

RESOLUTION NO. _____ -21

A RESOLUTION AUTHORIZING THE USE OF EMINENT DOMAIN TO ACQUIRE A RIGHT OF ENTRY TO REAL PROPERTY OWNED BY RICK AND ELIZABETH APOTHEKER FOR THE CASCADE METROPOLITAN DISTRICT CONVERSION PROJECT

WHEREAS, the City of Colorado Springs (“City”), by and through its enterprise, Colorado Springs Utilities (“Utilities”), operates utility systems and provides utility services, including water service, to its customers within Utilities’ service area, as authorized by Article 1, Section 1-20(d) of the Charter of the City of Colorado Springs; and

WHEREAS, on February 24, 2015, City Council approved Ordinance No. 15-15, which authorized Utilities to execute a settlement agreement with Cascade Metropolitan District No. 1 (“CMD”) which provided, *inter alia*, for the conversion of CMD’s existing water distribution system to a Utilities owned and operated system and CMD’s and customers to Utilities’ customers upon the satisfaction of certain terms and conditions (“CMD Conversion Project”); and

WHEREAS, as part of the CMD Conversion Project, CMD was required to obtain, by the Conversion Date, easements where its existing water distribution system traversed private property (“Easements”); and

WHEREAS, ownership and operation of CMD’s water distribution system and CMD’s customers transferred to Utilities on December 1, 2020 (the “Conversion Date”); and

WHEREAS, CMD was unable to obtain all of the required Easements before the Conversion Date; and

WHEREAS, Utilities agreed to obtain the remaining Easements after the Conversion Date at CMD’s expense, pursuant to a Repayment Agreement executed by CMD and Utilities on November 30, 2020; and

WHEREAS, one of the remaining Easements to be obtained crosses a portion of the property known as 4210 Outpost Road, Cascade, Colorado 80809, legally described as Lot 3 Marigreen Subdivision, El Paso County, Colorado, which is identified as tax schedule number 8326101006 (the “Property”); and

WHEREAS, the Property is owned by Rick and Elizabeth Apotheker (the “Apothekers”); and

WHEREAS, Utilities needs to enter the Property to conduct locates on the water pipe that exists on the Property, to create a legal description of the needed easement, and to have the easement appraised for completion of the CMD Conversion Project; and

WHEREAS, after the Conversion Date, Utilities, by and through the City’s Real Estate Services Division, sought the Apothekers’ permission to enter the Property for these purposes; and

WHEREAS, the Apothekers refuse to grant Utilities permission to enter the Property; and

WHEREAS, pursuant to the provisions of Article XX, Section 1 of the Colorado Constitution and the City Charter, the City is empowered to acquire property interests within or without its territorial limits by lease, purchase, gift, bequest, dedication, or other suitable means of conveyance, or through institution of eminent domain proceedings, for all interests necessary for the City; and

WHEREAS, The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests provides that City Council may authorize the use of eminent domain to acquire a right of entry when a property owner refuses to grant the City permission to enter the property.

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

Section 1. City Council hereby finds it to be in the interest of the public health, safety, and welfare, and that the City has a need to, and it is necessary to acquire, a right of entry to the Property for the CMD Conversion Project, which is a public purpose.

Section 2. The City Attorney is hereby authorized to take all action necessary to acquire a right of entry to the Property owned by the Apothekers including by use of eminent domain or other appropriate proceedings.

This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado, this ____ day of _____, 2021.

Council President

ATTEST:

Sarah B. Johnson, City Clerk