

RESOLUTION NO. 93 - 25

A RESOLUTION AUTHORIZING AND DIRECTING THE CHIEF
EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO
ENTER INTO A SETTLEMENT AGREEMENT WITH THE
OVERLOOK MUTUAL WATER COMPANY

WHEREAS, Overlook Mutual Water Company ("Overlook") is a private water company that provides water service for twenty-eight (28) homes located on Cheyenne Mountain in an enclave of the City of Colorado Springs; and

WHEREAS, Overlook derives its water supply from junior water rights associated with the McKay Tunnel ("McKay Water Rights") which, prior to 1973, were owned by the Broadmoor Hotel Water and Power Company ("Broadmoor"); and

WHEREAS, Overlook was granted the perpetual use of water derived from the McKay Tunnel pursuant to an Agreement and Release dated October 29, 1957, between Overlook and the Broadmoor, under which Overlook agreed to maintain the McKay Tunnel and all connections, pipelines, and appurtenances at its own expense ("1957 Agreement"); and

WHEREAS, on April 9, 1973, the City of Colorado Springs ("City") entered into an agreement ("1973 Agreement"), under which it purchased the Broadmoor's assets, including the McKay Water Rights and agreed to undertake all the Broadmoor's obligations to serve its "certificated area"; and

WHEREAS, in 2022, the Colorado Division of Water Resources notified Overlook that Overlook needed an augmentation plan and/or substitute water supply plan to continue diverting and using the McKay Water Rights; and

WHEREAS, relying upon its interpretation of the 1957 Agreement and 1973 Agreement, Overlook demanded that Colorado Springs Utilities ("Utilities") take any necessary action to maintain Overlook's water supply, including obtaining a substitute water supply plan and/or an augmentation plan for the McKay Water Rights, and providing augmentation water to Overlook; and

WHEREAS, Utilities disputed Overlook's claim related to its obligations under the 1957 Agreement and 1973 Agreement and Overlook indicated it would file a declaratory judgment action requesting that the Court find that Utilities is obligated to prosecute and obtain approval of a substitute water supply plan and/or an augmentation plan for the McKay Water Rights and provide augmentation water to Overlook under the 1957 Agreement and the 1973 Agreement; and

WHEREAS, Utilities and Overlook have negotiated an agreement that settles all claims that have arisen, or could arise, between Overlook and the City or Utilities under the 1957 Agreement and the 1973 Agreement without litigation ("Settlement Agreement"); and

WHEREAS, Utilities requests that City Council authorize and direct the Chief Executive Officer of Utilities to enter into the Settlement Agreement and cause Utilities to meet its obligations thereunder.

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

Section 1. City Council finds that the public interest and best interests of the City and Colorado Springs Utilities will be served by accepting and implementing the Settlement Agreement.

Section 2. City Council hereby approves the Settlement Agreement in substantially the same form as set forth in Exhibit "A," attached hereto and made a part hereof subject to such minor modifications as may be approved by the Colorado Springs Utilities' Chief Executive Officer and the City Attorney.

Section 3. Colorado Springs Utilities' Chief Executive Officer is authorized to execute the Settlement Agreement for the City on behalf of Colorado Springs Utilities, and to cause Colorado Springs Utilities to perform all the obligations and meet all the terms and conditions contained in the Settlement Agreement.

Section 4. Colorado Springs Utilities' Chief Executive Officer and the City's Real Estate Services Manager are authorized to execute all agreements and documents contemplated in the Settlement Agreement that are necessary for its implementation.

Section 5. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 22nd day of July 2025.


Lynette Crow-Iverson, Council President

ATTEST:


Sarah B. Johnson, City Clerk



SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the Overlook Mutual Water Company, a Colorado Water Company ("Overlook") and the City of Colorado Springs, a Colorado home rule city and municipal corporation ("City") acting by and through its enterprise Colorado Springs Utilities ("Utilities") all of which are collectively referred to herein as the "Parties" and individually as a "Party".

RECITALS

A. Overlook is a private water company that provides water service for 28 homes located on Cheyenne Mountain in an enclave of the City.

B. Overlook derives its water supply from junior water rights associated with the McKay Tunnel described in Exhibit A to this Agreement ("McKay Water Rights"), which were owned by the Broadmoor Hotel Water and Power Company ("Broadmoor").

C. Overlook was granted the perpetual use of water derived from the McKay Tunnel pursuant to an Agreement and Release dated October 29, 1957, attached hereto as Exhibit A ("1957 Agreement"), between Overlook and the Broadmoor.

D. Overlook agreed to maintain the McKay Tunnel and all connections, pipelines, and appurtenances at its own expense and withdraw from the Broadmoor service area pursuant to the 1957 Agreement.

E. On April 9, 1973, the City entered into an agreement, attached hereto as Exhibit B ("1973 Agreement"), under which it purchased the Broadmoor's assets, including the McKay Water Rights.

F. The 1973 Agreement required the City to undertake all of the Broadmoor's obligations to serve its "certificated area." It is unclear whether the Broadmoor's "certificated area" included Overlook's 28 homes when the 1973 Agreement was executed.

G. The McKay Water Rights have not historically been used within Utilities' water system and have been used by Overlook consistently since at least 1911 as its source of water to supply its customers.

H. In 2022, the Colorado Division of Water Resources notified Overlook that Overlook needed an augmentation plan and/or substitute water supply plan to continue diverting and using the McKay Water Rights.

I. Relying upon the Broadmoor's grant of the perpetual right for Overlook to use the McKay Water Rights in the 1957 Agreement and the City's assumption of the Broadmoor's obligations to serve the Broadmoor's certificated area under the 1973 Agreements, Overlook demanded that Utilities take any necessary action to maintain Overlook's water supply, including obtaining a substitute water supply plan and/or an augmentation plan for the McKay Water Rights.

J. Utilities disputes that the 1957 and 1973 Agreements require Utilities to do anything more than not disrupt the ability for Overlook to use the water from the McKay

Water Rights and therefore is not obligated to obtain a substitute water supply plan and/or an augmentation plan, or provide augmentation water to Overlook.

K. Based upon this impasse, Overlook indicated that it would file a declaratory judgment action requesting that the Court find that Utilities is obligated to prosecute and obtain approval of a substitute water supply plan and/or an augmentation plan for the McKay Water Rights and provide augmentation water to Overlook without cost to Overlook under the 1957 and 1973 Agreements.

L. The Parties are entering into this Agreement to settle all claims that have arisen, or could arise, between Overlook and the City or Utilities under the 1957 and 1973 Agreements including, but not limited to, which Party has the obligation to obtain approval of a substitute water supply plan and/or an augmentation plan for the McKay Water Rights on behalf of Overlook.

M. The Parties intend for these recitals to be relied upon in the interpretation of this Agreement.

AGREEMENT

In consideration of the foregoing recitals, the keeping and performance of the promises contained herein, and other valid consideration to each of the Parties, which is hereby acknowledged and confirmed, the Parties agree as follows:

1. **Effective Date.** This Agreement shall be in full force and effect on the latest date on which this Agreement has been approved by Resolution adopted by the City Council of the City of Colorado Springs and signed by the Parties.

