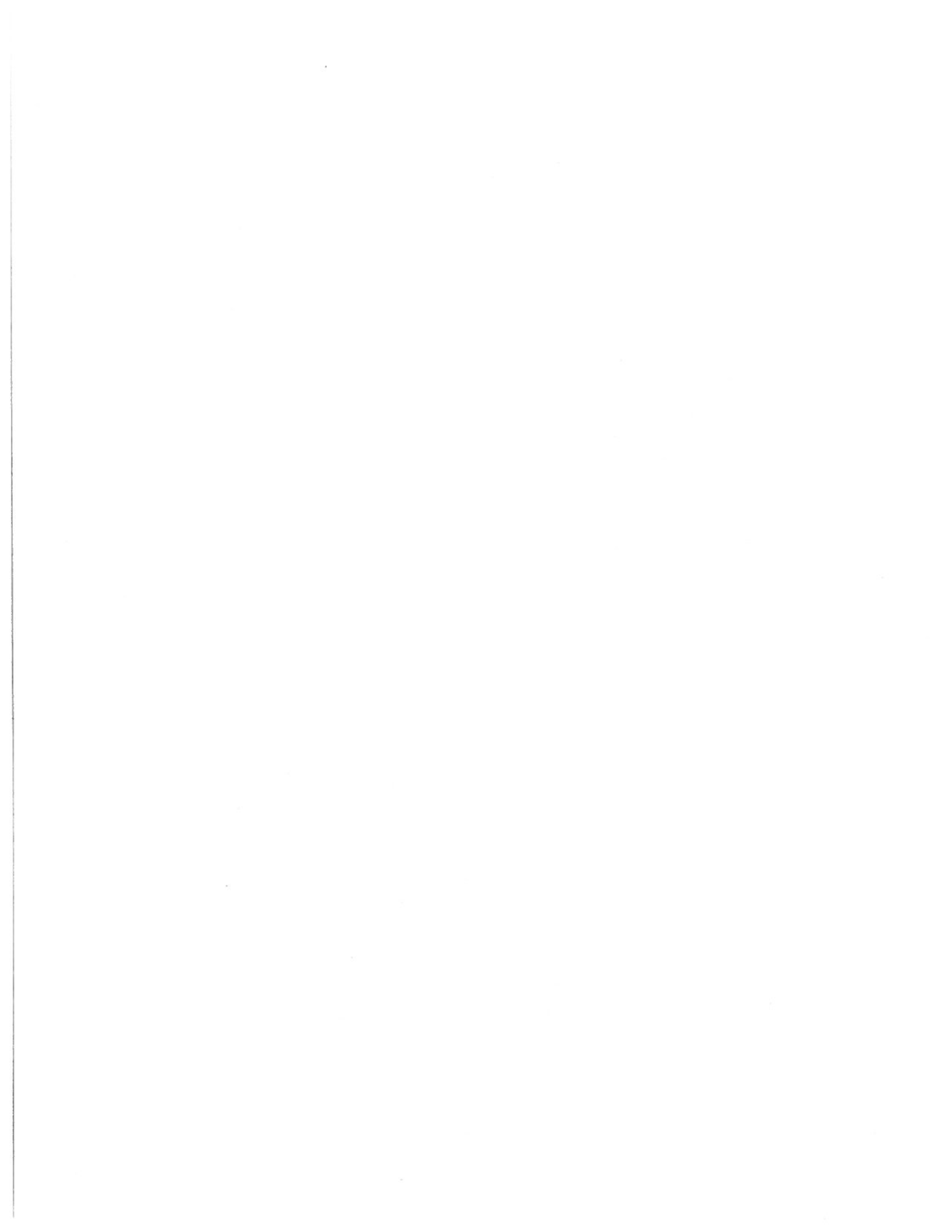
10. The City hereby expressly disclaims any warranty of title with respect to the Licensed Property. Licensee is relying on his own investigations as to the adequacy of the Licensed Property described herein for his use under this License. Without limiting the foregoing, the grant of rights set forth herein are subject to all easements, restrictions, reservations, and rights of way of record. The City further disclaims any warranty with respect to the physical condition of the Licensed Property described herein, including, without limitations, the fitness of such Licensed Property for any particular purpose and/or the condition of the soils contained therein. Licensee acknowledges that he is accepting his right to use the Licensed Property described herein on an as-is, where-is, and with all faults basis.

11. Licensee agrees that he shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Licensee's intentional or negligent conduct in the use of the Licensed Property. Licensee shall further indemnify and hold the City its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from environmental release of any septic tank material, hazardous substance, or hazardous material at, to, from, on, or through the Licensed Premises which is caused by Licensee (or Licensee's heir, successors, or assigns), or any appurtenance or apparatus of Licensee's (or Licensee's heir, successors, or assigns) located on the Licensed Premises.

12. The parties acknowledge and agree that this License is in the nature of a license as defined in the Colorado Springs, Colorado, City Charter for the use of City Licensed Property. As such, this License is expressly subject to section 10-100 of the Charter of the City of Colorado Springs, and is expressly revocable by the City Council at any time.

13. This License is further subject to section 10-60 of the Charter, which limits the term of this License to 25 years.

14. Nothing in this License shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*



15. Any notices required under this License shall be sent to the parties by United States Certified Mail, return receipt requested, to the persons and addresses below.

For the City:

For the Licensee:

Colorado Springs Utilities	Mark E. Cusack
Attn.: Engineering Support	242 N. Guadalupe
111 S. Cascade Avenue	San Marcos, Texas 78666
Colorado Springs, CO 80903	
Telephone: 719.668.4667	Telephone: 512-392-7700
Facsimile:	Facsimile: 512-392-1519

16. This License represents the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing signed by the City and Licensee.

Executed by Colorado Springs Utilities:

Daniel J Higgins  
Daniel Higgins

Date: 11-14-16

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

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of November 2016, by Daniel Higgins.

Witness my hand and official seal

My commission expires: May 19, 2017

Debra A. Mazza  
Notary Public

DEBRA A. MAZZA  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID # 19974009022  
MY COMMISSION EXPIRES MAY 19, 2017





# REVOCABLE LICENSE FOR USE OF CITY PROPERTY

For The Benefit of Mark E. Cusack

1. The City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation ("City"), hereby grants to Mark E. Cusack ("Licensee") a revocable license ("License") to use the City property described as "Area of Concern" shown on the Land Survey Plat Recorded on \_\_\_\_\_, 2016, Reception number \_\_\_\_\_, and attached hereto as **Exhibit A**, (hereinafter referred to as the "Licensed Property"). This License is granted to supplement the Boundary Agreement, attached hereto as **Exhibit B**, that was executed by the parties to a lawsuit filed by Mark E. Cusack, entitled: *Mark E. Cusack v. Daniela F. Cusack and the City of Colorado Springs, a Municipal Corporation*, El Paso County Dist. Court, Case No. 2013CV32158 and a subsequent settlement agreement entered into by the parties. This License is solely for the purpose of permitting Licensee to keep his existing electrical outlets, two (2) water pumps, and an underground septic tank (collectively "Improvements") in their current location and to maintain these Improvements. Licensee shall have the right to use and enter upon the Licensed Property for the purposes above, and no other purpose.

