

RESOLUTION NO. 47-16

A RESOLUTION AUTHORIZING THE PURCHASE OF FOUNTAIN MUTUAL IRRIGATION COMPANY STOCK AND ASSOCIATED WATER RIGHTS OWNED BY COMANCHE RESOURCES, LLC FOR COLORADO SPRINGS UTILITIES; AND AUTHORIZING THE EXECUTION OF CLOSING DOCUMENTS

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 of Colorado Springs on behalf of its enterprise, Colorado Springs Utilities, and Comanche Resources, LLC ("Comanche") entered into that certain Contract for Purchase of Fountain Mutual Irrigation Company Stock (the "Purchase Agreement") for purchase of 131 shares of stock in the Fountain Mutual Irrigation Company ("FMIC") ("Subject Stock") that represent an ownership interest in senior Fountain Creek water rights and are anticipated to yield approximately 91.7 acre-feet of renewable and reusable water per year; and

WHEREAS, the subject stock is currently dedicated as a source of augmentation water in three augmentation plans decreed in District Court, Water Division 2, Case Nos. 99CW146, 00CW152, and 02CW112; and

WHEREAS, Pursuant to the Purchase Agreement, the Subject Stock must be removed from dedication to the augmentation plans before the closing on the purchase of the shares can occur; and

WHEREAS, Comanche has filed an action in District Court, Water Division 2, Case No. 16CW3010 to remove the shares from dedication to the augmentation plans decreed in Case Nos. 99CW146, 00CW152, and 02CW112; and

WHEREAS, the pursuant to the Purchase Agreement, closing on the purchase of the shares can occur in 2016 and 2017; and

WHEREAS, upon execution of the closing documents described herein and on behalf of and in coordination with its enterprise, Colorado Springs Utilities, the City of Colorado Springs will hold title to stock certificates representing the Subject Stock and the water rights represented by the Subject Stock in accordance with the Purchase Agreement; and

WHEREAS, the Subject Stock is currently represented by FMIC stock certificate number 1665, which such certificate is attached hereto and incorporated herein by reference; and

WHEREAS, the Subject Stock shall be transferred to the City of Colorado Springs following closing of the purchase upon request of the City and Comanche by FMIC; and

WHEREAS, the acquisition of the Subject Stock and Subject Water Rights is in the public interest as the acquisition of new water rights is required to meet Colorado Springs Utilities' water customers' long-term water demands; and

WHEREAS, the acquisition of the Subject Stock and Subject Water Rights is further supported by Executive Limitation 10, which provides that the Colorado Springs Utilities' Chief Executive Officer "may not fail to protect and optimize existing water resources and aggressively seek to develop new water sources"; and

WHEREAS, such acquisitions 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"), however, Colorado Springs Utilities has attempted to follow the Real Estate Services Manual to the greatest extent possible; and

WHEREAS, the purchase price to be paid by Colorado Springs Utilities for the Subject Stock is \$1,473,750.00 for the FMIC shares; and

WHEREAS, Colorado Springs Utilities requests approval to proceed with closing on the purchase of the Subject Stock, to execute all necessary closing documents, and to accept the Subject Stock for the City of Colorado Springs on behalf of Colorado Springs Utilities; and

WHEREAS, pursuant to Chapter 4 and Chapter 7, of Real Estate Services Manual and City Code §7.7.1802, the City Council shall authorize the purchase and acceptance of real property subject to appropriate terms, conditions, and compliance with the provisions of the Real Estate Services Manual.

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

Section 1. City Council authorizes the purchase of the Subject Stock from Comanche Resources, LLC for the agreed upon amount of \$1,473,750.00 with additional closing costs, in accordance with the Purchase Agreement entered into between the parties.

Section 2. The authorization to purchase the Subject Stock provided in Section 1 hereto, is expressly conditioned on the shares being removed from dedication

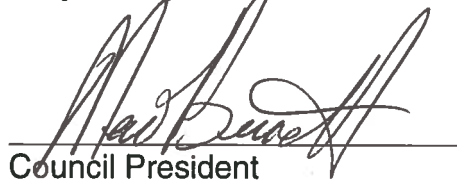
and being free and clear of any terms and conditions of the augmentation plans decreed in District Court, Water Division 2, Case Nos. 99CW146, 00CW152, and 02CW112 prior to closing or November 1, 2017, whichever occurs first.