2. **Settlement Terms.**

a. Ownership of the McKay Water Rights: Within thirty (30) days after the Effective Date, Utilities shall convey the McKay Water Rights to Overlook utilizing the Bargain and Sale Deed attached hereto as Exhibit C.

b. Prosecution of Augmentation Plan/Substitute Water Supply Plan for McKay Water Rights: As the owner of the McKay Water Rights, Overlook shall be solely responsible for filing and pursuing to completion, including resolution of any appeals, a substitute water supply plan ("SWSP"), if determined to be necessary by Overlook, and an application in the Division 2 Water Court requesting the Division of Water Resources and/or Water Court to approve an augmentation plan for replacement of out-of-priority depletions associated with the McKay Water Rights ("Application") subject to the following:

i. The SWSP request and/or Application will provide that the source of augmentation water under the plan is Utilities' fully consumable water available to Overlook pursuant to the Special Contract for Augmentation Service ("Special Contract") attached hereto as Exhibit D. The Parties shall execute the Special Contract within thirty (30) days after the effective date. Upon its execution, the Special Contract will supersede any other agreements under which Overlook may claim a right to water supplies or

water service from Utilities including, but not limited to, the 1957 and 1973 Agreements.

ii. Overlook shall be solely responsible for hiring and paying a water resource engineer to prepare the engineering necessary to support the claims made in the SWSP request and/or Application. Overlook shall also be solely responsible for hiring and paying an attorney(s) to prepare the SWSP request and/or Application and prosecute the request or Application through issuance of an SWSP and entry of a final decree, including all appeals. Overlook shall provide Utilities with notice of the engineer(s) and attorney(s) it hires.

1. Overlook's engineer(s) will prepare the engineering required to support the Application and/or SWSP request. Utilities' water resources staff ("Utilities' Staff") will review the engineering work to ensure that the engineering is consistent with Utilities' policies and operations for the contracting for and use of Utilities' augmentation water supplies. Overlook's attorney(s)/engineer(s) shall coordinate with the Colorado Springs City Attorney's Office ("CAO")/Utilities' Staff on the review of the SWSP request and/or Application and on how the request and Application will be pursued by Overlook. Overlook's engineer(s)/attorney(s) shall coordinate with Utilities Staff/CAO on addressing any comments on or concerns with the engineering raised by third parties who commented on a SWSP request that pertain to Utilities' provision of augmentation water to ensure that any resolution with the third parties is consistent with Utilities' policies and operations. Overlook shall provide Utilities with the opportunity to review, provide comments on, and approve drafts of any engineering reports, SWSP requests, Application or responses to third party comments on a SWSP request. Overlook shall not finalize or submit an engineering report, SWSP request, Application, or response to third party comments until it has received Utilities' approval thereof, which approval shall not be unreasonably withheld. Utilities shall conduct such review and convey its approval within a reasonable period of time that is sufficient for Overlook to meet any applicable deadlines. Should Utilities not approve or not convey an approval of such, Overlook shall have the right to finalize or submit any such documents to the extent necessary to meet any applicable deadlines, but its submittal shall note that the document is subject to Utilities' approval pursuant to agreement. Should Utilities not approve or not convey an approval, the parties shall proceed under the Dispute Resolution procedures in paragraph 7 below.

a. To facilitate the coordination contemplated above, Utilities' Staff/CAO and Overlook's attorney(s)/engineer(s) shall meet after the Effective Date to discuss the necessary components of the initial engineering report, SWSP request and/or Application, the information Overlook's engineer(s) need from Utilities to complete those documents, and the implementation of a schedule for Overlook's preparation and completion of the necessary documents to allow Utilities sufficient time to provide the required information and review, comment on, and approve the documents. The Parties will also agree upon

timelines for the Parties to address any comments on the SWSP request raised by third parties. The Parties will work in good faith to meet all agreed upon deadlines.

2. Overlook acknowledges that Utilities will file a Statement of Opposition in support of the Application to monitor the status of the Application, including working with Overlook to address concerns raised by third parties who file statements of opposition to the Application. Utilities shall provide Overlook with the opportunity to review and comment upon the Statement of Opposition before it is filed. Overlook shall conduct such review and provide Utilities with comments thereon within a reasonable period of time that is sufficient for Utilities to meet its filing deadlines. Utilities will not oppose entry of a decree approving the Application as long as it includes terms and conditions agreed upon by the Parties and that are consistent with the terms of this Agreement. The Parties shall cooperate in good faith to include such terms and conditions, but approval of such terms and conditions shall not be unreasonably withheld. The Parties agree that the pursuit of such an Application and/or SWSP request involves common interests between the Parties and shall be subject to a common interest agreement to be entered into in the future that includes the sharing or privileges and disclosure or discovery protections.
3. Overlook's attorney(s)/engineer(s) shall coordinate with the CAO/Utilities' Staff on Utilities' review of proposed decree(s) for the augmentation plan. Overlook shall provide Utilities with the opportunity to review, provide comments on, and approve the proposed decree before it is circulated to third parties. Overlook shall not finalize the proposed decree or move to enter the final decree until it has received Utilities' approval thereof, which approval shall not be unreasonably withheld. Utilities shall conduct such review and convey its approval within a reasonable period of time that is sufficient for Overlook to meet any applicable deadlines. Should Utilities not approve or not convey an approval of such, Overlook shall have the right to finalize or submit any such documents to the extent necessary to meet any applicable deadlines, but its submittal shall note that the document is subject to Utilities' approval pursuant to agreement. Should Utilities not approve or not convey an approval, the parties shall proceed under the Dispute Resolution procedures in paragraph 7 below. Overlook shall also coordinate with Utilities on addressing any comments on or concerns with the engineering or proposed decree raised by a third party who filed a statement of opposition to the Application that pertain to Utilities' provision of augmentation water to ensure that any resolution with the third party is consistent with Utilities' policies and operations. Overlook shall not provide a response to any comments or concerns related to Utilities' provision of augmentation water until Utilities has approved the response, which approval shall not be unreasonably withheld. Utilities shall conduct such review and convey its approval within a reasonable period of time that is sufficient for Overlook to meet any applicable

deadlines. Should Utilities not approve or not convey an approval of such, Overlook shall have the right to finalize or submit any such documents to the extent necessary to meet any applicable deadlines, but its submittal shall note that the document is subject to Utilities' approval pursuant to agreement. Should Utilities not approve or not convey an approval, the parties shall proceed under the Dispute Resolution procedures in paragraph 7 below.

a. To facilitate the coordination contemplated above, the Parties shall meet after the Application is filed to discuss the necessary components of the decree, the information Overlook needs from Utilities in order to prepare the decree, and the implementation of a schedule for Overlook's preparation of the proposed decree, to allow Utilities sufficient time to provide the required information and review, comment on, and approve the proposed decree. The Parties shall also agree on timelines for the Parties to address any comments on or concerns with the engineering or proposed decree raised by a third party who filed a statement of opposition to the Application. The Parties will work in good faith to meet all agreed upon deadlines.

c. Reimbursement: Utilities will reimburse Overlook for up to the first \$35,000 of Overlook's properly documented engineering and legal expenses associated with preparing and prosecuting the SWSP and/or Application. Utilities shall have no obligation to reimburse Overlook for and Overlook shall be solely responsible for any improperly documented engineering and legal fees or any legal or engineering expenses it incurs in excess of \$35,000.00.

i. By the 15th of each month, Overlook shall provide Utilities with invoices for the legal or engineering expenses it incurred during the previous month at the following address: Manager, Water Resources, Colorado Springs Utilities, P.O. Box 1107, MC1825, Colorado Springs, CO 80947. Utilities shall pay such invoices no later than thirty (30) days following receipt of each invoice. Any invoice submitted by Overlook shall include a reasonably detailed description of the fees, expenses, and costs incurred by Overlook's attorney(s) and/or engineer(s).

ii. Should Utilities dispute that any fee, expense, or cost shown on such an invoice is reimbursable, the Parties shall follow the dispute resolution procedures as follows:

1. Utilities shall provide Overlook with notice that includes a written explanation of the basis for disputing that fee, expense, or cost. The Parties shall negotiate in good faith for a period of at least thirty (30) days to resolve the dispute before taking any further action as provided in this paragraph ("Expense Dispute Negotiation Period"). The date that Overlook receives such notice is the first day of the Expense Dispute Negotiation Period.