2. The term of this License shall be for twenty-five (25) years commencing November 4, 2016, through November 3, 2041, unless sooner revoked in writing by the Real Estate Services Manager, the Mayor or designee, authorized City or Colorado Springs Utilities' designee, or as otherwise provided in this License. At the end of each twenty-five year license term, this License, or successor license, as the case may be, shall automatically begin a new twenty-five year revocable license term under the same provisions set forth herein. No party shall be required to take affirmative steps or action to create a new revocable license period at the end of each term.

3. This License is given subject to all easements or other encumbrances upon the Licensed Property. The City shall retain the right to make full use of the Licensed Property, including but not limited to use of such Licensed Property for any utility lines, drainage, water right corridor, or otherwise. If, at any time, the City desires to use the Licensed Premises, or any part thereof, then the City may revoke this License and Licensee shall, at Licensee's sole cost and expense, remove any Improvement requested by the City. The City retains the right to enter upon the Licensed Property at any time and to service all utilities or other City facilities located in or thereon, and the right to utilize the Licensed Property for City purposes. Licensee will not injure or interfere with, now or in the future, any of the City's existing or future facilities or other license or easement rights. All costs in connection with Licensee's activities are at his sole cost and expense of Licensee.

4. By accepting this License, Licensee expressly agrees for himself, his successors and assigns, that they will not interfere in any way with the City's primary purpose and use of the Licensed Property. Each and every one of the benefits and burdens of this License shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of the parties hereto.

5. Licensee shall not commit any nuisance or cause any waste on the Licensed Property. Licensee shall not annoy, disturb, or be offensive to anyone on the Licensed Property. Licensee shall repair or reimburse the City for the reasonable cost of repair for any physical damage to the Licensed Property or any utilities, structure, apparatus, or appurtenances on the Licensed Property done by or resulting from actions, omissions or operations of Licensee, their successors, heirs and assigns, employees, contractors, or representatives to the Licensed Property and/or any of the City's existing or future facilities or improvements, whether within or outside of the Licensed Property.

6. Licensee shall maintain the Licensed Property in a clean and neat condition at all times, including removal of garbage, pet refuse, and other debris. Licensee shall not restrict the City's access or use of the

Licensed Property in any manner whatsoever. Licensee shall not construct or install any fence, facility, structure, apparatus, or appurtenances on or under the Licensed Property. License shall not increase the size of or increase the number of any electrical outlet, water pump, or septic tank which extends beyond Licensee's boundary as depicted in Exhibit A. Licensee shall not move any electrical outlet, water pump, or septic tank located on the Licensed Premises unless it is for the sole purpose of removing such Improvement from the Licensed Premises. Licensee shall not use any part of the Licensed Premises for storage of any material or thing, including, but not limited to firewood, building materials, or camping equipment. If Licensee or Licensee's heirs, successors, or assigns sell the property contiguous to the Licensed Premises, then this License shall immediately and automatically revoke, requiring Licensee to remove all electric outlets, water pumps and the septic tank from City property.

7. Licensee shall have the right to assign or otherwise transfer this License or any right or obligation hereunder to his heirs, successors, and assigns without the prior written consent of the City.

8. It is the intent of the parties that this License shall be deemed to run with the Licensed Property.

9. This License is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado. Licensee shall insure that they and their Licensee's employees, agents, and officers are familiar with, and comply with, applicable Federal, State, and local laws and regulations as now written or hereafter amended.

10. The City hereby expressly disclaims any warranty of title with respect to the Licensed Property. Licensee is relying on his own investigations as to the adequacy of the Licensed Property described herein for his use under this License. Without limiting the foregoing, the grant of rights set forth herein are subject to all easements, restrictions, reservations, and rights of way of record. The City further disclaims any warranty with respect to the physical condition of the Licensed Property described herein, including, without limitations, the fitness of such Licensed Property for any particular purpose and/or the condition of the soils contained therein. Licensee acknowledges that he is accepting his right to use the Licensed Property described herein on an as-is, where-is, and with all faults basis.

11. Licensee agrees that he shall indemnify, defend and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from, or arising out of, or in connection with the Licensee's intentional or negligent conduct in the use of the Licensed Property. Licensee shall further indemnify and hold the City its officers, employees and agents, from and against any and all loss, damage, injuries, claims, cause or causes of action, or any liability whatsoever resulting from environmental release of any septic tank material, hazardous substance, or hazardous material at, to, from, on, or through the Licensed Premises which is caused by Licensee (or Licensee's heir, successors, or assigns), or any appurtenance or apparatus of Licensee's (or Licensee's heir, successors, or assigns) located on the Licensed Premises.

12. The parties acknowledge and agree that this License is in the nature of a license as defined in the Colorado Springs, Colorado, City Charter for the use of City Licensed Property. As such, this License is expressly subject to section 10-100 of the Charter of the City of Colorado Springs, and is expressly revocable by the City Council at any time.

13. This License is further subject to section 10-60 of the Charter, which limits the term of this License to 25 years.

14. Nothing in this License shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

15. Any notices required under this License shall be sent to the parties by United States Certified Mail, return receipt requested, to the persons and addresses below.

For the City:

For the Licensee:

Colorado Springs Utilities	Mark E. Cusack
Attn.: Engineering Support	242 N. Guadalupe
111 S. Cascade Avenue	San Marcos, Texas 78666
Colorado Springs, CO 80903	
Telephone: 719.668.4667	Telephone: 512-392-7700
Facsimile:	Facsimile: 512-392-1519

16. This License represents the entire agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing signed by the City and Licensee.

Executed by Colorado Springs Utilities:

\_\_\_\_\_  
Daniel Higgins

Date: \_\_\_\_\_

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2016, by Daniel Higgins.


Witness my hand and official seal

My commission expires: \_\_\_\_\_

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

City Int: \_\_\_\_\_ Licensee Int: *MLC*  
Date: \_\_\_\_\_ Date: *11/5/16*

Executed by Mark Cusack:

By:   
Mark Cusack  
Date: Nov. 5, 2016

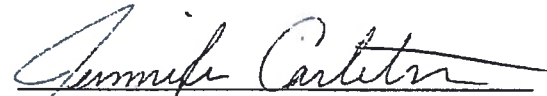
STATE OF TEXAS )  
COUNTY OF ~~HAYS~~ Gillespie )ss.

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of Nov. 2016, by  
Mark Cusack.

