

ORDINANCE NO. 035, 2023
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS,
CONVEYANCES, AND OTHER DOCUMENTS TO INCORPORATE
THE SPRING CAÑON WASTE WAY DITCH

WHEREAS, the Spring Cañon Waste Way Ditch, a.k.a. Spring Cañon Waste Way Ditch (“Ditch”) is located in southeast Fort Collins, diverting water from a draw in the NE1/4 of Section 1, Township 6 North, Range 68 West of the 6th P.M., just south of Zach Elementary School, and continuing in a southeasterly direction; and

WHEREAS, a water right with an appropriation date of July 22, 1875, was decreed to the Ditch by the Larimer County District Court in Civil Action 2031 in the decree dated April 22, 1922 (“Water Right”); and

WHEREAS, the Ditch, Water Right, and associated structures and property and other legal rights, including easements (together, “Ditch Rights”) have historically been owned by various persons and entities as fractional interests, without these Ditch Rights being held by a mutual ditch company, which is a more common ownership model in this region; and

WHEREAS, as part of the City’s 2002 acquisition of the land and other property that became Eagle View Natural Area, the City acquired a 2/12th interest in the Ditch Rights; and

WHEREAS, the City currently uses the Water Right and water from the Ditch to irrigate Eagle View Natural Area; and

WHEREAS, the City’s portion of the Ditch Rights are not associated with the City’s water utility; and

WHEREAS, the City and the other fractional owners of the Ditch Rights (“Co-Owners”) periodically need to coordinate with respect to internal and external matters, including: maintenance of the Ditch, including paying for such maintenance; actions to protect the Ditch and Water Right; and consideration and execution of potential arrangements related to the Ditch and Water Right; and

WHEREAS, the historical and current fractional ownership model for the Ditch Rights makes this internal and external coordination among the City and the Co-Owners difficult for various reasons, including a lack of structure for decision making; and a lack of established principles related to ditch matters; and

WHEREAS, changing the ownership structure of the Ditch Rights from the historical and current fractional ownership model to a mutual ditch company model would benefit the City and the Co-Owners in various ways, including: providing internal organization among the City and the Co-Owners; a financial structure for maintenance and other costs; an established body of law (*see, e.g., Colorado Revised Statute Section 7-42-101 et seq.; Jacobucci v. Dist. Court*, 541 P.2d 667,

189 Colo. 380 (1975) (summarizing mutual ditch company law)); and a single point of contact for external matters; and

WHEREAS, the City and the Co-Owners desire to pursue the creation of a mutual ditch company to hold title to the Ditch Rights, which would require the City and the Co-Owners to execute agreements and other documents to establish the company and conveyances and associated agreements to convey their ownership interests in the Ditch Rights to the newly-formed mutual ditch company in exchange for shares of stock in the company that represent the City's and the Co-Owners' current proportional ownership interest in the Ditch Rights ("Incorporation Documents"); and

WHEREAS, Section 23-111(a) of the City Code authorizes City Council to sell, convey, or otherwise dispose of any interest in real property owned by the City, provided that City Council first finds, by ordinance, that such sale or other disposition is in the best interests of the City; and

WHEREAS, the execution of Incorporation Documents is in the best interest of the City because of the benefits described above; and

WHEREAS, the execution of Incorporation Documents will result in the City receiving a value in an amount equal to or greater than the fair market value of the Ditch Rights because the City will retain the same proportional ownership of the Ditch Rights, with the added benefits described above.

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

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

Section 2. That City Council finds, pursuant to Section 23-111(a) of the City Code, that the execution of Incorporation Documents and conveyance of the City's interest in the Ditch Rights to a newly-formed mutual ditch company to hold title to the Ditch Rights is in the best interests of the City.

Section 3. That City Council finds, pursuant to Section 23-114 of the City Code, that the execution of Incorporation Documents will result in the City receiving stock of equal or greater value than the fair market value of the property interests conveyed.

Section 4. That City Council authorizes the City Manager to execute Incorporation Documents as described in this Ordinance and such other documents as may be necessary to carry out the transactions contemplated by this Ordinance, on terms and conditions consistent with this Ordinance, together with such additional 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.

Introduced, considered favorably on first reading, and ordered published this 7th day of March, 2023 and to be presented for final passage on the 4th day of April, 2023.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on this 4th day of April, 2023.

Mayor

ATTEST:

City Clerk