2. If the Parties do not reach agreement concerning payment of the disputed fee, cost, or expense within the Expense Dispute Negotiation Period, which may be extended by written agreement of the Parties, either Party may initiate an action in the District Court for El Paso County, Colorado, to resolve the dispute.
3. During the pendency of any dispute under paragraph (d)(ii)(1)-(3) above, Utilities shall make timely payment to Overlook for all expenses that were reported in any monthly invoice that are undisputed.

d. Special Contract for Standby Service: Overlook is considering requesting the ability to receive temporary water service under – Utilities' Water Rate Schedule – Contract Service Regional (WCR) Standby Service Option ("Standby Service") whereby Utilities' infrastructure and water would be used by Overlook to serve its customers on a temporary basis when Overlook's normal operations are disrupted. Utilities agrees to enter into good faith negotiations with Overlook on a special contract for Standby Service upon receipt of notice from Overlook that it is requesting Standby Service from Utilities. Overlook acknowledges and agrees that any such agreement for Standby Service is subject to approval by the Colorado Springs City Council, which approval is not guaranteed. Such agreement will provide that Overlook is solely responsible for designing and constructing any infrastructure necessary for the provision of Standby Service in accordance with City Code, Utilities' line extension and service standards and any other applicable Utilities' regulations or policies.

3. General Release of Claims. Except as to the obligations created by this Agreement, and reserving to the Parties the rights set forth in this Agreement, each Party hereby forever releases the other Party, their heirs, successors and assigns, from all claims, liability, and damages of any kind that have arisen, or could have arisen, between Overlook and the City or Utilities under the 1957 and 1973 Agreements including, but not limited to, which Party has the obligation to prosecute a SWSP or augmentation plan for the McKay Water Rights on behalf of Overlook. Specifically, Utilities hereby releases any and all right it has to enforce any diversion or use limits contained in the 1957 and 1973 Agreements and any right it has to use any water from the Water Rights pursuant to the 1957 and 1973 Agreements. .

4. Representations and Warranties of the Parties.

- a. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement.
- b. Each Party has carefully read this Agreement and knows the contents thereof and has signed the same as its free and voluntary act and after having the opportunity to have the same explained by counsel. Each Party expressly states that it has been advised of its right to consult additional professionals of its choice, including lawyers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatever kind and nature, which the Party may have or will incur, whether

suspected or unsuspected. Each Party further expressly understands and agrees that the signing of this Agreement shall be forever binding and no rescission, modification, or release of a Party from the terms of this Agreement will be made for any mistake.

c. Each Party understands and agrees that it is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided hereunder. Each Party agrees that no other party has provided representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or its tax reporting or payment obligations for the monetary consideration set out herein.

d. Each Party further warrants that it fully realizes that it may have sustained unknown and unforeseen losses, fees, costs or expenses and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by the Parties, which are based or may or will be based upon the 1957 and 1973 Agreements and all matters incident or related thereto, and that no promise or inducement has been offered except as herein set forth and that all agreements and understandings between the Parties are expressed herein and that this Agreement was executed without reliance upon any statement or representation by the other Party, and each Party's representative who executes this Agreement is legally competent to execute this Agreement. Each Party accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, known or unknown, sustained under the 1957 or 1973 Agreements.

e. This Agreement is not intended to be an admission of any fact or issue alleged by any Party relating to the 1957 or 1973 Agreement, and with the exception of a claim related to breach or enforcement of this Agreement, this Agreement is not intended to be evidence in any other matter.

5. **Notice.** Each notice required herein, shall be given in writing, signed by an authorized representative of the Party giving notice, and sent by certified mail, return receipt requested. Notice sent by certified mail will be deemed to have been given upon receipt, as confirmed by the return receipt. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices required to be given to the Parties hereunder must be delivered to the following addresses (or such other address as either Party may direct by written notice to the other Party):

If to Overlook:

Overlook Mutual Water Company
ATTN: John Patrick Michael Murphy
3755 Hill Drive
Colorado Springs, Colorado 80906

and

Mulliken Weiner Berg & Jolivet P.C.
ATTN: Murray Weiner
102 South Tejon Street, Suite 900
Colorado Springs, Colorado 80920

If to Utilities:

United States Postal Service Address:

Colorado Springs Utilities
ATTN: General Manager, Infrastructure and Resource Planning
P.O. Box 1107, MC 1825
Colorado Springs, CO 80947-1825

Personal Service Address:

Colorado Springs Utilities
ATTN: General Manager, Infrastructure and Resource Planning
1525 S. Hancock Expressway
Colorado Springs, CO 80903

and

City Attorney's Office - Utilities Division
United States Postal Service Address:
City of Colorado Springs
ATTN: City Attorney's Office – Utilities Division
P.O. Box 1595
Colorado Springs, CO 80901-1575

Personal Service Address:

City of Colorado Springs
ATTN: City Attorney's Office – Utilities Division
30 S. Nevada Ave., 5th Floor
Colorado Springs, CO 80903

6. **Force Majeure.** No Party to this Agreement will be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this section, provided that: (i) the non-performing Party gives the other Parties prompt written notice describing the particulars of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (c) sabotage; (d)

vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) war; (g) riots; (h) fire; (i) explosion; (j) insurrection; (k) strike, slow down or labor disruptions; (l) denial or revocation of any governmental or regulatory permit, license, or approval; and (m) governmental restriction, denial, or moratoria. To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.

7. Dispute Resolution/Remedies.

a. If either Party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each Party will have the right of specific performance against the other.

b. In the event of litigation arising out of or related to this Agreement, the substantially prevailing Party as determined by the court will be awarded its litigation costs, including reasonable attorney's fees.

c. If Utilities does not approve or convey approval as provided in paragraph 2.b. above, the parties shall promptly meet and negotiate in good faith to achieve a mutually agreeable resolution. If the Parties do not reach agreement concerning resolution and provision of such approval, Overlook may proceed with the proposed action absent such approval if necessary to meet applicable deadlines; and Utilities shall have the right to initiate an action in the Division 2 Water Court or the District Court for El Paso County, Colorado, to seek available judicial relief except voiding any approved augmentation plan.

8. Governmental Immunity. No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by Utilities of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as applicable now or hereafter amended.

9. Generally Applicable Provisions.

a. Entire Agreement. This Agreement and its Exhibits constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior agreements and understandings, written or oral, with respect to the subject matter.

b. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by all Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The Exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

c. Waiver. The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment in any future case of any of the terms of this Agreement.

d. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns.

e. Governing Law and Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Jurisdiction and venue for any dispute arising out of or related to this Agreement is proper only in the District Court of El Paso County, Colorado. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action including, but not limited to, *forum non-conveniens* or otherwise.

f. Third-Party Rights. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies whatsoever on any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.

g. Time. Time is of the essence in this Agreement.

h. Legal Counsel. Each Party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it is not to be construed against any Party on the basis of authorship.

i. Signatures – Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or PDF, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile or PDF signature page were an original itself.

10. Termination of Agreement. If the Colorado Springs City Council fails to adopt a resolution approving this Settlement Agreement on or before xxxx xx, 2025, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to their execution of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth opposite their respective signatures, said agreement to be in full force and effect upon the Effective Date as defined herein.