Witness my hand and official seal

My commission expires: Oct. 16, 2018



  
Notary Public

Approved as to form:

\_\_\_\_\_  
City Attorney's Office

Date: \_\_\_\_\_

Executed by Mark Cusack:

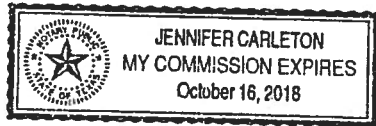
By: *Mark Cusack*  
Mark Cusack  
Date: Nov. 5, 2016

STATE OF TEXAS )  
 )ss.  
COUNTY OF ~~HAYS~~ Gillespie

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of Nov. 2016, by Mark Cusack.

Witness my hand and official seal

My commission expires: Oct. 16, 2018



*Jennifer Carleton*  
Notary Public

Approved as to form:

*Mark Cusack*  
City Attorney's Office

Date: 11/8/2016

<b>DISTRICT COURT, EL PASO COUNTY, COLORADO</b>  <b>Court Address:</b> 270 S. Tejon Street Colorado Springs, CO 80903 <b>Phone Number:</b> (719) 452-5000	
<b>Plaintiff(s):</b> MARK E. CUSACK  v.  <b>Defendant(s):</b> DANIELA FRANCIS CUSACK a/k/a DANIELA F. CUSACK; THE CITY OF COLORADO SPRINGS, a municipal corporation; and ALL UNKNOWN PERSONS WHO CLAIM ANY INTEREST IN THE SUBJECT MATTER OF THIS ACTION	<b>▲ COURT USE ONLY ▲</b>  <b>Case Number:</b> 2013CV32158  <b>Div. 20</b>
<b>ARBITRATOR'S DECISION AND AWARD</b>	

The parties above named submitted this matter to me for the purpose of determining the appropriate terms and language of a final settlement agreement. Joseph W. Diver of Berniger, Berg & Diver, LLC, represented Plaintiff Mark E. Cusack ("Mark Cusack"). Paul L. Murphy and Howard Morrison represented Defendant Daniela Francis Cusack ("Daniela Cusack"). Michael K. Gendill, of the Office of the City Attorney for Colorado Springs, represented Defendant The City of Colorado Springs ("the City").

This case involves a parcel of unimproved real property located in Ute Pass near Cascade, Colorado (hereinafter "the Property"). The Property, identified as Parcel No. 83264-00-016 in the El Paso County Assessor's records, is roughly rectangular in shape, and contains 2.02 acres, more or less. The northern boundary of the Property is contiguous to the Colorado Department of Transportation ("CDOT") Right-of-Way for Colorado Highway 24. French Creek dissects a portion of the Property. Mark Cusack and Daniela Cusack each own two separate tracts of land that are adjacent to and roughly south of the Property.

As against Daniela Cusack, Plaintiff claimed title to the Property by means of the 18-year adverse possession statute (CRS 38-41-101, *et seq.*) or, alternatively, the 7-year payment-of-taxes statute (CRS 38-41-108 and/or 38-41-109). Mark Cusack asserted a claim against the City for declaratory relief adjudging the City's interest in the 50-foot strip through the Property to be an easement, rather than a fee interest. Both Defendants denied the substantive claims of Mark Cusack.

As a result of a mediation conducted before me on August 29, 2014, the parties entered into a "Mediated Settlement Agreement," which would have settled all claims in the above captioned case. The Mediated Settlement Agreement contemplated that the parties would draft and execute a more formal settlement agreement, and provided as follows:

Provided it is allowed by the regulations of the Colorado Springs Utilities, in the event any dispute arises regarding the Final Settlement Agreement, that dispute shall be submitted to David C. Mize, as arbitrator, to resolve any dispute by order binding on all parties.

The Mediated Settlement Agreement provided *inter alia* that Mark Cusack and Daniela Cusack would convey by quitclaim deeds their respective interests in the Property to the City, in return for which (1) the City would grant both Cusacks vehicular access over and across the Property from Highway 24 and allow them to use the Property for hiking and recreational purposes, and (2) the City would prohibit the use of the Property for public access and for park purposes. Sometime after the Mediated Settlement Agreement was executed, the parties discovered that CDOT would not allow access to the Property from Highway 24, thus requiring the parties to re-negotiate certain terms of the settlement.

Subsequently, Mark Cusack and the City reached an agreement on the terms and wording of a proposed final settlement agreement ("proposed agreement"). However, Daniela Cusack raised objections to the proposed agreement and declined to sign it. Thereafter, pursuant to a joint motion Mark Cusack and The City, the Court appointed me to act as arbitrator to determine the appropriate terms and wording of a final settlement agreement between the parties.

On June 20, 2016 Mark Cusack and the City jointly submitted to me their proposed final settlement agreement. Subsequently, Daniela Cusack requested that the proposed agreement contain a provision whereby Mark Cusack would release her from any and all claims that he might have relating to her two remaining properties. Mark Cusack agreed to the proposed revision, and the proposed agreement was revised and resubmitted to me. On July 6, 2016, Daniela Cusack submitted to me a suggested revision to the

proposed agreement whereby she would be allowed to utilize Mark Cusack's electrical poles for the purpose of bringing electrical service to her two remaining properties. The proposed revision would include the following additional language:

Mark Cusack grants Daniela Cusack an easement to utilize the electric poles he has caused to be erected, on either his property and/or the CSU service road, in order to bring electricity to her separate property.  
("Daniela Cusack's Proposed Revision")

On July 12, 2016 Mark Cusack and the City submitted to me their comments regarding Daniela Cusack's Proposed Revision. Both Mark Cusack and the City acknowledged that there currently exists a disagreement over who owns the power poles and associated electrical equipment. Separately, Mark Cusack suggested that, if he does in fact own the power poles and associated electrical equipment, Daniela Cusack should reimburse him for some portion of his investment therein if she wishes to use the power poles to bring electrical service to her properties. On July 18, 2016, Daniela Cusack responded, stating that, if the power poles and associated electrical equipment are owned by Mark Cusack, it would be appropriate for her to reimburse him for some portion of his investment therein.

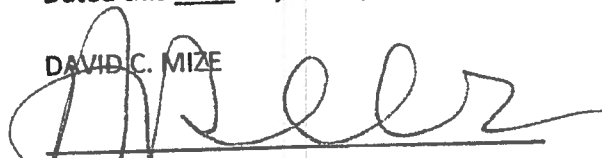
The parties have now resolved the issue regarding Daniela Cusack's use of the power poles and associated electrical equipment, and have submitted to me a revised proposed settlement agreement, a copy of which is attached to this Arbitrator's Decision and Award as Exhibit A.

Therefore, I hereby approve the proposed settlement agreement depicted in the attached Exhibit A, and I hereby direct the parties to sign and record the same, and to execute the appropriate deeds, license agreement and boundary agreement that are attached as exhibits to the proposed settlement agreement.

This Decision and Award resolves all issues presented in this arbitration.

Dated this 26<sup>th</sup> day of July, 2016.

