

RESOLUTION NO. _____ - 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 ____ day of _____, 2025.

Lynette Crow-Iverson, Council President

ATTEST:

Sarah B. Johnson, City Clerk