COLORADO SPRINGS UTILITIES

OVERLOOK MUTUTAL WATER COMPANY

By: _____
Travas Deal
Chief Executive Officer

By: _____
John Patrick Michael Murphy
President

Date: _____, 2025

Date: _____, 2025

APPROVED AS TO FORM:

APPROVED AS TO FORM:
MULLIKEN, WEINER, BERG, & JOLIVET
Attorneys at Law

By: _____
Michael J. Gustafson
City Attorney's Office – Utilities Division

By: _____
Murray I. Weiner
Counsel for Overlook

EXHIBIT A
1957 Agreement

AGREEMENT AND RELEASE

THIS AGREEMENT Made and entered into on this 29th day of October,
A. D. 1957, by and between THE BROADMOOR HOTEL WATER and POWER
COMPANY, a Colorado corporation, hereinafter called "Broadmoor" and
OVERLOOK MUTUAL WATER COMPANY, a Colorado corporation, herein-
after called "Overlook",

WITNESSETH:

"Overlook" has distributed water for domestic use to its stockholders
in The Overlook, Rest Home and Dixon Heights Addition or Subdivision, and
claims for its stockholders certain rights to the flow of water from McKay
Tunnel, and "Broadmoor" has heretofore sold water to Overlook for such
distribution, under a written contract made April 24th, 1918 between
"Overlook" and "Broadmoor's" predecessor in interest, The Broadmoor
Hotel and Land Company. "Broadmoor" has now agreed, subject to the
restrictions hereinafter stated and in consideration of the agreements
undertakings and covenants hereinafter set forth to be kept and performed
by "Overlook", as follows:

(1) Broadmoor will grant and by these presents does grant to "Over-
look" the perpetual use of the lower Northerly McKay Tunnel located on the
Easterly slope of Cheyenne Mountain in the Northeast quarter of the South-
west quarter of Section 2, Township 15 South, Range 67 West of the 6th
P. M., together with a perpetual right to the use of the waters produced
from said tunnel, but subject to the limitations hereinafter stated, and to-
gether with the rights of access to, and egress from said tunnel over and
across the property of the Broadmoor as may be necessary to maintain said

tunnel and appurtenant structures and by reasonably direct routes to be selected by Broadmoor.

(2) Overlook agrees to maintain said Tunnel at its own expense in such manner that the maximum amount of water that can be produced therefrom shall be available to "Overlook", and also to construct and maintain at its own expense within said tunnel a collection reservoir, intake and metering device. If said tunnel is maintained by Overlook so as to permit the collection and withdrawal of all water available therefrom and such water so available shall be less than an average of five thousand gallons per day over any consecutive ten day period, then Broadmoor will permit Overlook to withdraw from other sources of Broadmoor, available to Overlook by gravity feed, sufficient water so that Overlook shall have from such tunnel and from such other source a total average computed over ten day consecutive periods of five thousand gallons per day. Broadmoor shall never be called upon to furnish more than five thousand gallons in any one day and shall only be liable to furnish any water when the supply available to Overlook from said tunnel shall have been less than five thousand gallons per day, average, for the preceding ten day period.

(3) Said grants and agreements on the part of Broadmoor are upon the following conditions and covenants on the part of Overlook:

a. Said water is to be used for domestic purposes only and shall be used on the respective premises only after the same shall have been built upon and used for dwelling purposes and while belonging to stockholders of Overlook and to the amount of water which the owner thereof may be entitled by virtue of his stockholdings in Overlook and subject to Overlook's rules and regulations as to the use thereof.

b. Said water shall be delivered to Overlook without charge but

Any water in addition to the water from said tunnel, and which is to be delivered to Overlook by Broadmoor shall be delivered through the meter to be installed by Overlook and shall be only water that can be supplied through gravity feed.

c. Broadmoor shall be released and discharged from all further obligations, other than those herein stated, to furnish water for any purpose to Overlook or to the area served by Overlook.

d. The agreement of April 23, 1918 and any and all other agreements, oral or written, whereby Broadmoor may be obligated to supply water to Overlook or the area served by Overlook, are hereby cancelled and terminated.

e. Overlook will furnish to Broadmoor its written consent and the written consent of not less than two thirds of the stockholders of Overlook that said area may be withdrawn from the service area of Broadmoor and that the Colorado Public Utility Commission may take appropriate action to effectuate this agreement.

(4) Overlook shall maintain the tunnel and all connections, pipe lines and appurtenances at its own expense.

(5) Overlook shall indemnify, save harmless and defend Broadmoor from any and all liability for damages to property or injuries to persons, arising out of or connected with the maintenance of said tunnel or water supply.

(6) Any of the water of said lower Northerly McKay Tunnel not required for the purposes of Overlook, may be used by Broadmoor and Overlook shall never divert from said tunnel an average of more than five thousand gallons per day.

Each of the parties agree to sign such conveyances, releases and other instruments as may be necessary or desired to effectuate this agreement.

THE BROADMOOR HOTEL WATER and POWER
COMPANY

By  President

Attest:


Secretary

THE OVERLOOK MUTUAL WATER COMPANY

By  President

After recording return to:
Terry Taylor
Hogan & Hartson L.L.P.
2 N. Cascade Ave., Suite 230
Colorado Springs, CO 80903

EXHIBIT B

1973 Agreement

**CONTRACT FOR THE PURCHASE AND
SALE OF PROPERTY**

THIS CONTRACT, Made and entered into this 9th day of April, 1973,
by and between THE BROADMOOR HOTEL WATER AND POWER
COMPANY, a Colorado Corporation, Party of the First Part, hereinafter
called "Water Company", BROADMOOR HOTEL, INC., a Colorado Cor-
poration, Party of the Second part, hereinafter called "Broadmoor", and
THE CITY OF COLORADO SPRINGS, a Municipal Corporation, Party of
the Third Part, hereinafter called the "City",

W I T N E S S E T H:

Water Company has agreed and does hereby agree to sell and
convey to the City and the City has agreed and does hereby agree to pur-
chase from Water Company all of the operating assets (utility plant accounts),
excluding vehicles and movable items, of Water Company and to pay there-
for, all in accordance with the particulars, conditions and provisions
hereinafter set out. Broadmoor is the owner of all of the issued and
outstanding stock of Water Company and agrees to vote said stock so as to
effectuate this Agreement. Certain of the tracts herein required to be
conveyed by Water Company to the City are owned by Broadmoor or by
the Cheyenne Mountain Museum and Zoological Society as hereinafter set
out. Water Company represents that it has an agreement with Cheyenne
Mountain Museum and Zoological Society to purchase said tract for the sum
of \$25,000.00 and that it has an agreement with Broadmoor to purchase
the tracts owned by Broadmoor and required herein to be conveyed to the
City at the current value. Water Company shall promptly consummate
said agreements and acquire said tracts so that the same may be conveyed
free and clear to the City, all at the expense of Water Company and without
further obligation on the part of the City, and all payments of the purchase

RECORDER NOTE: Legibility
of writing, typing or printing
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of this document when received.

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El Paso County, CO



205078831

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price hereinafter recited shall be paid to Water Company or its assigns but said tracts of land may be conveyed either to Water Company and then by Water Company to the City, or directly from the record owner to the City, as Water Company shall determine.

I. THE PROPERTY SOLD AND PURCHASED

The property covered by this agreement and to be conveyed by Water Company to the City is as follows:

1. The property on which is located the Penrose Rosemont Reservoir and facilities and which property is more particularly described in the proposed form of Warranty Deed attached hereto and marked Exhibit "A".
2. A tract of land now owned by the Cheyenne Mountain Museum and Zoological Society and upon which the reservoir or storage tank supplying the grounds of the Cheyenne Mountain Museum and Zoological Society and other Water Company customers is located, as more particularly described in the proposed form of deed attached hereto and marked Exhibit "B".
3. Tracts of land upon which are located the Penrose (Cooking Club) Reservoir and Fisher Canon Reservoir, together with additional areas surrounding said reservoirs, as described in Exhibit "C" hereto attached together with drawings, the approximate boundaries outlined in red.
4. Tracts upon which are located Reservoirs numbers 1, 3 and 3A, together with additional area, all as described in Exhibit "D" and attached maps, said areas being outlined in green. Water Company and the City agree to cooperate in surveying and defining the legal descriptions for said areas, which descriptions will be incorporated in a deed conveying the same to the City.

