

RESOLUTION NO. \_\_\_\_ - 23

A RESOLUTION AUTHORIZING THE PURCHASE OF FORT LYON CANAL COMPANY STOCK OWNED BY THADDEUS WERTZ AND SIERRA 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 (“Springs Utilities”), an enterprise of the City of Colorado Springs (the “City”), recent water supply planning documents, including its Integrated Water Resources Plan, demonstrate that Springs 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, Springs Utilities is pursuing the acquisition of water supplies from the Arkansas River Basin; and

WHEREAS, the 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 Springs Utilities, and Thaddeus Wertz and Sierra Wertz entered into that certain Purchase and Sale Agreement on June 1, 2022 (the “Purchase Agreement”) for purchase of eighty (80) shares of stock (“Corner Shares”) in the Fort Lyon Canal Company (“FLCC”), a water sharing agreement providing Springs Utilities with the right to use water associated with an additional one hundred and five (105) FLCC shares three of every ten years (“3/10 Shares”), easements to construct, operate, and maintain augmentation and return flow facilities on Thaddeus Wertz’ and Sierra Wertz’ farm, and real property covenants that require Thaddeus Wertz and Sierra Wertz to dry-up and revegetation portions of their Farm (collectively, the “Property”) for a total purchase price of \$724,750.00; and

WHEREAS, City Council approved the transaction by resolution 150-22 on October 11, 2022; and

WHEREAS, Thaddeus Wertz and Sierra Wertz have requested that Springs Utilities amend the Purchase Agreement to remove the 3/10 Shares from the authorized transaction; and

WHEREAS, Springs Utilities is agreeable to the request and has negotiated an amended Purchase Agreement with Thaddeus Wertz and Sierra Wertz under which it will purchase the Corner Shares, easements to construct, operate, and maintain augmentation and return flow facilities on Thaddeus Wertz’ and Sierra Wertz’ farm, and

real property covenants that require Thaddeus Wertz and Sierra Wertz to dry-up and revegetate portions of their Farm (collectively, the “Remaining Property”) for a total purchase price of \$520,000.00; and

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

WHEREAS, the acquisition is further supported by Springs Utilities’ Excellence in Governance Policy Manual, Instruction No. I-7, which requires that Springs 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”), however, Springs Utilities has attempted to follow the Real Estate Services Manual to the greatest extent possible; and

WHEREAS, Springs Utilities is requesting City Council’s approval to allow Springs Utilities to purchase the Remaining Property, rather than all the Property for a total purchase price of \$520,000.00; and

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

WHEREAS, the Colorado Springs City Council has consistently directed Springs 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 Springs Utilities, to change the type and place of use of the water derived from its Arkansas Basin Rights 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 appropriative 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 Remaining 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 Remaining Property, rather than all the Property, from Thaddeus Wertz and Sierra Wertz for the agreed upon purchase price of \$520,000.00 with any additional closing costs.

Section 3. In accordance with City Code §7.7.1802, City Council hereby authorizes the purchase and acceptance of only the Remaining Property.

Section 4. Springs Utilities Chief Executive Officer and the City's Real Estate Services Manager are authorized to execute all documents necessary to complete the acquisition of the Remaining Property and to take all steps necessary to accept the transfer of the Remaining Property to the City from Thaddeus Wertz and Sierra Wertz.

Section 5. City Council affirms the City's intent to fully use, reuse, and successively use to extinction the historical consumptive use water derived from its Arkansas Basin Rights through changes of water rights and conditional appropriative rights of exchange.

Section 6. The officers and staff of Springs 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 historical consumptive use 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 January, 2023.

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

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk