

ORDINANCE NO. 161, 2023  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CONVEYANCE OF THREE PERMANENT  
EASEMENTS AND A LICENSE TO ENTER TO COLORADO STATE UNIVERSITY  
FOR INSTALLATION OF FIBER OPTIC CABLES ON CITY PROPERTY

WHEREAS, the City owns various interests in real property located north of Cherry Street in Fort Collins including:

- a 65% interest in the property described as Lot 1, Fort Collins Discovery Museum (“the Museum Property”) (the other 35% being owned by the Fort Collins Museum of Discovery Nonprofit Partner [“MOD”] as tenant in common with the City);
- a portion of Block 24 located between and connecting the right of way for Mason Court and the Museum Property (the “Block 24 Property”);
- the property located at 430 North College Avenue (the “Powerhouse Campus”) that is leased to the Colorado State University Research Foundation (“CSURF,” now known as “CSU STRATA”) pursuant to a lease agreement between the City and CSURF dated February 29, 2012 (the “Powerhouse Lease”); and
- a utility tunnel running under and between Lot 1 and the Powerhouse Campus (the “Tunnel”); and

WHEREAS, the Museum Property, the Block 24 Property and the Powerhouse Campus are more particularly described and shown on Exhibits “A-1”, “A-2”, and “A-3” respectively, attached and incorporated herein by this reference; and

WHEREAS, the general location of the Tunnel is shown on Exhibit “B”, attached and incorporated herein by this reference; and

WHEREAS, Colorado State University (“CSU”) has been working for some time to establish a fiber optic connection between the CSU main campus and the Powerhouse Campus; and

WHEREAS, CSU already has fiber optic cable installed along Mason Street from Laurel Street to Laporte Avenue, and is now planning a project to complete the connection across the City properties described above (the “Project”); and

WHEREAS, to accommodate the Project, City staff recommends that the City grant CSU permanent easements across the Block 24 Property (the “First Easement”) and the Powerhouse Campus (the “Third Easement”), as well as a license to enter for the interior of the tunnel (the “License”), and that the City and MOD grant CSU a permanent easement across the Museum Property (the “Second Easement”); and

WHEREAS, the First, Second and Third Easements are more particularly described and shown on Exhibits “C,” “D,” and “E” respectively, attached and incorporated herein by this reference; and

WHEREAS, the Powerhouse Campus property and the Tunnel are owned by the City’s electric utility; and

WHEREAS, Section 23-111 of the City Code authorizes the City Council to sell, convey or otherwise dispose of any interests in real property owned by the City, provided the City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City and, with respect to property which is part of the City’s utility systems, that the disposition will not materially impair the viability of the particular utility system as a whole and will be for the benefit of the citizens of the City; and

WHEREAS, Section 10 of Article XI of the City Charter authorizes the City Council to grant a permit at any time for the use or occupation of any street, alley, or public place, provided that any such permit shall be revocable by the Council at its pleasure; and

WHEREAS, Section 16 of Article II of the City Charter authorizes the City Council, by ordinance or resolution, to enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, City staff estimates the fair market value of the Easements to the City to be \$7,745; however, staff is recommending that the City not charge CSU for the Easements and the License as the conveyance serves a bona fide public purpose under Section 23-114 of the City Code because:

- (1) The use of the Easements and License will enhance CSU STRATA’s continued use of the Powerhouse Campus for research and development of alternate energy solutions, which promotes health, safety or general welfare and benefits a significant segment of the citizens of Fort Collins;
- (2) The use to which the Easements and License will be put supports one or more of the City Council's goals, adopted policies, projects or plans by continuing the support the City Council has previously shown through the minimal rent (\$25 per year) the City charges CSU STRATA under the Powerhouse Lease;
- (3) The financial support provided by the City through the below-market conveyance of the Easements and License is only a small portion of the total cost of the Project, estimated at approximately \$350,000, and will be leveraged with other funding or assistance from CSU including federal grants and donations;
- (4) Conveyance of the Easements and License will not result in any direct financial benefit to any private person or entity, except to the extent such benefit is only an incidental consequence and is not substantial relative to the public purpose being served; and

- (5) Conveying the Easements and License for less than fair market value will not interfere with current City projects or work programs, hinder workload schedules or divert resources needed for primary City functions or responsibilities.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Council hereby finds that the conveyance of the Easements and the License to CSU, as provided herein is in the best interests of the City, will not impair the viability of the electric utility system as a whole, and will be for the benefit of the citizens of the City.

Section 3. That the conveyance of the MOD Easement by the City is contingent upon MOD's approval of the Easement conveyance.

Section 4. That the City Council hereby authorizes the Mayor to execute such documents as are necessary to convey the Easements and License to CSU on terms and conditions consistent with this Ordinance, together with such terms and conditions as the City Manager, in consultation with the City Attorney, determines are necessary or appropriate to protect the interests of the City, including, but not limited to, any necessary changes to the legal description of the Easements or License, as long as such changes do not materially increase the size or change the character of the interest to be conveyed.

Introduced, considered favorably on first reading and ordered published this 21st day of November, 2023, and to be presented for final passage on the 5th day of December, 2023.

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Mayor

ATTEST:

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City Clerk

Passed and adopted on final reading this 5th day of December, 2023.

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Mayor

ATTEST:

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City Clerk