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Title: A Resolution Authorizing a Below-Market Lease of Real Property to Michael Toneff and Crystal Toneff

Presenter:
Jessica Davis, Land Resource Manager, Colorado Springs Utilities
Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

Sponsors:

Indexes:

Code sections:

Attachments: 1. Resolution Approving Below Market Lease-Toneff, 2. Signed Resolution 116-21

Date	Ver.	Action By	Action	Result
8/24/2021	1	City Council	adopted	Pass

A Resolution Authorizing a Below-Market Lease of Real Property to Michael Toneff and Crystal Toneff

Presenter:

Jessica Davis, Land Resource Manager, Colorado Springs Utilities
Aram Benyamin, Chief Executive Officer, Colorado Springs Utilities

Summary:

Colorado Springs Utilities' (Springs Utilities) staff requests City Council approval of a resolution authorizing a below fair market lease to Michael and Crystal Toneff of the real property (the Property") that was purchased for the Gary M. Bostrom Reservoir, formerly known as the Upper Williams Creek Reservoir (UWCR), which is part of the Southern Delivery System (SDS) project.

Background:

On December 10, 2013, City Council approved Resolution No. 134-13 authorizing negotiations to acquire properties necessary for the SDS project. Utilities has acquired approximately 2,200 acres of property for UWCR.

Utilities acquired the Property on April 30, 2020, in a consensual transaction. The Property consists of 120 acres of land, which is located at 13420 and 13550 Bradley Road, Colorado Springs, Colorado 80928 and known as El Paso County Tax Schedule Numbers 45000-00-121 and 45000-00-122 and includes a house, a modular home, a utility shed, and a garage. Michael and Crystal Toneff currently reside in the modular home. The Property is needed for the reservoir site and buffer area. When acquired, the Easteps had multiple tenants (fifteen separate individuals or seven separate family units) leasing portions of the Property. According to City Code of the City of Colorado Springs and the City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interests, Revised 2021 (City's Real Estate Manual), those tenants were to be relocated according to

the federal Uniform Act even though no federal funds were associated with the SDS project.

As part of the acquisition, City Council approved a one-year below fair market value lease to the Easteps to assist with relocation efforts of the property owners and their tenants. The lease allowed the Easteps to continue their leases with their tenants as subtenants. The Easteps and all subtenants moved from the property within the one year period, with the except Michael and Crystal Toneff. The Toneffs had purchased property in El Paso County prior to Utilities' acquisition of the Property. The Toneffs have been and are currently constructing a new home on their property. The Toneffs' anticipated move in date is before December 31, 2021, and as early as August 31, 2021. Due to the COVID pandemic and the unprecedented increase in the cost of building supplies, the building of the Toneffs' new home has gone slower than expected. As a matter of disclosure, Mr. Toneff is currently an employee of Utilities. His work is considered essential and he has been working at a Utilities' facility through the pandemic.

Staff recognizes that this request should have been made to City Council sooner. Staff has been working with the Toneffs to support their move effort and to renew a lease with them. H.C. Peck, Utilities' relocation contractor, determined that the market rent for the portion of the Property leased by the Toneffs is \$1550 per month. The Toneffs are currently considered as hold-over tenants. They have stated that they cannot afford market rent as it significantly exceeds the rent charged by the Easteps. Staff is against eviction for a variety of reasons including timing and the moratorium on evictions during the pandemic.

Due to budget constraints staff is not able to demolish the structures on the Property until 2022. There are several benefits of having a tenant on-site, namely having people living at the Property helps prevents trespassers, squatters, dumping, vandalism, and destruction of property. When the tenants move and until demolition can occur, Utilities will have to pay for a security guard to check on the site at least once a week. Utilities will not lease the property to another tenant because demolition is schedule, so there is no loss in potential income to Utilities resulting from authorizing a below-market lease. Continuing the Toneffs' tenancy, even at a below-market lease rate, will result in a net benefit to Utilities.

For these reasons, Staff recommends approval of a below-market lease to the Toneffs for the portion of the Property occupied by the Toneffs expiring on December 31, 2021.

City Council finding of a public purpose and approval is required for all below-market leases under Section 11.2(c)(iii)(2) of the City's Real Estate Manual.

Previous Council Action:

Since September 8, 2009, City Council has passed a number of resolutions authorizing more than 200 property transactions for the SDS project.

On March 10, 2020, City Council passed a resolution authorizing the purchase of the Property and a below fair-market value lease to the prior owner of the Property (the Easteps) for one year.

Financial Implications:

This Property demolition is scheduled for 2022 due to 2021 budget reductions. Having tenants on the Property helps to avoid trespassers, squatters and unwanted dumping that would add to the cost of demolition. The Toneffs' continued occupancy contributes to the safety and security of the Property. Other nearby properties acquired for the reservoir required the installation of gates,

security checks and private services to remove dumping debris and discourage trespassers.

City Council Appointed Board/Commission/Committee Recommendation:

N/A

Stakeholder Process:

Staff has been in contact with the Toneffs and will continue to communicate with the Toneffs on a regular basis.

Alternatives:

Approve the attached Resolution finding a public purpose and authorizing the below market lease of real property or do not approve the attached Resolution, however choosing this alternative will result in a potential eviction of the tenants.

Proposed Motion:

Move approval of the proposed Resolution finding a public purpose and authorizing the below-market lease of the property to Michael Toneff and Crystal Toneff expiring December 31, 2021.

N/A