

RESOLUTION NO. \_\_\_\_\_ - 22

A RESOLUTION AUTHORIZING THE PURCHASE OF FORT LYON CANAL COMPANY STOCK OWNED BY MARK WERTZ AND HEATHER WERTZ FOR COLORADO SPRINGS UTILITIES AND AUTHORIZING THE FILING OF WATER COURT APPLICATIONS FOR CHANGES OF WATER RIGHTS AND APPROPRIATIVE RIGHTS OF EXCHANGE

WHEREAS, Colorado Springs Utilities' ("Utilities"), an enterprise of the City of Colorado Springs (the "City") recent water supply planning documents, including its Integrated Water Resources Plan, demonstrate that Utilities needs additional water supplies, including supplies derived from the Arkansas River Basin, to meet an approximately 40,000 annual acre-foot supply gap based on the reasonably anticipated future demands of its customers over a reasonable planning period; and

WHEREAS, consistent with the Colorado Water Plan and the acquisition strategies outlined in the Integrated Water Resource Plan, Utilities is pursuing the acquisition of water supplies from the Arkansas River Basin; and

WHEREAS, the City Charter of the City of Colorado Springs, § 6-50 provides: "The City shall have the authority to buy, exchange, augment, lease, own and control water and water rights"; and

WHEREAS, the City, on behalf of Utilities, and Mark and Heather Wertz entered into that certain Purchase and Sale Agreement on December 6, 2021 (the "Purchase Agreement") for: the purchase of one hundred and thirteen (113) shares of stock ("FLCC Shares") in the Fort Lyon Canal Company ("FLCC"), a water sharing agreement providing Utilities with the right to use water associated with an additional ninety (90) FLCC Shares three of every ten years ("3/10 Shares"), easements to construct, operate, and maintain augmentation and return flow facilities on Mark Wertz and Heather Wertz' farm, and real property covenants that require Mark Wertz and Heather Wertz to dry-up and revegetate portions of the farm (collectively, the "Property"); and

WHEREAS, the FLCC Shares and the 3/10 Shares represent an ownership interest in senior Arkansas River water rights; and

WHEREAS, the FLCC Shares are anticipated to yield approximately 113 acre-feet of renewable and reusable water to Utilities per year and the 3/10 Shares are anticipated to yield approximately 270 acre-feet of renewable and reusable water to Utilities over the course of ten years; and

WHEREAS, the acquisition of the Property is in the public interest and is required to meet Utilities' water customers' long-term water demands; and

WHEREAS, the acquisition of the Property is further supported by Colorado Springs Utilities' Excellence in Governance Policy Manual, Instruction No. I-7, which

requires that Utilities' Chief Executive Officer "direct that new and existing water resources and systems are aggressively developed"; and

WHEREAS, acquisitions of water rights are not subject to the procedures of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest* ("Real Estate Services Manual"). Colorado Springs Utilities followed the Real Estate Services Manual to the greatest extent practical; and

WHEREAS, Utilities has offered and Mark Wertz and Heather Wertz have accepted, subject to City Council approval, to purchase the Property for \$910,000; and

WHEREAS, Utilities requests City Council's approval to purchase the Property for a purchase price of \$910,000; and

WHEREAS, in order to use, reuse, and successively use the historical consumptive use water derived from the FLCC Shares, the 3/10 Shares and other Arkansas Basin water rights in which the City acquires an interest (collectively "Arkansas Basin Rights"), the City, acting on behalf of Utilities, must change the type and place of use of such water and must be able to deliver such water from points on the Arkansas River and its tributaries upstream to structures in the Arkansas River Basin for subsequent delivery to its existing and future service area via appropriate rights of exchange; and

WHEREAS, City Council has consistently directed Utilities to develop all feasible means of implementing the use, reuse, and successive use of the City's water resources; and

WHEREAS, it is technologically and economically feasible for the City, acting by and through Utilities, to change the type and place of use of the historical consumptive use water derived from Arkansas River Basin water rights it has an interest in and exchange said water from points on the Arkansas River and its tributaries upstream to other structures in the Arkansas River Basin for subsequent delivery to customers in its existing and future service area; and

WHEREAS, it is necessary and desirable for the City to file applications and to obtain decrees in District Court, Water Division 2, for adjudication of changes of water rights and conditional appropriate rights of exchange that will allow Utilities to fully use, reuse, and successively use to extinction the historical consumptive use water derived from its Arkansas Basin Rights.

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

Section 1. City Council finds the acquisition of the Property to be in the public interest and in compliance with the City Charter, City Code, and all other applicable laws.

Section 2. City Council authorizes the purchase of the Property from Mark Wertz and Heather Wertz for the agreed upon amount of \$910,000 with additional closing costs.

Section 3. Utilities' Chief Executive Officer and the City's Real Estate Services Manager are authorized to complete the acquisition of the Property and to take all steps necessary to accept the transfer of the Property to the City from Mark Wertz and Heather Wertz.

Section 4. City Council affirms the City's intent to fully use, reuse, and successively use to extinction the water derived from its Arkansas Basin Rights, through changes of water rights and conditional appropriative rights of exchange.

Section 5. The officers and staff of Utilities are hereby directed to take all actions reasonable and necessary to obtain a judicial confirmation of the changes of water rights and conditional appropriative rights of exchange described herein, including the filing of applications in District Court, Water Division 2, that change the type and place of use and will allow the City to fully use, reuse, and successively use the water derived from its Arkansas Basin Rights. All actions previously taken by officials and staff on behalf of the City in the planning and furtherance of such changes of water rights and conditional appropriative rights of exchange are hereby ratified and confirmed.

DATED at Colorado Springs, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2022.

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

ATTEST:

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Sarah B. Johnson, City Clerk