Section 3. In accordance with Chapter 4 and Chapter 7 of the Real Estate Services Manual, and City Code §7.7.1802, City Council hereby finds that there is a public purpose for the purchase of the Subject Stock and authorizes the purchase and acceptance of the Subject Stock by deed and Stock transfer.

Section 4. The City's Real Estate Services Manager is authorized to execute all documents necessary to complete the acquisition of the Subject Stock.

Section 5. Upon execution of all documents necessary to complete the purchase of the Subject Stock, Colorado Springs Utilities is authorized to take all steps necessary for transfer of the Subject Stock to the City of Colorado Springs from Comanche Resources, LLC.

DATED at Colorado Springs, Colorado, this 10th day of May, 2016.


Council President

ATTEST


Sarah B. Johnson, City Clerk





Colorado Springs Utilities

It's how we're all connected

November 2, 2017

VIA Certified Mail Return Receipt Requested

Comanche Resources, L.L.C.
c/o Gary Smith
P.O. Box 25068
Colorado Springs, CO 80936

RE: Termination of Contract for Purchase of Fountain Mutual Irrigation Company Stock

Dear Mr. Smith:

On December 2, 2015, the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities (Utilities) and Comanche Resources, L.L.C. (Comanche), entered into a Contract for Purchase and Sale of Fountain Mutual Irrigation Company Stock (Agreement). The Agreement set forth the terms and conditions under which Utilities would purchase 131 shares of stock in the Fountain Mutual Irrigation Company Stock (Subject Shares) owned by Comanche. The Agreement recognized that the Subject Shares are dedicated as a source of replacement water in three plans for augmentation decreed in Water Court, Division 2, Case Nos. 99CW146, 00CW152, and 02CW112 (Augmentation Plans). The Agreement further provided that the Subject Shares would have to be removed from dedication to the Augmentation Plans by Comanche before Utilities' purchase of the Subject Shares could close.

Pursuant to the Agreement, Utilities made an earnest money deposit to Comanche of \$25,000.00 to assist Comanche with funding the Water Court case necessary to remove the Subject Shares from dedication to the Augmentation Plans. Under the terms of the Agreement, closing on Utilities' purchase of the Subject Shares was to occur on or before February 28, 2017 but could be extended until November 1, 2017, with no further extensions, in the event that Comanche needed ~~additional time to secure a Water Court decree removing the Subject Shares from dedication to the~~ Augmentation Plans. The Agreement also provides that title to the Subject Shares must be unencumbered and marketable in Comanche so that they may be delivered to Utilities free, clear, and unencumbered at closing. If Comanche does not have such title as of the closing date, Utilities can terminate the Agreement. Comanche has thirty (30) days from the date it receives notice of termination from Utilities to return the deposit payment to Utilities.

In January of 2016, Comanche filed an Application in Water Court, Division 2, Case No. 16CW3010 in which it requested that the Water Court enter a decree removing the Subject Shares from dedication to the Augmentation Plans. Case No. 16CW3010 is still proceeding and a decree has not been entered by the Water Court as of the date of this letter. As such, the Augmentation

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Colorado Springs, CO 80947-1825

Phone 719-668-5300
Fax 719-668-5541/719-668-5329
<http://www.csu.org>

Comanche Resources
November 2, 2017

Plans constitute an encumbrance on Utilities' ability to use the water associated with the Subject Shares as of November 1, 2017.

Utilities hereby provides notice that it is terminating the Agreement effective immediately due to Comanche's failure to remove the Subject Shares from dedication to the Augmentation Plans. Utilities expects that Comanche will return the \$25,000.00 deposit to Utilities by December 7, 2017, pursuant to the terms and conditions of the Agreement. Please contact Diane Block, at 719-668-8754, to make arrangements for the payment.

Utilities appreciates Comanche's efforts to get the Subject Shares removed from dedication to the Augmentation Plans in time for the transaction to close and regrets that the transaction could not be completed within the agreed upon timeframe. Please do not hesitate to contact me or Michael Gustafson if you would like to discuss this matter further.

Sincerely,



Abigail Ortega, P.E.
Planning Supervisor

cc: Ryan W. Farr
M. Patrick Wells
Michael J. Gustafson
Jenny Bishop