5. Deeds of Access or Rights of Way across property of Broadmoor to any reservoir, treatment or distribution facilities where there are no means of access over public property or public roads or highways. Provided, however, that where such rights of way cross the golf course or other property used for hotel or recreation purposes by Broadmoor, that such rights of way shall be limited to the extent that where it is contemplated interfering with the surface of any property used as a golf course or for hotel or recreation purposes, that such entry shall be arranged in advance and shall be effected at a time and in a manner that will least interfere with the use of said property by the fee owner thereof and its guests or invitees, and that all surface shall be promptly repaired and restored to its original condition by the City at its own expense after any such entry.

6. All water, water rights, ditches, reservoirs and reservoir rights owned by the Water Company, including, but not limited to, the rights designated in Exhibit "E" attached. All transmission and distribution pipelines, meters, distribution, storage and treatment facilities, valves, fire hydrants, pump stations and fixed equipment owned by the Water Company. Provided, however, that it is not contemplated hereby to convey to or vest in the City any water lines, mains or valves beyond (in direction of water flow) the point of metering. All such mains, valves, water lines and facilities beyond the point of metering shall remain the property of the present owner thereof.

7. An additional tract or tracts of ground and rights of way as may be determined necessary for plant expansion and future distribution facilities needed to serve the areas designated as Areas 1 and 2 on the attached "Exhibit F". It is not presently known what the required

areas will be nor where they will be located, but it is presently contemplated that approximately fifteen (15) acres will be required and are to be located at such points as determined by the City and at such places as will least likely interfere with the efficient use of the properties surrounding said facilities. In addition to the above obligation, Broadmoor will grant a right of way for the pipeline of the Fryingpan-Arkansas Diversion project, which it is contemplated will cross the property of the Broadmoor and for which a right of way at a mutually agreeable location will be furnished without cost but subject to the above limitation as to location and the requirement that the pipeline will be installed at a time and in a manner so as to interfere with the use of the property to the least extent possible, and the surface replaced at the expense of the City or the Fryingpan-Arkansas authority without delay.

II. PURCHASE PRICE

The total agreed purchase price is the sum of Eight Hundred Seventy-four Thousand Dollars (\$874,000.00), which includes Twenty-five Thousand Dollars (\$25,000.00) to be paid by the Water Company to Cheyenne Mountain Museum and Zoological Society for its reservoir and storage tank, and also includes the amounts to be paid by Water Company to Broadmoor for certain tracts owned by Broadmoor and herein required to be conveyed to the City. The purchase price shall be paid by a promissory note executed by the City to Water Company. Said note shall bear interest at 5% and shall be payable both principal and interest in equal annual installments over a period of not to exceed twenty (20) years. Said note shall be dated as of the date of closing of this contract and each annual payment shall be due on the same day of each year thereafter. Said note shall be fully negotiable, transferrable and assignable, but shall contain the following provisions: "This note is payable solely out of the available revenues

of the Utility Department of the City of Colorado Springs. Available revenues shall mean income derived from the operation of the municipal water works system, electric light or power systems, gas systems or sewer system of the City of Colorado Springs after payment of all necessary and reasonable expenses of operation and maintenance of such utilities and after payment as they become due of all principal, interest and reserve requirements of the bonds and other securities of the City heretofore or hereafter issued and by their terms payable from such revenues. However, this note is not subordinated to any other like obligation of the City of Colorado Springs Utility Department entered into after the date hereof."

III. OBLIGATIONS OF THE CITY

In addition to the payment of the purchase price hereinabove provided for, the City agrees that it will undertake all of the obligations of the Water Company to serve its certificated area, the same being designated as Parcel 1 on the attached plat, which is Exhibit "F". The City further agrees that it will provide water service to the area designated as Parcel No. 2 on the attached map which is not presently included within the certificated area but which is a logical extension thereof, provided that such obligation of the City to serve said area shall not exceed a requirement for nine hundred (900) residential taps and additional taps or facilities to serve the golf course contemplated to be located thereon. The City further agrees that it will supply water to a contemplated addition to the Broadmoor Hotel within said certificated Area 1.

All of such water service shall be furnished subject to the effective rates for water service and the applicable connection charges and tapping fees to all areas served with water by the City beyond its corporate limits, and as increased from time to time, but not less than the present rate until the debt created by Article II is fully paid.

IV. OBLIGATIONS OF BROADMOOR

Broadmoor agrees to annex to the City of Colorado Springs at any time after water is served to the lands described in Parcel 1 and Parcel 2, if possible. The water rates for servicing the properties of Broadmoor in said Areas 1 and 2 shall be the present suburban rates charged by the City and any increase made effective in said suburban areas, and these rates shall continue for such properties notwithstanding their annexation to the City of Colorado Springs until such time as the purchase price stated in Article II above has been fully paid. After annexation and payment in full of said purchase price, said rates for water service shall be the same as for other properties within the corporate limits of the City. The obligation to furnish 900 residential taps for Area 2 shall not exist before the Fryingpan-Arkansas pipeline is completed to Colorado Springs and water is available to the City therefrom.

V. MUTUAL UNDERTAKINGS AND OBLIGATIONS

1. The City will cooperate with the Water Company in its petition to the Public Utilities Commission for approval of the transfer of its assets to the City under this contract and this contract is dependent upon securing such approval.
2. All meters will be read on the date of closing. After closing of said contract all accounts receivable for the period prior to the date of closing will be collected by the Water Company and shall be the property of the Water Company.
3. The date of closing shall be May 1, 1973, or such earlier date as the parties may agree.
4. All property conveyed by the Water Company, whether directly or indirectly, shall be free and clear from all liens and encumbrances

of every kind, including taxes, which shall be prorated to date of closing.
The Water Company will pay or settle all debts, obligations or liabilities
which might constitute or ripen into a lien upon the properties hereby
agreed to be conveyed.

5. This agreement shall be binding upon and inure to the res-
pective successors and assigns of the parties.

IN WITNESS WHEREOF, the parties have caused these presents
to be executed by their proper officers pursuant to resolutions duly adopted.

THE BROADMOOR HOTEL WATER AND
POWER COMPANY

ATTEST:

J. Montgomery

By

Russell R. Nutt
President

BROADMOOR HOTEL, INC.

ATTEST:

J. Montgomery

By

Karl E. Eitel
Vice-President

THE CITY OF COLORADO SPRINGS

ATTEST:

R. E. Parker

By

Eugene W. Chang

*Approved as to form:
Parsond. Lind
city attorney 4.11.13*

RESERVOIRS 3 and 3A

A tract of land, 300.0 feet square, lying in the SW1/4 of NW1/4 of Section 1, and SE1/4 of NE1/4 of Section 2, Township 15 South, Range 67 West to the 6th Principal Meridian, El Paso County, Colorado, described as follows, to-wit:

Commencing at a point on the Section line between said Sections 1 and 2, 880.0 feet North of the Southwest corner of said SW1/4 of NW1/4 of Section 1, which is also the Southeast corner of the said SE1/4 of NE1/4 of Section 2, and running thence West 150.0 feet, thence North 300.0 feet; thence East 300.0 feet, thence South 300.0 feet, thence West 150.0 feet to place of beginning.

Containing 2.07 acres, more or less.

Also granting right-of-way for ingress and egress to and from said tract of land over and along an existing road from Marland Road.

