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Title: A Resolution Authorizing the Donation of the Property Known as Jones Park for a Public Purpose to the United States Forest Service through the National Forest Foundation

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Date	Ver.	Action By	Action	Result
9/9/2014	1	City Council	denied	Fail
9/9/2014	1	City Council	continued	Pass

A Resolution Authorizing the Donation of the Property Known as Jones Park for a Public Purpose to the United States Forest Service through the National Forest Foundation

From:
Jerry A. Forte, P.E., CEO, Colorado Springs Utilities

Summary:
Utilities staff is proposing that City Council approve a resolution to donate Jones Park to the United States Forest Service (USFS) through the National Forest Foundation (NFF). Utilities staff has provided information regarding Jones Park and associated recreational uses and threatened species issues to the Utilities Board on several occasions, including a presentation at the March 18, 2014 Board meeting, written responses to questions presented at the April 16, 2014 Board meeting and presentations at the May 21, 2014 and August 20, 2014 Board meetings.

Previous Council Action:
N/A

Background:
The Jones Park property is 1191 acres of land owned by the City of Colorado Springs (City) and managed by Colorado Springs Utilities (Utilities). However, Utilities has no operational use for the land and no other department in the City has an interest in the property, making Jones Park a “surplus property” appropriate for disposal. Jones Park is completely surrounded by USFS lands and trails. As the controlling enterprise of the City, Utilities is responsible for managing connected trails located on Jones Park.

Bear Creek, which runs through Jones Park, contains the only genetically pure greenback cutthroat trout population listed as a threatened species under the federal Endangered Species Act (ESA) in the Arkansas River Basin. In 2008, the US Fish and Wildlife Service identified Jones Park trails as a possible threat to the trout population and its habitat. Since 2010, Utilities has worked toward a sale or land exchange with the USFS to dispose of Jones Park for value. Due to increasing costs and liabilities, these discussions have not produced a viable for-value transfer of the property to that agency. The USFS is conducting a long-term planning process under the National Environmental Policy Act (NEPA) to identify necessary changes to the trails to assure protection of the threatened fish. Utilities is cooperating with the USFS in the NEPA process, but recommends disposing of the property to avoid the costs of implementing the required trail changes on Jones Park (estimated to be \$400,000-\$800,000 in 2015-16) and potential legal liabilities under the ESA. Due to these challenges, several non-profit agencies contacted by Utilities (including the Nature Conservancy, the Trust for Public Lands, the Palmer Land Trust, and Western Rivers Conservancy) are not willing to buy Jones Park. Similarly, Colorado Parks and Wildlife was not interested in possibly acquiring Jones Park. As there are no identifiable buyers willing to maintain public access and accept the identified costs and liabilities, Utilities considers the USFS to be the one logical entity to receive the property by donation to provide unified management of recreation within the watershed and protect the threatened fish. The USFS is willing to accept the property and assume responsibility for the associated costs and liabilities. The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests (RES Manual) authorizes the disposal of surplus property for less than fair market value to serve a public purpose.

The NFF is a congressionally created non-profit that facilitates projects, fundraising, and property transactions in support of the USFS. By involving the NFF as an intermediary in the transfer of the property, the donation can be completed within 60-90 days and the NFF will cover all costs of the transaction. The NFF will also work with the USFS and other stakeholders and agencies to complete the NEPA process and will contribute \$250,000 in funds matching a Colorado Water Conservation Board (CWCB) grant of \$250,000 for work implementing the required trail work and stream improvements on Jones Park and the surrounding USFS lands. Utilities considers this arrangement to meet the public purpose of establishing and maintaining appropriate recreational access in the Bear Creek watershed while protecting the threatened trout population.

Recently, El Paso County (County) has requested to receive Jones Park as a donation, and pledged \$200,000 for anticipated work on the property. This alternative would preclude involvement of the NFF and its pledged funding, potentially delay the ongoing NEPA process, and might prolong implementation of necessary trail work within the watershed. The unified management of Jones Park with the surrounding Pike National Forest lands will help provide efficiencies that support and enhance recreational opportunities in the area. In light of this, Utilities continues to recommend donation of Jones Park to the USFS through the NFF.

If City Council determines that there is no one logical potential purchaser, then City Council may approve that Jones Park be sold through the sealed bid process. Sealed bid process would require the City to perform an updated appraisal of Jones Park and set the appraised value as the minimum bid price. Prior to beginning an appraisal, City Council can apply deed restrictions regarding the future uses of Jones Park (e.g., public access, or agreement to comply with the final decision of the NEPA process, etc.) and establish those as requirements for an acceptable bid. If acceptable bid(s) are received, the highest bidder has ninety (90) days to perform its due diligence and enter into a contract. If the highest bidder does not enter into a contract within the ninety (90) days, then the process continues with the next highest bidder until either a contract is executed or there are no more

bidders.

If City Council were to require all future owners to maintain public recreational access on Jones Park notwithstanding the legal requirement to protect the threatened trout population, the property would likely have de minimis market value. If the City were to conduct a closed seal bid without a deed restriction requiring the maintenance of public access, a private property owner purchasing Jones Park could eliminate public recreational uses on the property in perpetuity.

For the reasons described above, Utilities seeks approval to donate Jones Park to the USFS through the NFF. The benefits of unified management of Jones Park and surrounding watershed lands that are subject to the restrictions of the ESA and the NFF's willingness to partner with the USFS in funding many of the improvements anticipated to be required under the NEPA decision to keep Jones Park open to the public are compelling considerations. The proposed resolution is attached.

Financial Implications:

If the City donates Jones Park to the USFS through the NFF, the NFF will accept all closing costs associated with the donation and all costs related to owning and managing the property until transferred to the USFS, and the City will have no further financial liabilities related to the property. However, if the City retains ownership of Jones Park through September 2014, then Utilities will fulfill its responsibility to fund the cultural resource survey work estimated at \$40,000 - \$50,000 in support of completing the on-going NEPA process in 2014. If the City retains ownership of Jones Park beyond 2014, then Utilities will be responsible for spending \$400,000 - \$800,000 over the next three years to implement the final decision of the NEPA process as it pertains to Jones Park. Thereafter, there may be on-going costs for trail and fish habitat maintenance and recreational management on Jones Park.

Board/Commission Recommendation:

On August 20, 2014 Utilities Board recommended the proposed resolution be brought before City Council on September 9, 2014.

Stakeholder Process:

Utilities staff has presented this recommended proposal to the Bear Creek Restoration Round Table members, involved agencies, and other stakeholders.

Alternatives:

Donate Jones Park to the US Forest Service through the National Forest Foundation, donate the property to another entity such as El Paso County, determine that the property may be sold for a market value established by appraisal and conduct the Closed Sealed Bid process as set forth in the RES Manual, or retain the property.

Note: An alternative resolution proposed by Council President King authorizing the property to be sold to the highest bidder and, if not sold, donated to El Paso County, has also been included in the materials for this item

Proposed Motion:

Approve the resolution authorizing the donation of the property known as Jones Park for a public purpose to the United States Forest Service through the National Forest Foundation

N/A

