

**A RESOLUTION AUTHORIZING THE DONATION OF THE
PROPERTY KNOWN AS JONES PARK FOR A PUBLIC
PURPOSE TO EL PASO COUNTY, COLORADO**

WHEREAS, the City of Colorado Springs (“City”), on behalf of its enterprise Colorado Springs Utilities (“Utilities”), holds title to multiple parcels of land in and around the Bear Creek watershed collectively known as Jones Park (the “Property”); and

WHEREAS, the Property was purchased for potential use in the development of Utilities’ local water system as a reservoir; and

WHEREAS, development by Utilities of the Property as a reservoir never occurred and the property provides no operational value or necessity to Utilities for efficient water system operations, but remains an important part of watersheds that serve the City; and

WHEREAS, the Property is not developable for future water system operations; and

WHEREAS, the Property is surplus property of no operational use and its disposal complies with section 6-80 of the City Charter, does not violate Utilities’ bond covenants, and is in the public interest; and

WHEREAS, Utilities desires to dispose of the Property subject to appropriate terms, conditions and restrictions for uses of the property to ensure the Property continues to fulfill its function as a necessary and essential watershed resource; and

WHEREAS, Utilities must ensure that the purchaser/donee of the Property does not injure or adversely affect water quality within the watershed and that forest management and fire suppression efforts on the Property is consistent with management of surrounding United States Forest Service (“USFS”) lands; and

WHEREAS, the Property is entirely surrounded by USFS property and is only physically accessible through USFS property by recreational trails; and

WHEREAS, the USFS is currently completing an environmental assessment under the National Environmental Policy Act of 1969 (“NEPA”) regarding the management of property within the Bear Creek watershed, including the Property, with a final USFS decision expected in late 2014 or early 2015 that will evaluate and make recommendations concerning what actions should be performed, including what recreational access is appropriate in the watershed to avoid adverse impacts to the greenback cutthroat trout that inhabits Bear Creek and is designated as a threatened species under the federal Endangered Species Act (“ESA”); and

WHEREAS, disposal of the Property will eliminate future costs to Utilities' ratepayers for ongoing management, maintenance, and legal and regulatory compliance; and

WHEREAS, no City department or enterprise is interested in acquisition or receipt of the Property; and

WHEREAS, the anticipated use restrictions and land management requirements under the ESA for protection of the greenback cutthroat trout located on the property, and the requirements of the National Historic Preservation Act ("NHPA"), primarily limit the uses and value of the Property to recreational and natural resources purposes; and

WHEREAS, *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests* ("RES Manual") authorizes the disposal of properties for less than fair market value upon a finding of a public purpose and for the transfer of property to an appropriate single, logical purchaser/donee; and

WHEREAS, evidence has been presented to the City Council that the Board of County Commissioners of El Paso County, Colorado ("County") is the appropriate and one logical, potential purchaser/donee of the Property; and

WHEREAS, the County has expressed its desire to accept conveyance of the Property from Utilities and implement the trail and stream improvement work identified and to be identified in the USFS final decision; and

WHEREAS, the County possesses and maintains a publicly supported parks, trails and open space system which uniquely qualifies it as the one, logical public steward ensuring such perpetual recreational use as may be consistent with the USFS final decision, protection of the watershed, and the protection of the greenback cutthroat trout within the Property; and

WHEREAS, excepting the cost of a title insurance policy to be paid for by the City, the County will pay Utilities all transaction costs and costs associated with cultural services studies and appraisals associated with the conveyance of the Property; and

WHEREAS, upon and after transfer the County will hold title to the Property and assume all associated liabilities; and

WHEREAS, a donation of the Property to the County, subject to appropriate terms, conditions and restrictions, will serve a public purpose and is consistent with applicable laws and regulations; and

WHEREAS, 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 County as the one logical, potential purchaser/donee.

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

Section 1. City Council finds that the Property is surplus property that is not necessary for the operation of the Utilities enterprise, is unneeded for the proper conduct of City affairs, and its disposal is in compliance with section 6-80 of the City Charter.

Section 2: Subject to the imposition of the appropriate terms, conditions and restrictions below and in accord with RES Manual, Chapter 1, Section 1.1(b), and Chapter 5, City Council hereby finds, for the reasons set forth in the recitals above, a public purpose is served by the donation of the Property to the County as the one logical, potential purchaser/donee and the County will provide management of recreational access and protection of the greenback cutthroat trout on the property.

Section 3: In addition to the requirements contained within the RES Manual and all other applicable laws, ordinances, rules and regulations, City Council finds that the following terms, conditions and restrictions shall be imposed on the County and all subsequent purchasers pursuant to the quitclaim deed transferring the Property:

A. The County, and any subsequent transferee of the Property, shall (i) fully collaborate and cooperate with the USFS in the completion of the National Environmental Policy Act ("NEPA") Bear Creek Watershed Restoration planning process and subsequent Environmental Assessment, but the County shall have the right to negotiate with the USFS, State Historic Preservation Office, and US Fish and Wildlife Service, as may be applicable, terms and conditions that are necessary for the County's use and management of the Property; (ii) implement the terms and conditions of the USFS final decision, including maintenance and monitoring requirements, as it applies to the subject property and all related mitigation measures as required by the State Historic Preservation Office and the US Fish and Wildlife Service necessary to comply with the USFS final decision, the Endangered Species Act, and the National Historic Preservation Act, and (iii) provide public recreational access in perpetuity that is not inconsistent with the USFS final decision; and

B. No future use of the Property shall interfere with the City's rights and benefits, or the performance of its obligations, and access required therefor, related to the maintenance of watershed lands under applicable laws, including the Act of Congress, approved February 27, 1913, granting the City of Colorado Springs, Colorado, certain rights on the north slope of Pikes Peak, Public No. 392, H. R. 23293, for the protection of the water

supply of the City of Colorado Springs and the Town of Manitou, Colorado, and under the following agreements: (i) the Cooperative Agreement for the Purpose of Conserving and Protecting the Water Supply of Colorado Springs and Manitou, Colorado, dated October 9, 1914, and (ii) the Cooperative Agreement for the Purpose of Conserving and Protecting the Water Supply of the City of Colorado Springs, Colorado, dated January 9, 1924; and

C. City shall retain the right of first refusal to reacquire the Property at no cost if County decides to transfer the Property at any point in the future; and

D. Should the City determine that the County has violated one or more of the covenants, restrictions, terms and conditions set forth in the quitclaim deed, then the County shall have ninety (90) days to cure such violation, after written notice from the City. In the City's sole reasonable discretion, should the City determine that the County has failed to timely cure the violation, then the City may exercise its right to seek appropriate judicial relief in the El Paso County District Court to enforce said covenants, restrictions, terms and conditions. If the City prevails, then the County shall comply with the requirements of the Court's Order; and

E. Within twenty four (24) months of transfer of ownership from the City to the County, the County shall impose upon the Property a conservation easement with conversation values consistent with the restrictions contained in the quitclaim deed and the USFS final decision, which will be held by an appropriate certified conservation easement holder.

Section 4. Pursuant to the RES Manual, Chapter 2.11, the City's Real Estate Services Manager is authorized to execute all documents necessary to complete the disposition of Jones Park and to obtain the Mayor's signature on the deed donating Jones Park to the County.

DATED at Colorado Springs, Colorado, this ____ day of _____, 2014.

Keith King, Council President

ATTEST:

Sarah B. Johnson, City Clerk