



AGENDA ITEM SUMMARY

City Council

STAFF

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SUBJECT

Second Reading of Ordinance No. 161, 2023, 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.

EXECUTIVE SUMMARY

This Ordinance, unanimously adopted on First Reading on November 21, 2023, permits the conveyance of three (3) permanent easements (the “Easements”) and one (1) license to enter (the “License”) to Colorado State University (“CSU”) for the installation and operation of fiber optic cables on City property to connect the Powerhouse Energy Campus (the “Powerhouse Campus”) located at 430 North College Avenue to the CSU main campus and allow for future CSU fiber optic connectivity to the Powerhouse 2 facilities.

STAFF RECOMMENDATION

Staff recommends adoption of the Ordinance on Second Reading.

BACKGROUND / DISCUSSION

The Project

The Easements and the License (the “Conveyance Documents”) are part of a CSU project (the “Project”) to install new fiber optic cable that will connect the Powerhouse Campus to the CSU main campus and will allow for future fiber optic cable connectivity to the future Powerhouse 2 facilities planned for construction north of Vine Drive. The Powerhouse Campus is located on property owned by the City and leased to the Colorado State University Research Foundation (“CSURF” now known as “CSU STRATA”) at 430 North College Avenue.

This portion of the Project will include installations on public and private property from the corner of Mason Street and Laporte Avenue to the Powerhouse Campus. The Easements are located on three different tracts of land owned in various capacities by the City, and the License pertains to an underground utility tunnel running from just west of the Fort Collins Museum of Discovery, located at 408 Mason Court, to the Powerhouse Campus. The utility tunnel also runs underneath a portion of the BNSF Railroad, Union Pacific Railroad, and U.S. Highway 287 (College Avenue).

In addition to the Easement and License, CSU has applied for a construction permit (the "Construction Permit") to be approved by City Engineering through its usual processes for the installation of additional underground fiber optic cable within the Mason Street Right of Way. The Construction Permit does not require City Council approval.

CSU has submitted plans (the "Construction Plans") to the City for the Project, which have been reviewed by staff. The improvements to be installed within the Easements include 2" conduits and fiber optic cables installed at a depth of 24-36" below the surface (the "Fiberline") and vault boxes located at and below ground level and measuring approximately 50" x 33" x 24" (a "Vault Box"). The Fiberline will be installed using subsurface boring, and the contractors estimate minimal surface disturbance during initial construction of all elements of the Project. The Easements also provide that any damage to the land must be restored by CSU and/or its contractors.

Staff have relied primarily on CSU and/or its contractors to provide accurate surveys, legal descriptions, and title review for the Conveyance Documents.

The First Easement – City Property

The first easement (the "First Easement") is comprised of 330 square feet of City-owned property adjoining the eastern boundary of Mason Court and the western boundary of Lot 1 of the Plat of the Fort Collins Discovery Museum (the "Discovery Museum Parcel"). The First Easement will be used only for underground Fiberline and will not include any permanent surface use or equipment.

The Second Easement – City and Museum of Discovery Property

The second easement (the "Second Easement") is comprised of 4,520 square feet located on the Discovery Museum Parcel, which is owned by the City and the Fort Collins Museum of Discovery, Nonprofit Partner, f/k/a Discovery Center (the "MOD"), as tenants in common. Further details regarding the ownership and operation of the Discovery Museum Parcel are set forth in that certain Operating Agreement dated effective March 11, 2008, by and between the City and MOD (the "Operating Agreement").

The Second Easement will be for Fiberline and one Vault Box, both of which will be installed within existing City utility alignments. The Vault Box will be located adjacent to several other utility boxes on the Discovery Museum Parcel. Construction is estimated to only take a few days to complete, and there are no foreseeable construction impacts to access and parking at the Discovery Museum Parcel.

Based upon a review of Section 3.2 of the Operating Agreement and a Special Warranty Deed dated January 28, 2013, recorded at Reception No. 20130007128, Clerk and Recorder's Records, Larimer County, Colorado, the ownership interests are determined as City (65%) and MOD (35%). Staff for the City and MOD have agreed that compensation for the Second Easement, if any, shall be divided according to the above percentages.

Section 3.1 of the Operating Agreement states that neither the City nor MOD "may assign, lease, or in any other way convey or encumber its interest in the Facility [the Discovery Museum Parcel] without the written consent of the other party, which shall not be unreasonably withheld." Accordingly, the document conveying the Second Easement will be signed by both the City and MOD to evidence their consent and compliance with this section of the Operating Agreement.

MOD staff are currently seeking approval from their Executive Board for the Second Easement, which is expected to be obtained prior to the final adoption of this Ordinance.