156A

Penrose-Rosemont Reservoir Second Enlargement

718 627 2 449 356 September 25, 1925

163A

Fisher Canyon Reservoir

2 373 100 4 822 456 September 1, 1928

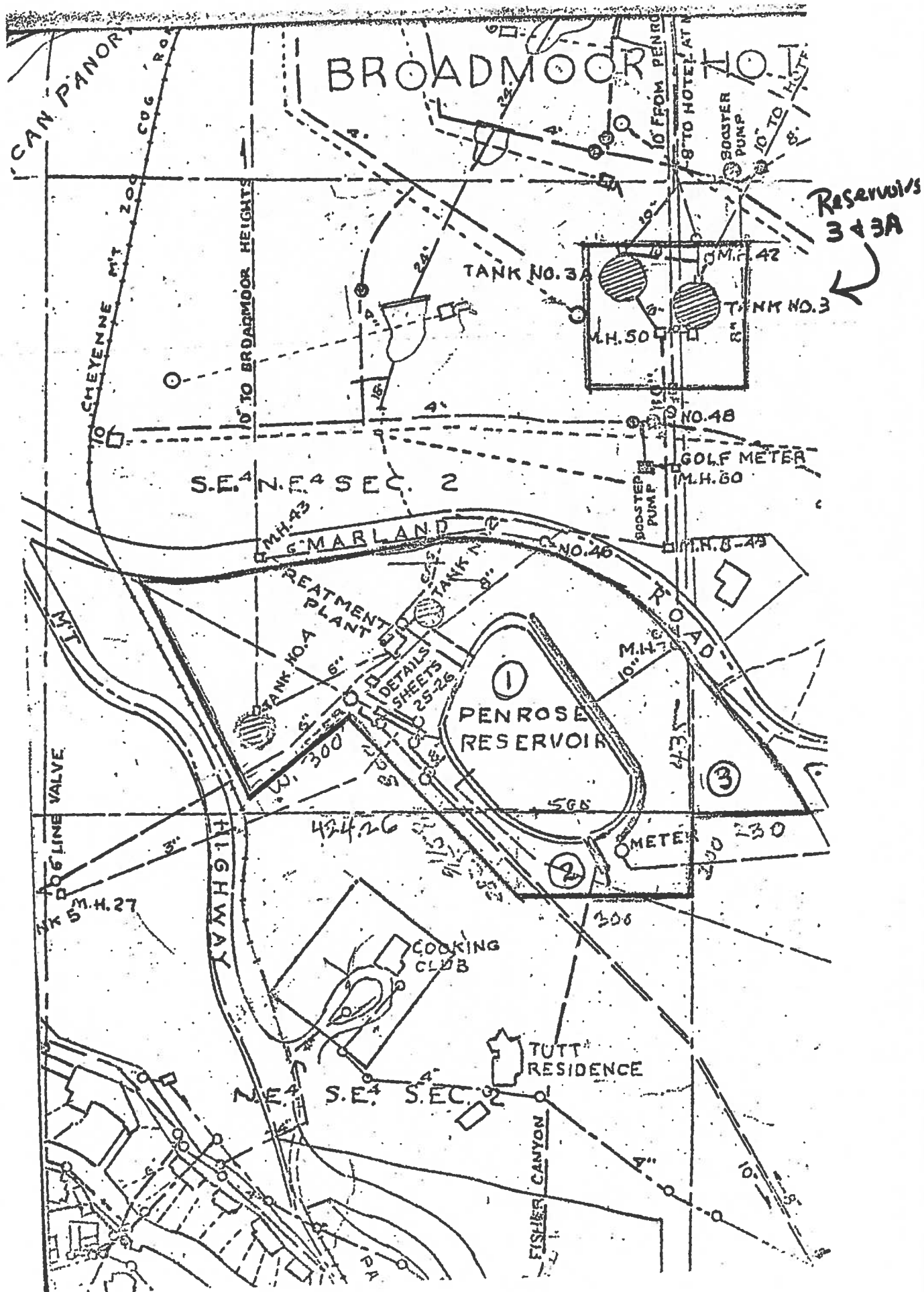


EXHIBIT C
McKay Water Rights

1. McKay Pipe Line #2 (WDID 10000684), in the amount of 0.94 c.f.s., decreed on June 5, 1919, in Case No. C.A. 10146, District Court, El Paso County, with a priority date of April 28, 1911 the source of which is a spring or springs tributary to Fountain Creek, and as changed in Case No. C.A. 13801, decreed on February 16, 1960, District Court, El Paso County.
2. McKay Seepage Ditch and McKay Seepage Ditch and Pipe Line Amended (WDID 10000685), in the amount of 0.119 c.f.s., decreed on June 5, 1919, in Case No. C.A. 10146, District Court, El Paso County, with a priority date of July 26, 1910 the source of which is a group of springs tributary to Fountain Creek, and as changed in Case No. C.A. 13801, decreed on February 16, 1960, District Court, El Paso County.
3. El Patio Pipe Line and El Patio Pipe Line Amended (WDID: 10000687), in the amount of 0.2 c.f.s., decreed on February 16, 1960, in Case No. C.A. 13801, District Court, El Paso County with a priority date of July 27, 1909 the source of which is a spring or underground flow tributary to Fountain Creek located approximately 200 yards west of 3700 block of Hill Drive, Colorado Springs, El Paso County, Colorado.

EXHIBIT D

**BARGAIN AND SALE DEED
(WATER RIGHTS)**

THIS DEED, made this ____ day of _____, 2023, City of Colorado Springs, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities whose address is P.O. Box 1103, Colorado Springs, CO 80947-1015, ("Grantor") and the Overlook Mutual Water Company, whose address is 3810 McKay Road, Colorado Springs, CO 80906 ("Grantee").

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sells and conveys to Grantee all interest it has in the following described water rights:

1. McKay Pipe Line #2 (WDID 10000684), in the amount of 0.94 c.f.s., decreed on June 5, 1919, in Case No. C.A. 10146, District Court, El Paso County, with a priority date of April 28, 1911 the source of which is a spring or springs tributary to Fountain Creek, and as changed in Case No. C.A. 13801, decreed on February 16, 1960, District Court, El Paso County.
2. McKay Seepage Ditch and McKay Seepage Ditch and Pipe Line Amended (WDID 10000685), in the amount of 0.119 c.f.s., decreed on June 5, 1919, in Case No. C.A. 10146, District Court, El Paso County, with a priority date of July 26, 1910 the source of which is a group of springs tributary to Fountain Creek, and as changed in Case No. C.A. 13801, decreed on February 16, 1960, District Court, El Paso County.
3. El Patio Pipe Line and El Patio Pipe Line Amended (WDID: 10000687), in the amount of 0.2 c.f.s., decreed on February 16, 1960, in Case No. C.A. 13801, District Court, El Paso County with a priority date of July 27, 1909 the source of which is a spring or underground flow tributary to Fountain Creek.

IN WITNESS WHEREOF, the Grantor has executed this **BARGAIN AND SALE DEED** on the date set forth above.

GRANTOR:

**City of Colorado Springs, on behalf of its enterprise
Colorado Springs Utilities**

By: _____
Name: Yemi Mobolade
Title: Mayor

STATE OF }
 }ss.

COUNTY OF EL PASO }

The foregoing **BARGAIN AND SALE DEED** was acknowledged before me this ____ day of __, 2023 by Yemi Mobolade as Mayor of the City of Colorado Springs.

Witness my hand and official seal.

My Commission Expires: _____

APPROVED AS TO FORM

By: _____
City Attorney's Office

EXHIBIT E
Special Contract

**SPECIAL CONTRACT FOR AUGMENTATION SERVICE BETWEEN COLORADO
SPRINGS UTILITIES AND OVERLOOK MUTUAL WATER COMPANY**

This Special Contract for Augmentation Service ("Agreement") is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 ("UTILITIES"), and Overlook Mutual Water Company with its principal place of business at 3810 McKay Road, Colorado Springs, CO 80906 ("OVERLOOK") (collectively "the Parties").

