

## RESOLUTION NO. 94-16

### A RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE A SECOND AMENDMENT TO THE GROUNDWATER CAPACITY LEASE AGREEMENT WITH SECURITY WATER DISTRICT

WHEREAS, City Code § 12.4.304 allows Colorado Springs Utilities to provide by contract for the use of or a connection to the City's water supply system by institutions, organized special districts, governments, municipal corporations, or other similar users; and

WHEREAS, Security Water District is a Colorado special district that provides water to the town of Security, Colorado, which is located south of Colorado Springs; and

WHEREAS, Colorado Springs Utilities is entitled to withdraw its apportionment of Widefield Aquifer capacity through its Pinello Wells at a base level pumping rate of not more than 375 acre-feet per month, nor more than 1,200 acre-feet in any successive four month period, nor more than 1,600 acre-feet in any calendar year; and

WHEREAS, Colorado Springs Utilities has leased up to 600 acre-feet per year of its apportionment of Widefield Aquifer capacity to Security Water District for a period of 25 years pursuant to a Groundwater Capacity Lease Agreement entered into on December 14, 2012 and Amended on March 13, 2014; and

WHEREAS, the Groundwater Capacity Lease Agreement contains a take or pay provision that requires Security Water District to pay for a minimum of 300 acre-feet of Widefield Aquifer capacity annually whether or not it withdraws any capacity; and

WHEREAS, the Groundwater Capacity Lease Agreement provides that Security Water District may terminate the lease if the water quality in the Widefield Aquifer is such that it requires treatment under governmental drinking water standards; and

WHEREAS, due to the presence of perfluorooctane sulfonate and perfluorooctanoic acid, water quality in the Widefield Aquifer in the vicinity of Security Water District's wells has deteriorated to the point that it can no longer divert and use the Widefield Aquifer capacity without additional water treatment to meet governmental drinking water standards; and

WHEREAS, Security Water District has requested an amendment to the Groundwater Capacity Lease Agreement that would suspend the take or pay provision for calendar years 2016, 2017, and 2018, with the option to extend the suspension upon mutual agreement of the parties, in order to give Security Water District time to investigate how to use its wells in compliance with drinking water standards; and

WHEREAS, Colorado Springs Utilities has negotiated a second amendment to the Groundwater Capacity Lease that suspends the take or pay provision as described above and that provides for automatic reinstatement of the take or pay provision on January 1 of the year immediately following the year in which Security Water District determines that it can use its wells in compliance with drinking water standards; and

WHEREAS, Colorado Springs Utilities requests that City Council authorize and direct the Chief Executive Officer of Colorado Springs Utilities to execute the second amendment to the Groundwater Capacity Lease with Security Water District; and

WHEREAS, the City Council finds that it is appropriate for Colorado Springs Utilities to enter into such an amendment to Groundwater Capacity Lease with Security Water District.

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

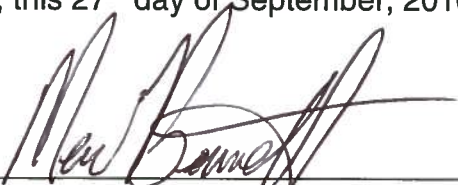
Section 1: The Chief Executive Officer of Colorado Springs Utilities is authorized and directed to enter into a second amendment to the Groundwater Capacity Lease Agreement with Security Water District in a form substantially similar to that attached hereto.

Section 2: The Chief Executive Officer of Colorado Springs Utilities is also authorized to enter into subsequent amendments to the Groundwater Capacity Lease Agreement that suspend the take or pay provision for additional periods not to exceed the original term of the Groundwater Capacity Lease Agreement without seeking further authorization from City Council.


Section 3: The Chief Executive Officer of Colorado Springs Utilities is also authorized to administer the Groundwater Capacity Lease Agreement and any amendments thereto.


Section 4: This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado, this 27<sup>th</sup> day of September, 2016.

  
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Merv Bennett, Council President

ATTEST:

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



## **SECOND AMENDMENT TO GROUNDWATER CAPACITY LEASE AGREEMENT**

This Second Amendment to Groundwater Capacity Lease Agreement ("Second Amendment") is made and entered into this 27 day of October, 2016, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation ("UTILITIES"), and Security Water District, acting by and through its water activity enterprise, whose address is 231 Security Boulevard, Colorado Springs, Colorado, 80911 ("DISTRICT"), and is effective during the term of this Agreement.