DAVID C. MIZE



Arbitrator




**APPROVED AS TO FORM:**

BERNIGER, BERG & DIVER, LLC

By: \_\_\_\_\_  
Joseph W. Diver, Reg. #6343  
Attorneys for Plaintiff Mark E. Cusack

\_\_\_\_\_  
Michael K. Gendill, Senior Attorney, Reg. #35018  
Attorney for Defendant City of Colorado Springs

\_\_\_\_\_  
Paul L. Murphy, Reg. #329  
Attorney for Defendant Daniela Francis Cusack



Howard Morrison, Reg. #2161  
Attorney for Defendant Daniela Francis Cusack

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of July, 2016, I served a true and correct copy of the above and foregoing **ARBITRATOR'S DECISION AND AWARD** on the below named recipients by email:

Recipients:

Joseph W. Diver, Esq.  
P.O. Box 38335  
Colorado Springs, CO 80937  
[jdiverlaw@gmail.com](mailto:jdiverlaw@gmail.com)  
Attorney for Plaintiff Mark E. Cusack

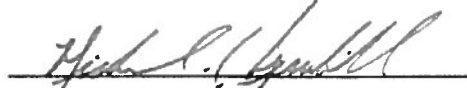
Michael K. Gendill, Esq., Senior Attorney  
P.O. Box 1575, Mail Code 501  
30 S. Nevada Avenue, Suite 501  
Colorado Springs, CO 80901  
[mgendill@springsgov.com](mailto:mgendill@springsgov.com)  
Attorney for Defendant The City of Colorado Springs

**APPROVED AS TO FORM:**

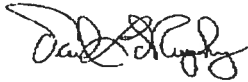
BERNIGER, BERG & DIVER, LLC

By: \_\_\_\_\_

Joseph W. Diver, Reg. #6343  
Attorneys for Plaintiff Mark E. Cusack



Michael K. Gendill, Senior Attorney, Reg. #35018  
Attorney for Defendant City of Colorado Springs



Paul L. Murphy, Reg. #329  
Attorney for Defendant Daniela Francis Cusack

Howard Morrison, Reg. #2161  
Attorney for Defendant Daniela Francis Cusack

**CERTIFICATE OF SERVICE**

I hereby certify that on this \_\_\_\_ day of July, 2016, I served a true and correct copy of the above and foregoing **ARBITRATOR'S DECISION AND AWARD** on the below named recipients by email:

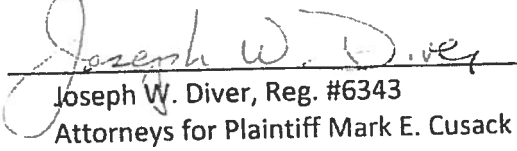
Recipients:

Joseph W. Diver, Esq.  
P.O. Box 38335  
Colorado Springs, CO 80937  
[jdiverlaw@gmail.com](mailto:jdiverlaw@gmail.com)  
Attorney for Plaintiff Mark E. Cusack

Michael K. Gendill, Esq., Senior Attorney  
P.O. Box 1575, Mail Code 501  
30 S. Nevada Avenue, Suite 501  
Colorado Springs, CO 80901

**APPROVED AS TO FORM:**

BERNIGER, BERG & DIVER, LLC

By:   
Joseph W. Diver, Reg. #6343  
Attorneys for Plaintiff Mark E. Cusack

\_\_\_\_\_  
Michael K. Gendill, Senior Attorney, Reg. #35018  
Attorney for Defendant City of Colorado Springs



\_\_\_\_\_  
Paul L. Murphy, Reg. #329  
Attorney for Defendant Daniela Francis Cusack

\_\_\_\_\_  
Howard Morrison, Reg. #2161  
Attorney for Defendant Daniela Francis Cusack

**CERTIFICATE OF SERVICE**

I hereby certify that on this 26<sup>th</sup> day of July, 2016, I served a true and correct copy of the above and foregoing **ARBITRATOR'S DECISION AND AWARD** on the below named recipients by email:

Recipients:

Joseph W. Diver, Esq.  
P.O. Box 38335  
Colorado Springs, CO 80937  
[jdiverlaw@gmail.com](mailto:jdiverlaw@gmail.com)  
Attorney for Plaintiff Mark E. Cusack

Michael K. Gendill, Esq., Senior Attorney  
P.O. Box 1575, Mail Code 501  
30 S. Nevada Avenue, Suite 501  
Colorado Springs, CO 80901

[mgendill@springsgov.com](mailto:mgendill@springsgov.com)

Attorney for Defendant The City of Colorado Springs

Paul L. Murphy, Esq.

611 N. Weber St., Suite 104

Colorado Springs, CO 80903

[pmurphy719@aol.com](mailto:pmurphy719@aol.com)

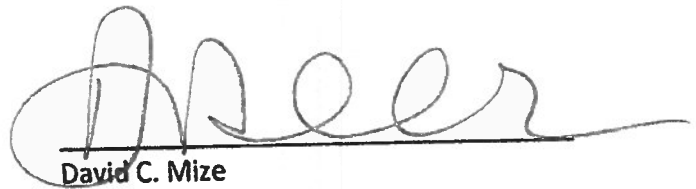
Attorney for Defendant Daniela F. Cusack

Howard Morrison, Esq.

231 E. Vermijo Avenue

Colorado Springs, CO 80903

[howardmorrison34@gmail.com](mailto:howardmorrison34@gmail.com)

A handwritten signature in black ink, appearing to read "Mize", written over a horizontal line. The signature is stylized with a large initial "M" and a long horizontal stroke extending to the right.

David C. Mize

# EXHIBIT A

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is made and entered into as of July 1, 2016, by and between MARK E. CUSACK ("Mark Cusack"), DANIELA FRANCIS CUSACK a/k/a DANIELA F. CUSACK ("Daniela Cusack"), and THE CITY OF COLORADO SPRINGS, a municipal corporation ("the City"), and supersedes the Mediated Settlement Agreement entered into by and among the Parties on August 29, 2014. Hereinafter, Mark Cusack, Daniela Cusack and the City shall be referred to jointly as "the Parties" and individually as "Party". This Agreement and all deeds, licenses, and easements required herein shall become effective upon City Council's approval of the terms and the land acquisition of the property described in paragraphs B and 1.2 of this Agreement.

### RECITALS

This Agreement is entered into with reference to the following facts:

A. Mark Cusack filed an action in the District Court of El Paso County, Colorado (1) for declaratory relief against the City, and (2) for a decree quieting title, as against Daniela Cusack, to a parcel of land located in the W½ of the SE¼ of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, Colorado located in Ute Pass, west of Colorado Springs, Colorado, and near the town of Cascade, Colorado. 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").

B. The property in dispute in the Lawsuit is an unimproved parcel containing 2.02 acres, more or less, and is legally described as follows:

A part of the W½ of the SE¼ 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 NW¼ of the SE¼ 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 (hereinafter the "Property").