RECITALS

- A. OVERLOOK is a private water company that provides water service for 28 homes located on Cheyenne Mountain in an enclave of the City.
- B. OVERLOOK derives its water supply from junior water rights associated with the McKay Tunnel described in Exhibit A to this Agreement ("McKay Water Rights").
- C. In 2022, the Colorado Division of Water Resources notified OVERLOOK that OVERLOOK needed an augmentation plan to and/or substitute water supply plan to continue diverting and using the McKay Water Rights.
- D. OVERLOOK desires to lease up to 3.0 acre feet annually of water from UTILITIES for the purpose of replacing out-of-priority depletions to the Fountain Creek Basin associated with OVERLOOK's use of the McKay Water Rights ("Augmentation Water").
- E. Based on current conditions and operation system constraints, UTILITIES has determined that a sufficient but interruptible supply of fully consumable water owned by UTILITIES, not including water imported from the Blue River or any other type of water that could be replaced in UTILITIES' system by Blue River water, is or will be available for delivery to OVERLOOK for augmentation of depletions from the McKay Water Rights. Utilities shall provide Overlook with a list of the specific water rights that make up this supply of fully consumable water for purposes of identifying such rights in the SWSP request and/or Water Court Application.
- F. UTILITIES has agreed to lease up to 3.0 acre feet annually of Augmentation Water to OVERLOOK for augmentation of depletions from the McKay Water Rights.
- 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.
- H. UTILITIES has entered into this Special Contract pursuant to section 12.4.304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended.

AGREEMENT

NOW, THEREFORE, in consideration of mutual benefits to the parties and the payment to UTILITIES as hereinafter provided, the receipt and sufficiency of which is acknowledged, **IT IS AGREED:**

1. **Term.** The effective date ("Effective Date") of this Agreement shall be the last date upon which one of the Parties executes this Agreement. This Agreement shall commence on its Effective Date and shall remain in effect for an initial period of twenty-five (25) years following the Effective Date, unless terminated sooner in accordance with its terms.

- a. No later than twenty-four (24) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new agreement for UTILITIES to provide Augmentation Service to OVERLOOK hereunder, with the expectation that such new agreement shall be substantially similar to this Agreement.
- b. If the Parties are unable to execute a new agreement by the date that is six (6) months prior to the end of the Term the Parties mutually agree to continue good faith negotiations for a new special contract for augmentation service beyond the Term, the term may be extended for an additional 1 year term at UTILITIES' sole discretion.

2. **Provision of Augmentation Water.** During the Term of this Agreement and any renewals thereof, UTILITIES agrees to make available to OVERLOOK up to 3.0 acre feet annually of Augmentation Water in accordance with the terms of this Agreement. The actual amount and timing of delivery of Augmentation Water provided to OVERLOOK shall be in accordance with OVERLOOK's out-of-priority depletions determined in an approved augmentation plan and/or substitute water supply plan, and reported to UTILITIES and the Division 2 Engineer on a monthly basis. OVERLOOK has a flow meter that records the amount of water OVERLOOK diverts under the McKay Water Rights. OVERLOOK shall maintain the flow meter in good working order and shall repair or replace it as necessary during the term of this Agreement. OVERLOOK shall read the flow meter no less than monthly or as otherwise required under an augmentation plan decree or substitute water supply plan approval and report the readings to UTILITIES for accounting purposes. OVERLOOK shall also be responsible for constructing, operating, maintaining and replacing any measurement equipment/devices deemed necessary by the State or Division Engineer or the Water Court for operation and administration of any SWSP approval or augmentation plan decree.

3. **Price for Augmentation Water.** OVERLOOK shall pay UTILITIES for the Augmentation Water delivered to OVERLOOK under this Agreement based on UTILITIES 'Augmentation Service Tariff in effect at the time of delivery multiplied by 1.5 (as of the date

of this Agreement \$0.00126/cf or \$54.88/AF). OVERLOOK agrees to pay UTILITIES the total of the above cost per acre foot of water multiplied by the total acre feet of Augmentation Water deemed delivered annually hereunder. OVERLOOK further agrees to pay UTILITIES an annual fee of \$250.00 to cover its costs in administering this Agreement ("Administrative Fee"). The Administrative Fee will escalate at the rate of 2% per year. UTILITIES shall provide OVERLOOK with a timely annual invoice(s) for all Augmentation Water deemed delivered annually and the Administrative Fee. OVERLOOK shall make full payment of the invoices to UTILITIES within 30 days of its receipt of the invoice.

4. **Measurement of Augmentation Water.** The Augmentation Water provided hereunder shall be measured and deemed delivered at UTILITIES' Las Vegas Wastewater Treatment Plant. OVERLOOK shall be responsible for any and all transit losses and evaporation losses subsequent to the delivery of the Augmentation Water.

5. **Overlook's Water System Infrastructure.** OVERLOOK shall own and shall be solely responsible, financially, and otherwise, for the operation, maintenance and repair, and improvements to its Water System including any improvement, repair or maintenance thereof that is requested by UTILITIES that is necessary for delivery of Augmentation Water or required by the State or Division Engineer or Water Court for administration of any augmentation plan or SWSP.

6. **Approvals.** OVERLOOK is solely responsible, financially or otherwise, for obtaining all required approvals of the State Engineer, Division 2 Engineer, or Water Court including, but not limited to, adjudication of an augmentation plan and/or approval of a substitute water supply plan authorizing use of the Augmentation Water to replace depletions associated with operation of the McKay Water Rights, as well as all other necessary approvals required for the delivery and use of the Augmentation Water.

7. **Arrangements for Delivery.** OVERLOOK shall be responsible to arrange with UTILITIES' Water Resource Supply Department for the delivery of the Augmentation Water. The delivery schedule shall be consistent with the delivery schedule for Augmentation Water required by any decreed augmentation plan and/or substitute water supply plan adjudicated for the McKay Water Rights and UTILITIES will make reasonable efforts to deliver Augmentation Water in accordance with the approved augmentation plan and substitute water supply plan. The Parties acknowledge that the delivery of Augmentation Water under this Agreement will take place within the supply limitations of UTILITIES water supply system and that those limitations vary by season. The actual timing of the delivery of Augmentation Water shall be at the reasonable discretion of UTILITIES. OVERLOOK shall provide UTILITIES two working days' notice in writing by mail, or electronic mail at the addresses shown below prior to UTILITIES beginning delivery of the leased Augmentation Water.

Colorado Springs Utilities

Water Conveyance
P.O. Box 1107, MC 1825
Colorado Springs, CO 80947
water_accounting@csu.org

8. **Augmentation Water Use.** All Augmentation Water delivered under this Agreement shall be for one time use only and for OVERLOOK's use exclusively to replace depletions associated with its operation of the McKay Water Rights. In the event OVERLOOK does not or cannot beneficially use the Augmentation Water delivered under this Agreement to replace depletions associated with the McKay Water Rights, all dominion over the Augmentation Water shall revert completely to UTILITIES. UTILITIES retains the legal ownership of and the right to use, reuse, and successively use any Augmentation Water that is not beneficially used by OVERLOOK.
9. **Interruptible Supply.** OVERLOOK acknowledges that UTILITIES' delivery of Augmentation Water under this Agreement is on an interruptible basis. OVERLOOK acknowledges and consents to UTILITIES' right to discontinue deliveries of water under this Agreement due to (1) a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting the water system, and maintenance and repair to the infrastructure) to UTILITIES' water system, or (2) as otherwise authorized by the City Code of Colorado Springs. UTILITIES will use reasonable efforts to provide OVERLOOK with 30 days prior notice of a discontinuance of water supplies provided for in the foregoing sentence. OVERLOOK acknowledges that UTILITIES cannot always anticipate when interruptions in water supplies or disruptions to its water system will occur and that UTILITIES has no obligation to provide OVERLOOK with prior notice of a discontinuance of deliveries of Augmentation Water due to an interruption in water supplies or a disruption in its water system.
10. **Termination.** OVERLOOK acknowledges and consents to UTILITIES' right to terminate this Agreement: (1) due to OVERLOOK's breach of a material term or condition of this Agreement, if OVERLOOK has not taken substantial steps to cure the breach within thirty (30) days of receiving written notice of such breach from UTILITIES; (2) if OVERLOOK does not obtain the necessary approvals for it to meet its obligations under this Agreement from the State Engineer, Division 2 Engineer, the Water Court; or (3) as otherwise authorized by the City Code of Colorado Springs or the Colorado Springs City Council. UTILITIES will make reasonable efforts to notify OVERLOOK of circumstances that could result in such termination. OVERLOOK may terminate this Agreement due to a material breach on the part of UTILITIES, if UTILITIES has not taken substantial steps to cure the breach within thirty (30) days of receiving written notice of such breach from OVERLOOK. OVERLOOK may also terminate this Agreement upon 30 days written notice to UTILITIES if OVERLOOK is unable to obtain the necessary approvals for it to meet its obligations under this Agreement from the State Engineer, Division 2 Engineer, or Water Court.