### **RECITALS**

A. UTILITIES and DISTRICT entered into a Groundwater Capacity Lease Agreement on December 14, 2012 ("Agreement"), under which UTILITIES leases to the DISTRICT up to 600 annual acre feet of UTILITIES' apportionment of the Widefield Aquifer capacity diverted from Pinello Wells 8, 10, and 13 ("Aquifer Capacity");

B. UTILITIES and DISTRICT entered into a First Amendment to the Agreement on March 13, 2014 ("First Amendment"), which allows DISTRICT to use its existing wells, Wells S-13 and S-14, as alternate points of diversion to divert the Aquifer Capacity under the Agreement.

C. The first 300 annual acre feet of the leased Aquifer Capacity (the "Base Amount"), is provided to DISTRICT on a take or pay basis, whereby DISTRICT is obligated to pay for the full Base Amount whether or not it is diverted by DISTRICT pursuant to Paragraph 1 of the Agreement.

D. DISTRICT has the right to terminate the Agreement if the water quality in the Widefield Aquifer is such that it requires treatment under governmental drinking water standards pursuant to Paragraph 11 of the Agreement.

E. Due to the presence of perfluorooctane sulfonate (PFOS) and perfluorooctanoic acid (PFOA), water quality in the Widefield Aquifer in the vicinity of the wells has deteriorated to the point that DISTRICT can no longer divert and use the Aquifer Capacity without additional

water treatment to meet governmental drinking water standards (May, 2016 U.S. Environmental Protection Agency health advisory for PFAS and PFOA).

F. UTILITIES is willing, under the terms of this Second Amendment, to allow DISTRICT, without terminating the Agreement and without operation of the take or pay obligation for the Base Amount, up to three years to investigate how to use Pinello Wells 8, 10, and 13 or Wells S-13 and S-14 in compliance with water quality standards, possibly involving the installation of additional water treatment facilities that will allow DISTRICT to divert and use the Aquifer Capacity.

G. Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights; and

H. UTILITIES has entered into the Agreement, the First Amendment, and this Second Amendment pursuant to Section 304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended.

**NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS FOLLOWS:**

1. **Suspension of Take or Pay Obligation:** The take or pay obligation for the Base Amount contained in Paragraph 1 of the Agreement shall be suspended through December 31, 2018; and for calendar years 2016, 2017, and 2018 DISTRICT shall only pay for the number of acre feet of the Aquifer Capacity that are actually diverted by DISTRICT in its discretion, if any, pursuant to the Agreement. The take or pay obligation for the Base Amount shall automatically be reinstated starting on January 1, 2019 and shall continue in full force until the expiration or termination of the Agreement. The suspension of the take or pay obligation may be extended upon mutual agreement of the parties if the water quality issues cannot be resolved within the specified time

frame. DISTRICT, however, still maintains the right to terminate the Agreement pursuant to Paragraph 11 of the Agreement.

2. DISTRICT shall provide UTILITIES with notice that gives updates on the progress DISTRICT is making toward resolving the water quality issues by June 30 and December 31 of each year in which the suspension of the take or pay obligation is in effect. DISTRICT shall also provide UTILITIES with notice of the date upon which DISTRICT makes the determination that the water quality issues have been resolved such that it can divert and use the Aquifer Capacity without additional water treatment to meet governmental drinking water standards. Such notice shall be provided within 15 days of the date DISTRICT makes the determination that the water quality issues have been resolved. Notwithstanding the provisions of Paragraph 1, the take or pay obligation for the Base Amount shall automatically be reinstated on January 1 of the year immediately following the year in which DISTRICT determined that it has resolved the water quality issues. By way of example, if DISTRICT provides notice that it resolved the water quality issues on September 1, 2017, the take or pay obligation shall automatically be reinstated on January 1, 2018.

3. **Remaining Terms.** With the exception of the matters that are the subject of this Second Amendment, the Agreement and First Amendment remain unchanged in all other respects.

4. **Authority.** Both parties to this Second Amendment represent that they have the full power and authority to enter into and perform this Second Amendment, and the signatories represent and warrant that they have full power and authority to bind their respective entities.

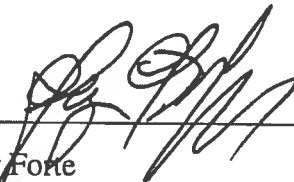
5. **Entire Agreement.** The Agreement together with the First Amendment and this Second Amendment shall constitute the entire agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Second Amendment.


6. **Binding Effect.** The covenants, agreements, and obligations contained herein shall extend to, bind, and inure to the benefit of not only the parties hereto, but also their respective personal representatives, heirs, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this 27 day of October, 2016.


COLORADO SPRINGS UTILITIES

SECURITY WATER DISTRICT,  
acting by and through its water  
activity enterprise

By:   
\_\_\_\_\_  
Jerry Forte  
Chief Executive Officer

By:   
\_\_\_\_\_  
Dick Gilham, President

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michael Gustafson, City Attorney's Office – Utilities Division