See separately executed Quit Claim Deeds of Mark Cusack and Daniela Cusack collectively attached as **Exhibit A**. Each deed, including its provisions, is attached hereto, incorporated herein, and made a part hereof by reference.

C. In the Lawsuit Mark Cusack claims title to the Property as against Daniela Cusack pursuant to C.R.S. §38-41-101, *et seq.* (Adverse Possession for 18 years) and/or C.R.S. §§38-41-108 and/or 38-41-109 (Payment of Taxes for Seven Years).

D. In the Lawsuit, Mark Cusack claims that, pursuant to a prior conveyance from Anne Cusack Johnson to the City, recorded July 31, 1973, in Book 2609 at Page 180, the City acquired only an easement, and not a fee interest, over and across the Property for the purpose of maintaining a water transmission line.

E. Daniela Cusack claims to be the legal owner of the Property, and denies that Mark Cusack acquired any interest in the Property by adverse possession or otherwise.

F. The City claims that, pursuant to a Warranty Deed from Anne Cusack Johnson, recorded July 31, 1973 in Book 2609 at Page 180, it acquired a fee interest in a 50-foot strip of land dissecting the Property (“the 50-foot strip”). The City denies Mark Cusack’s claim that the City acquired only an easement across the Property.

G. The City, on behalf of its enterprise, Colorado Springs Utilities, has a vested interest in protecting and maintaining its water sources and delivery systems.

H. Recognizing the uncertainties and expense of litigation, the Parties hereto desire to settle, adjust, and compromise the claims and disputes between them.

### Agreement

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and the payment of the sums herein specified, the receipt and sufficiency of which is hereby acknowledged, the Parties agree, as follows:

#### 1. **Settlement Terms.**

1.1 The Parties are the respective owners of the parcels of real property identified in the attached **Exhibit B**, the boundaries of which parcels came into dispute during the course of the Lawsuit. Therefore, in accordance with C.R.S. § 38-44-112, the Parties hereby engage Luke Johnson, a Colorado Professional Land Surveyor employed by and working on behalf of Colorado Springs Utilities, to establish the location of the common boundary lines between the Parties’ respective parcels, as depicted in an informal survey previously conducted by him. The Parties further direct that Luke Johnson shall prepare and file with the Clerk and Recorder of El Paso County, Colorado a formal survey depicting the permanently established common boundary lines between the Parties’ respective parcels in accordance with his informal, unrecorded survey.

The Parties hereby agree to accept the boundary lines so located by Luke Johnson as the permanently established, true common boundaries between their respective parcels and, contemporaneously with the execution of this Settlement Agreement, will execute the Boundary Agreement attached hereto as **Exhibit B** and cause the same to be recorded in the real property records of El Paso County, Colorado. The Parties and their heirs, executors, personal representatives and assigns shall thereafter respect the boundary lines so located to the end that each of the Parties will be able to plan and undertake improvements without notice to the other. Inasmuch as Luke Johnson is an employee of the City, the expenses of conducting and recording the survey shall be borne by the City.

The parties agree that by engaging Luke Johnson to establish the permanently established true boundary between their respective parcels, the Parties shall waive any claim of any kind or nature, for themselves, and on behalf of their employees, agents, trustees, heirs, successors and assigns, and fully and finally release and forever discharge Luke Johnson and the City, together with their employees, agents, attorneys, trustees, heirs, successors and assigns from all known or unknown claims, demands, actions, damages, injuries, costs, causes of action and liabilities, legal and equitable, which arise from, relate to or concern the survey and/or boundary agreement establishing the Parties' permanent common boundaries lines.

1.2 Mark Cusack and Daniela Cusack shall, by means of separately executed Quit Claim Deeds, convey to the City all of their rights, title, and interest in and to the Property described in the Recitals, paragraph B (including Exhibit A above) and incorporated herein. Mark Cusack and Daniela Cusack also agree that by conveyance of the Property by Quit Claim Deed, all rights, title, and interest merge with the City's rights, title, and interest in the 50-foot tract of land contained within the boundaries of the Property, as follows:

A strip shaped parcel of land bounded on the Easterly and Westerly ends by the Easterly and Westerly boundaries of that tract described in Book 1646 at Page 570 in the records of El Paso County, Colorado. Said strip of land also being contained between the Northerly boundary of said tract of record and the Southwesterly right-of-way line of U. S. Highway 24 as Constructed under Colorado State Highway project F-017-1(2). All being situated in the Southeast quarter of Section 26, Township 13 South, Range 68 West of the 6th Principal Meridian. Containing 0.16 Acre, more or less. A tract 50 feet in width providing 25 feet on each, and either side of the center line of an existing 30-inch diameter, domestic water transmission line over, under, across, and/or through that parcel of land as recorded in Book 1646 at Page 570 in the records of the County of El Paso in the State of

Colorado. All being a part of the W½ of the SE¼ of Sec. 26, T. 13 S., R. 68 W. of the 6th P. M., more particularly described as follows:

Commencing at a point whence the N. E. corner of the NW¼ of the SE¼ of said Section bears N. 47° 26' E. 1,029 feet; thence S. 4° 00' 00" E. a distance of 433.27 feet to the true point of beginning for the center line description of the pipe line right of way to hereby be described. From the point of beginning thence N. 37° 25' 02" W. a distance of 144.90 feet to the first angle point; thence N. 7° 05' 02" W. a distance of 237.81 feet to the second angle point; thence N. 17° 37' 17" W. a distance of 80.93 feet to the third angle point; thence N. 50° 02' 17" W. a distance of 30 feet to a point of intersection with the Southerly right-of-way fence line of U. S. Highway 24. Also a tract of land 50 feet in width, providing 25 feet on each and either side of the center line of said 12-inch flush line, the center line of said 12-inch flush line being described as follows: Beginning at said second angle point in the foregoing description; thence N. 71° 01' 38" E. for a distance of 80.00 feet, to the point of termination.

See **Exhibit A**, the conveyance of the 50-Foot strip of land (hereinafter "50-foot Strip"). Mark Cusack and Daniela Cusack agree that this 50-foot Strip shall be included in the Quit Claim Deeds executed by each party to this Agreement.

Included in each such Quit Claim Deed shall be a restrictive covenant that neither the Ute Pass Regional Trail nor any other hiking, equestrian or motorized trail shall be located within or on the Property, the 50-foot Strip or any City-owned property that is contiguous to properties owned by Mark Cusack or Daniela Cusack, located in the West ½ of the SE ¼ of Section 26, T.13 S, R.68 W of the 6<sup>th</sup> P.M. , subject to the following exception: The City may grant a license or other permission to construct an extension or segment of the Ute Pass Regional Trail on City-owned property near and roughly parallel to the easterly boundary of the Property and parcels of land currently owned by Daniela Cusack, identified by El Paso County Assessor's Schedule Nos 8326400006 and 8326400009. Such exception shall also include a twenty-five (25) foot wide strip of land located within, along and contiguous to the northern boundary of the Property where it abuts the CDOT right-of-way for Highway 24. The 25-foot strip shall run parallel to the common boundary between the Property and the CDOT right-of-way and shall run along the entire northern boundary of the Property. See **Exhibit C**, map depiction of the subject area (notice: the attached map, Exhibit C, is for general reference and assistance in clarifying the locations described herein. The map is not intended to be and does not provide the precise location of where the Ute Pass Regional Trail will be constructed or where any fencing will be located). Mark Cusack and Daniela Cusack, their heirs, successors and assigns, shall have pedestrian access over and across the Property, together with the unlimited right to access the Property for hiking and recreational use.