11. **Revocation.** OVERLOOK acknowledges that this Agreement is in the nature of a license as defined in the Colorado Springs, Colorado, City Charter for the use of City of Colorado Springs property. As such, this Agreement is expressly subject to Article 10 of the Charter of the City of Colorado Springs, and is expressly revocable by the City of Colorado Springs City Council at any time.

12. **Rules and Regulations.** The water service provided under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, the Tariffs, WLESS, and all other applicable City of Colorado Springs' or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Water System as may be amended or replaced, except as otherwise provided in this Agreement. DISTRICT shall comply with applicable laws, ordinances, regulations, rules or policies concerning use of UTILITIES' Water System as they exist now or may be amended or replaced in the future. In addition, when a water shortage is declared under City Code Chapter 12, Article 4, Part 13, OVERLOOK agrees to declare and enforce water use restrictions within its service area that are no less restrictive than the water use restrictions imposed on UTILITIES' customers within the corporate boundaries of Colorado Springs. In accordance with City Code § 12.4.304, UTILITIES submits to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 4 that are applicable to this Agreement.

13. **Water Rights Unaffected.** No water rights are being transferred to or from UTILITIES or OVERLOOK under this Agreement.

14. **Disclaimer of Warranties.** UTILITIES makes no warranty of any kind as to the timing, availability, quality, or suitability of the Augmentation Water delivered hereunder to OVERLOOK for any particular use; OVERLOOK assumes all such risks.

15. **Legal Notice.** Each notice required herein, shall be given in writing, signed by an authorized representative of the Party giving notice, and sent by certified mail, return receipt requested. Notice sent by certified mail will be deemed to have been given upon receipt, as confirmed by the return receipt. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices required to be given to the parties hereunder must be delivered to the following addresses (or such other address as either Party may direct by written notice to the other Party):

If to Overlook:

Overlook Mutual Water Company
ATTN: John Patrick Michael Murphy
3755 Hill Drive
Colorado Springs, Colorado 80906

and

Mulliken Weiner Berg & Jolivet P.C.
ATTN: Murray Weiner
102 South Tejon Street, Suite 900
Colorado Springs, Colorado 80920
mweiner@mullikenlaw.com

If to Utilities:

United States Postal Service Address:

Colorado Springs Utilities
ATTN: General Manager, Infrastructure and Resource Planning
P.O. Box 1107, MC 1825
Colorado Springs, CO 80947

Personal Service Address:

Colorado Springs Utilities
ATTN: General Manager, Infrastructure and Resource Planning
1525 S. Hancock Expressway
Colorado Springs, CO 80903

and;

City Attorney's Office - Utilities Division

United States Postal Service Address:

City of Colorado Springs
ATTN: City Attorney's Office – Utilities Division
P.O. Box 1575
Colorado Springs, CO 80901-1575

Personal Service Address:

City of Colorado Springs
ATTN: City Attorney's Office – Utilities Division
30 S. Nevada Ave., 5th Floor
Colorado Springs, CO 80903

16. Assignment/Third Party Beneficiary. There shall be no assignment or delegation of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment or delegation shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to OVERLOOK,

UTILITIES may assign or delegate its rights and obligations under this Agreement without consent from OVERLOOK to the City of Colorado Springs, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and OVERLOOK.

17. **No Precedent; Severability.** The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future Agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the Parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

18. **Force Majeure.** No Party to this Agreement will be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this section, provided that: (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (c) sabotage; (d) vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) war; (g) riots; (h) fire; (i) explosion; (j) insurrection; (k) strike, slow down or labor disruptions; (l) denial or revocation of any governmental or regulatory permit, license, or approval; and (m) governmental restriction, denial, or moratoria. To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.

19. **Appropriation of Funds.** In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of UTILITIES' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and UTILITIES will thereafter have no liability for compensation or damages to OVERLOOK in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify OVERLOOK as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

20. **Indemnification.** OVERLOOK, hereby agrees to release, discharge, indemnify and hold harmless the City of Colorado Springs, UTILITIES, the Colorado Springs City Council, the Utilities Board, and the officers, directors, employees and agents of each (from and against any and all liability for any damages, injuries to the person or property, costs (including, but not limited to all fees and charges of engineers, architects, attorneys, and

other professionals and all court or other dispute resolution costs), causes of action, demands, or actions of whatsoever kind or nature, arising out of, or caused by the negligent acts or omissions, or intentional misconduct of OVERLOOK under this Agreement. OVERLOOK shall give UTILITIES timely and reasonable notice of any such claims or actions. Notwithstanding the foregoing, UTILITIES expressly reserves any and all of the protections, defenses, and limitations that it may be afforded under the Colorado Governmental Immunity Act. Additionally, OVERLOOK understands and agrees that the City of Colorado Springs, UTILITIES, the Colorado Springs City Council, the Utilities Board and the officers, directors, employees and agents of each shall not be liable, except where expressly provided by applicable laws, for incidental or consequential damages of any kind.

21. **Entire Agreement.** This Agreement contains the entire understanding between the Parties; no modification, amendment, notation, or other alteration to this Agreement shall be valid or of any force or effect unless mutually agreed to by the Parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement that are not specifically set forth herein. All electronic communications, including email and voice, from UTILITIES in connection with this Agreement are for informational purposes only. No such communication is intended by UTILITIES to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

22. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado, except for its conflict of law provisions, and the Colorado Springs City Charter and City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado, specifically in the District Court for El Paso County, Colorado, and if necessary for exclusive federal questions, the United States District Court for the District of Colorado, and for water matters as defined by Colo. Rev. Stat. § 37-92-201, et seq., the District Court for Water Division 2.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the dates following their signatures below.

By: _____
Travas Deal
Chief Executive Officer

By: _____
John Patrick Michael Murphy
President

Date: _____, 2025

Date: _____, 2025

APPROVED AS TO FORM:

APPROVED AS TO FORM:
MULLIKEN, WEINER, BERG, & JOLIVET
Attorneys at Law

By: _____
Michael J. Gustafson
City Attorney's Office – Utilities Division

By: _____
Murray I. Weiner
Counsel for Overlook

Exhibit A

1. McKay Pipe Line #2 (WDID 10000684), in the amount of 0.94 c.f.s., decreed on June 5, 1919, in Case No. C.A. 10146, District Court, El Paso County, with a priority date of April 28, 1911 the source of which is a spring or springs tributary to Fountain Creek, and as changed in Case No. C.A. 13801, decreed on February 16, 1960, District Court, El Paso County.
2. McKay Seepage Ditch and McKay Seepage Ditch and Pipe Line Amended (WDID 10000685), in the amount of 0.119 c.f.s., decreed on June 5, 1919, in Case No. C.A. 10146, District Court, El Paso County, with a priority date of July 26, 1910 the source of which is a group of springs tributary to Fountain Creek, and as changed in Case No. C.A. 13801, decreed on February 16, 1960, District Court, El Paso County.
3. El Patio Pipe Line and El Patio Pipe Line Amended (WDID: 10000687), in the amount of 0.2 c.f.s., decreed on February 16, 1960, in Case No. C.A. 13801, District Court, El Paso County with a priority date of July 27, 1909 the source of which is a spring or underground flow tributary to Fountain Creek located approximately 200 yards west of 3700 block of Hill Drive, Colorado Springs, El Paso County, Colorado.