

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 _____ day of _____, 2016.

ATTEST:

Merv Bennett, Council President

Sarah B. Johnson, City Clerk