1.3 The City agrees to maintain, repair and construct, a six foot tall chain-link fence along the northern boundary of the Property to be placed twenty-five (25) feet in a southerly direction from the point where the CDOT parcel abuts the Property (as described in the above paragraph). Such fence shall begin at the west bank of the French Creek and continue westerly for approximately 125 feet, thence northerly back to the CDOT parcel boundary. If the additional twenty-five (25) foot wide section of the Property (as described in the exception provisions above) is needed to complete an extension or a segment of the Ute Pass Trail, then the City shall construct an addition to the six foot tall chain-link fence which runs the length of the remaining northern section of the Property at a distance of twenty-five (25) feet from the point where CDOT property abuts the Property. Mark Cusack and Daniela Cusack understand and agree that vehicle parking or use of any property not part of the City's Property described herein must be approved by CDOT or the proper owner of such other property. For its part, the City agrees to take reasonable steps to maintain the Property in its natural state, provided that the City may construct other utility lines, apparatus and utility related structures on the Property, so long as such apparatus and structures blend with the natural look of the Property and do not emit noise. The City agrees that under no circumstances shall the Property be used for a public park or public access for any purpose, including, but not limited to, hiking trails, equestrian trails and motorized trails.

1.4 By separate instrument, the City shall give to Mark Cusack and Daniela Cusack, their respective heirs, successors-in-interest and assigns a right-of-way across the existing Colorado Springs Utilities road to the extent it is located on City-owned property for the purpose of access, including vehicular access, to their respective adjacent properties. The existing Colorado Springs Utilities road over which such right-of-way is to be located is identified in the Revocable License and provisions incorporated herein by reference and attached as Exhibit C, as follows.

A portion of a parcel of land located in the W½ of the SE¼ of Section 26, Township 13 South, Range 68 West, Sixth Principal Meridian, Colorado, as conveyed to The City of Colorado Springs by instrument recorded at Book 893 Page 381 and Book 915 Page 216, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, more particularly described as follows:

Commencing at the Center ¼ Sec. Cor. of Sec. 26 (a found granite stone, 8" x 4", firmly set, projecting 14" above ground, chiseled "+" on top and "+" on South face), from which the ¼ Sec. Cor. of Secs. 26 and 35 (a found iron pipe, 1" diameter, firmly set, projecting 2" above a mound of stone, 3½" diameter, with a brass cap, 2½" diameter, marked as described in the official record of the dependent resurvey of T. 13 S., R. 68 W., accepted in 1941) bears S 1 degree 35 minutes 09 seconds W, 2,597.18 feet

distance, Thence, along the West line of said W½ of the SE¼ of Sec. 26, S 1 degree 35 minutes 09 seconds W, 747.39 feet distance, and the **Point of Beginning**;

Thence, departing said West line, S 58 degrees 02 minutes 46 seconds E, 72.61 feet distance; Thence, S 72 degrees 07 minutes 18 seconds E, 98.03 feet distance; Thence S 61 degrees 28 minutes 21 seconds E, 81.49 feet distance; Thence S 70 degrees 49 minutes 30 seconds E, 105.99 feet distance; Thence, along a curve to the right, having a radius of 55.00 feet and a central angle of 80 degrees 00 minutes 14 seconds, an arc distance of 76.80 feet; Thence S 9 degrees 10 minutes 44 seconds W, 124.66 feet distance; Thence, S 6 degrees 01 minutes 36 seconds W, 120.43 feet distance; Thence, S 15 degrees 18 minutes 20 seconds E, 60.87 feet distance; Thence, S 2 degrees 37 minutes 05 seconds W, 122.64 feet distance; Thence, S 10 degrees 22 minutes 19 seconds E, 71.13 feet distance; Thence, S 30 degrees 09 minutes 34 seconds E, 117.26 feet distance; Thence, S 16 degrees 07 minutes 31 seconds E, 40.31 feet distance; Thence, S 0 degrees 06 minutes 30 seconds E, 74.40 feet distance; Thence, S 8 degrees 30 minutes 26 seconds W, 155.54 feet distance; Thence, N 86 degrees 35 minutes 56 seconds E, to a point on the West line of a parcel of land as recorded at Book 2654 Page 917, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 52.56 feet distance; Thence, along said West line, S 3 degrees 24 minutes 25 seconds E, to the Southwest corner of said parcel, also being the most Westerly corner of a parcel of land as recorded at Book 2654 Page 918, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 39.75 feet distance; Thence, along the West line of said parcel, S 3 degrees 24 minutes 25 seconds E, to the Southwest corner of said parcel, 50.00 feet distance; Thence, S 86 degrees 35 minutes 56 seconds W, to the Southeast corner of a parcel of land as recorded at Book 2615 Page 128, El Paso County Clerk and Recorder records, Colorado Springs, Colorado, 100.86 feet distance; Thence, along the East line of said parcel, N 3 degrees 24 minutes 25 seconds W, 89.75 feet distance; Thence, departing said East line, N 86 degrees 35 minutes 56 seconds E, 17.64 feet distance; Thence, N 8 degrees 30 minutes 26 seconds E, 159.61 feet distance; Thence, N 18 degrees 24 minutes 28 seconds W, 11.23 feet distance; Thence, N 0 degrees 06 minutes 30 seconds W, 67.31 feet distance; Thence, S 34 degrees 07 minutes 51 seconds W, to a point on said East line, 84.62 feet distance; Thence, along said East line, N 3 degrees 24

minutes 25 seconds W, 49.24 feet distance; Thence, departing said East line, N 34 degrees 07 minutes 51 seconds E, 66.54 feet distance; Thence, N 30 degrees 09 minutes 34 seconds W, to a point on said East line, 90.07 feet distance; Thence, along said East line, N 3 degrees 24 minutes 25 seconds W, to the Northeast corner of said parcel, 27.73 feet distance; Thence, along the North line of said parcel, S 73 degrees 53 minutes 53 seconds W, 7.99 feet distance; Thence, departing said North line, N 10 degrees 22 minutes 19 seconds W, 65.82 feet distance; Thence, N 2 degrees 37 minutes 05 seconds E, 121.32 feet distance; Thence, N 15 degrees 18 minutes 20 seconds W, 61.79 feet distance; Thence, N 6 degrees 01 minutes 36 seconds E, 126.91 feet distance; Thence, N 9 degrees 10 minutes 44 seconds E, 125.48 feet distance; Thence, along a curve to the left, having a radius of 25.00 feet and a central angle of 80 degrees 00 minutes 14 seconds, an arc distance of 34.91 feet; Thence, N 70 degrees 49 minutes 30 seconds W, 108.45 feet distance; Thence, N 61 degrees 28 minutes 21 seconds W, 81.15 feet distance; Thence, N 72 degrees 07 minutes 18 seconds W, 98.93 feet distance; Thence, N 58 degrees 02 minutes 46 seconds W, to a point on said West line of said W $\frac{1}{2}$ SE $\frac{1}{4}$  Sec. 26, 58.73 feet distance; Thence, along said West line, N 1 degree 35 minutes 09 seconds E, 34.77 feet distance, to the **Point of Beginning**, and containing 50,209 square feet of land, more or less.

The direction of each line is with reference to the Colorado Coordinate System of 1983 Central Zone. The distances are reported as horizontal measurement at a mean ground elevation of 6,500 feet above sea level, U. S. survey foot.

See **Exhibit D** (hereinafter "License"). The City agrees that neither the Ute Pass Regional Trail nor any other public hiking, equestrian or motorized trail shall be located within or on the property described in this License to Daniela F. Cusack and Mark Cusack. Mark Cusack and Daniela Cusack, for themselves, their respective heirs, successors and assigns, agree that they shall not permit or allow the Ute Pass Trail or any other public hiking, equestrian or motorized trail to be located on their respective properties situated in the West  $\frac{1}{2}$  of the SE  $\frac{1}{4}$  of Section 26, T.13 S, R.68 W of the 6<sup>th</sup> P.M.

1.5 The City and Daniela Cusack acknowledge that there presently exist electrical wires and poles ("electrical service") on and across the Property, which may include a separate parcel owned by Daniela Cusack, the purpose of which is to provide electricity to parcels owned by Mark Cusack. The electrical service was located and constructed for Mark Cusack by Colorado Springs Utilities. Colorado Springs Utilities agrees to provide electrical service via the

wires and poles described above to Mark Cusack's separately owned parcels. Colorado Springs Utilities will maintain the electrical wires and posts. If an easement from Daniela Cusack for the electrical wires and poles becomes necessary, Daniela Cusack will, by separate written instruments, grant an easement therefor to the City. The City retains the right, in the case of emergencies, to cut the electrical wires or take such other steps as may be necessary to resolve the emergency, in which case the City shall be responsible for the cost of restoring service up to Mark Cusack's meter.

A disagreement has arisen between Mark Cusack and the City as to who now owns the power poles and electrical equipment. If the City owns the power poles and associated electrical equipment, and continues to service the area at the time Daniela Cusack desires to bring electricity to her two properties, she will deal directly with the City. If, on the other hand, Mark Cusack owns the poles and associated electrical equipment, Daniela Cusack must reimburse him for a portion of his investment if she wishes to utilize his power poles and/or associated electrical equipment to bring electricity to her two properties. The amount of such reimbursement is to be determined by agreement between Mark Cusack and Daniela Cusack at some future date.

1.6 At some future date, the City may grant a license for the purpose of constructing an extension or segment of a trail system known as the Ute Pass Regional Trail ("the Trail") on City-owned property near and roughly parallel to the easterly boundary of the Property and parcels of land owned by Daniela Cusack. In the event the City grants such a license or other permission for the purpose of constructing the Trail, the City agrees to erect a 3-strand barbless wire fence with 6-foot metal T-posts ("Fence"), said Fence commencing at the northeast corner of the Property connecting to the existing barbed wire fence at the north end of the Property and running along the easterly property line of the Property, then continuing along the easterly property line of a parcel of property owned by Daniela Cusack (El Paso County Assessor's Schedule No. 8326400009) to the northwest corner of a parcel of property owned by Daniela Cusack (El Paso County Assessor's Schedule No. 8326400006), then along the northerly property line of said parcel to the northeast corner thereof, then along the easterly property line of said parcel to the southeast corner thereof, said Fence being approximately 1,260 feet in length (the "Fence"). The City agrees to erect the Fence within a reasonable time after the Trail is constructed and open for public recreational use by the general public. See **Exhibit C**, map depiction of the subject area (notice: the attached map, *Exhibit B*, is for general reference and assistance in clarifying the locations described herein. The map is not intended to be and does not provide the precise location of where the Trail will be constructed or where any fencing will be located).

The purpose of the Fence is to address Mark Cusack's concern that once the Trail is constructed patrons thereof could deviate from the designated Trail path and trespass onto his land. Thus, within a reasonable time after the Trail is constructed and open for public recreational use, the City agrees to install the Fence to deter potential trespassers from crossing onto Mark Cusack's property and/or Daniella Cusack's property. Once the Trail is constructed

and open for public recreational use and the Fence is constructed, the City agrees to maintain and repair the Fence, which responsibility the City may delegate to a third party as a condition for managing public use of the Trail. Such maintenance or repair shall be within reason, meaning the City or its delegatee shall repair or, if needed, replace damaged or broken sections, posts, or component parts which affect the structural integrity of the Fence that prevent it from serving its purpose. Although the City is agreeing to maintain or repair the Fence, the cost(s), including labor and materials, for such maintenance or repair shall be paid by Mark Cusack. The City, or its delegatee, has the option to utilize its internal resources/personnel to maintain or repair the Fence at fair market value for such services and materials or it may contract the work out to the lowest bidder (of not more than three bids). The City, or its delegatee, shall use best efforts, under the circumstances presented at the time, to obtain the most cost efficient method for maintenance or repair costs of the fence.

Mark Cusack may request that the City erect a better fence, in the same location as the Fence described above. This fence shall be erected at Mark Cusack's sole expense and subject to the City's written approval. The City shall not unreasonably withhold approval of a fence Mark Cusack wishes to erect so long as such fence: (1) is demonstrated to be necessary (i.e. people from the Trail are trespassing onto Mark Cusack's property and the requested improved fence is a reasonable means to reduce such trespass activity); (2) blends with the natural look of the area; (3) does not unreasonably interfere with the City's operations in the area; (4) does not result in any costs to the City; and (5) does not cause a substantial barrier that impedes fire, other emergency personnel/equipment, and/or City personnel/equipment from accessing the area. The City agrees to respond to Mark Cusack's request to erect a fence within sixty days.

If an improved fence is erected, the City shall maintain and repair the fence in a similar manner as described above. Such maintenance or repair shall be within reason, meaning the City shall repair or, if needed, replace damaged or broken sections, posts, or component parts which affect the structural integrity of the fence that prevent it from serving its purpose of deterring potential trespassers away from entering the mark Cusack's property or Daniella Cusack's property. Although the City is agreeing to maintain or repair the fence, the cost(s), including labor and materials, for such maintenance or repair shall be paid by Mark Cusack. The City has the option to utilize its internal resources/personnel to maintain or repair the fence at fair market value for such services and materials or it may contract the work out to the lowest bidder (of not more than three bids). The City shall use best efforts, under the circumstances presented at the time, to obtain the most cost efficient method for maintenance or repair costs of the fence.

1.7 Upon the execution of this Agreement, the Quit Claim Deeds referenced in Paragraph 1.2 above, the License for ingress and egress referenced in Paragraph 1.4 above, and, if necessary, the easement or license referenced in Paragraph 1.5-above, the Parties shall cause the Lawsuit to be dismissed with prejudice, each Party to pay its own attorney fees and costs incurred in connection with the Lawsuit.

2. **Release.** The Parties, for themselves, and on behalf of their employees, agents, trustees, heirs, successors and assigns, hereby fully and finally release and forever discharge each other, together with their employees, agents, attorneys, trustees, heirs, successors and assigns from all known or unknown claims, demands, actions, damages, injuries, costs, causes of action and liabilities, legal and equitable, which arise from, relate to or concern the claims asserted in the Lawsuit. The above release is expressly intended to and does waive, release, acquit, and forever discharge any and all subrogated interests, liens, or assignments, which might exist with regard to any claims, including counter claims, released herein.

In addition, Mark Cusack releases any claims for adverse possession or otherwise, that he may have against Daniela Cusack as they relate to any other real property owned by Daniela Cusack in El Paso County.

2.1. The Parties represent and warrant that, other than that which is set forth in the Recitals to this Agreement, they have not filed or caused to be filed or asserted any claim in or with any court or agency based on or related to the Lawsuit or claims and agree that they will not file any claim in or with any court or agency based on or related to the Lawsuit or claims against any Party to this Lawsuit.

2.2. The Parties hereby declare and represent that no other person, firm, or corporation has received any assignment, subrogation, lien, including but not limited to attorney lien, or other right of substitution to the claim or claims made or which could have been asserted, or that to the extent such assignment, subrogation, lien, or other right of substitution exists, the same has been waived, resolved, or otherwise disclosed.

3. **Different Facts.** The Parties, and each of them, acknowledge that they are fully familiar with the facts and assumptions giving rise to this Agreement, but agree that this Agreement shall remain fully effective and binding as to each of them even if the facts or assumptions turn out to be different from what they now believe them to be.

4. **No Admission.** The Parties acknowledge that this Agreement constitutes the settlement of disputed claims and that entering into this Agreement shall not constitute an admission of fault, wrongdoing, liability, or responsibility by a Party.

5. **Costs and Fees.** Each Party shall pay his, her or its own costs and attorneys' fees in connection with the dispute giving rise to this Agreement, the preparation and execution of this Agreement and any related documents.

6. **No Previous Assignment.** Each Party represents and warrants that it has not assigned or otherwise transferred, or purported to assign or otherwise transfer, to any party, directly or indirectly, voluntarily, involuntarily or by operation of law, any rights, claims or causes of action which it may have against the other Party, or any damages, liabilities, losses

and costs being released by this Agreement. The Parties each agree to indemnify and hold the other harmless from and against all claims, demands, actions, damages, injuries, costs, causes of action and liabilities of any nature suffered or incurred as a result or any assignment or transfer, or purported assignment or transfer, in breach of the representation and warranty contained in this paragraph. The Parties agree that the indemnification and hold harmless provisions of this paragraph apply to the City only to the extent permitted by law and subject to the limitations under the Colorado Constitution, the City Charter, and relevant statutes/ordinances.

7. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the Parties as to the subject matter of the Agreement, and supersedes all prior agreements, representations, and discussions between the Parties concerning that subject matter. Each Party further declares and represents that, in entering into this Agreement, it has not relied on any promise, inducement, representation, warranty, agreement, or other statement not set forth in this Agreement. The parties further agree that the mediation agreement of August 29, 2014 is hereby voided and superseded by this Agreement.

8. **Nonwaiver.** None of the provisions of this Agreement shall be considered waived by a Party unless such waiver is given in writing. The failure of a Party to insist in any one or more instances upon strict performance of any of the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

9. **Effect of Subject Headings.** Subject headings in this Agreement are inserted for convenience only, and shall not be construed as interpretations of text.

10. **Gender.** Words used in this Agreement, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

11. **Governing Law.** This Agreement shall be interpreted, governed, and construed under the laws of the State of Colorado.

12. **Amendment.** This Agreement may not be altered or modified by either of the Parties except by an instrument in writing executed by each of them.

13. **Further Assurances.** The Parties agree to cooperate promptly and fully in providing and/or executing such additional documents and taking such other actions as may later be determined to be reasonably necessary to effectuate the provisions of this Agreement.

14. **Review of Agreement; Construction.** The Parties acknowledge that they have read and understood this Agreement and further acknowledge that, in entering into this

settlement, they have been advised by independent attorneys of their choice. Further, each Party has cooperated in the drafting and preparation of this Agreement. Hence, in any construction to be made of this Agreement, the same shall not be construed against either Party on the basis that the Party was the drafter.

15. **Attorneys' Fees and Costs.** In the event that any action, arbitration or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs and expenses actually incurred in such action, arbitration or proceeding.

16. **Signature Clause.** Each Party represents and warrants that the person who signs below on behalf of that Party has been duly authorized to execute this Agreement on behalf of that Party without the further concurrence or approval of any person, entity or court. This Agreement and all deeds, licenses, and easements required herein shall become effective upon City Council's approval of the terms and the land acquisition of the property described in paragraphs B and 1.1 of this Agreement.

17. **Multiple Originals; Facsimiles.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single document binding on all the Parties hereto, notwithstanding that all such Parties are not signatories to the original or the same counterpart. This Agreement may be executed by facsimile signatures, which shall have the same force and effect as original signatures.

18. **Survivability.** Representations, obligations, remedies and warranties contained in this Agreement shall survive the Closing of this Agreement.

19. **Recording.** This Settlement Agreement and Release may be recorded in the Office of the Clerk & Recorder of El Paso County, Colorado.





Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
City of Colorado Springs, on behalf of its enterprise,  
Colorado Springs Utilities' representative

\_\_\_\_\_  
Print name and title

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2016, by \_\_\_\_\_.

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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

City of Colorado Springs

\_\_\_\_\_  
Print name and title

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2016, by \_\_\_\_\_.

Witness my hand and official seal

My commission expires: \_\_\_\_\_

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

Approved as to form:

\_\_\_\_\_  
Attorney for Mark E. Cusack

Date: \_\_\_\_\_

\_\_\_\_\_  
Attorney for Daniela F. Cusack

Date: \_\_\_\_\_

\_\_\_\_\_  
City Attorney's Office

Date: \_\_\_\_\_