The Third Easement – City Property Leased by CSURF

The third easement (the "Third Easement") is comprised of 1,589 square feet located entirely within the Powerhouse Campus, being more particularly described as a 4.091 acre tract of land referred to as the

Main Parcel in that certain Lease Agreement (the “Powerhouse Lease”) dated February 29, 2012, between the City and CSU STRATA. The lands comprising the Third Easement are owned by the City, subject to the rights of CSU STRATA as set forth in the Powerhouse Lease. No portion of the Third Easement will be located within the Grotto Historic Site, being Lot 2 of the Poudre River Whitewater Park Subdivision.

The Third Easement will be used only for underground Fiberline and will not include any permanent surface use or equipment. However, the Third Easement will connect the Powerhouse Campus to a Vault Box located within the existing right-of-way for College Avenue, which will allow for CSU’s future expansion of the Project to the Powerhouse 2 facility. The document conveying the Third Easement will be signed by both the City and CSU STRATA to evidence their consent and compliance with the Powerhouse Lease. This includes the “Reasonable Steps” required by the federal Environmental Protection Agency and outlined in the Powerhouse Lease for alterations on the leased premises as a result of environmental concerns on the site.

The Powerhouse Tunnel – Powerhouse Campus

Section 6.6 of the Powerhouse Lease also contains certain restrictions on CSU STRATA’s use of a 400’ utility tunnel (the “Powerhouse Tunnel”), which will be used to connect the Fiberline from the Third Easement to the Utility Tunnel, as discussed below. CSU STRATA has coordinated with the City Utilities Department and City Real Estate Services Department to ensure that the Project is in compliance with the Powerhouse Lease, insofar as it pertains to the Powerhouse Tunnel. Additional requirements for the use of the Powerhouse Tunnel are set forth in the License discussed below.

License to Enter - the City Tunnel – Powerhouse Campus to Museum of Discovery Property

That certain portion of the Fiberline located between the Discovery Museum Parcel and the Powerhouse Tunnel will be located within an existing utility tunnel (the “City Tunnel”) running from the eastern boundary of the Second Easement to the Powerhouse Tunnel. Although staff could not locate documentation evidencing the date of construction or authority to construct the City Tunnel, it has likely been used by the City for decades and is currently an integral part of the Light and Power infrastructure in Old Town. Rather than granting CSU an easement for the tunnel, staff recommends granting the License for use of specific components in the interior of the tunnel, to the extent of the City’s property rights therein.

The License provides that all construction operations within the City Tunnel will be conducted by the City and/or its contractors, and City Utilities staff will oversee any other operations within or access to the City Tunnel by any other personnel. City Utilities staff will install four one inch (1”) conduits inside the City Tunnel, at CSU’s expense, that will be owned by the City, and the License will allow CSU to install junction boxes, to pull the Fiberline through the conduits, and to continuously use the Fiberline after the initial installation. Furthermore, the License will be revocable at the will of the City.

CITY FINANCIAL IMPACTS

Other than staff time and other expenses reimbursable to City Utilities staff by CSU, there is no cost to the City associated with Conveyance Documents, the Easements, or the License. However, staff estimates the fair market value of the Easements to total \$8,299, (\$7,745 to the City) being itemized as follows (the “Property Values”):

- 1. First Easement: \$1,155;
- 2. Second Easement: \$1,582 (City portion being \$1,028); and
- 3. Third Easement: \$5,562.

Staff recommends that the Easements and License (the “Property Interests”) should be conveyed to CSU for no monetary consideration because such transactions serve a bona fide public purpose and satisfy the requirements of Section 23-114 of the City Code. Specifically:

- The Project supports the mission of the Powerhouse Campus to provide instruction, teaching, outreach, laboratory, and research services focused on developing innovative and alternate energy solutions that will benefit the citizens of Fort Collins and the population at large. The services provided at the Powerhouse Campus, which will be enhanced by the Project, support various Council goals, adopted policies, projects, and plans.
- The Powerhouse Campus and the Project are also supported by other funding or assistance, including federal grants, donations, and various other funding sources.
- The financial benefit to CSU in acquiring the Property Interests at below the Property Values is only a fraction of the total cost of the Project, estimated to be \$350,000, and is not substantial relative to the public purpose being served by the Powerhouse Campus.
- Furthermore, disposing of the Property Interests for less than fair market value will not interfere with any current City projects or work programs, hinder workload schedules, or divert resources needed for primary City functions or responsibilities.
- Finally, the disposition of the Property Interests will not materially impair the viability of the City’s electric utility system as a whole and will ultimately benefit all City citizens via the programs provided at the Powerhouse Campus.

BOARD / COMMISSION / COMMITTEE RECOMMENDATION

The City’s Utilities Department has approved the Construction Plans, the License, and any activity within the Powerhouse Tunnel. As stated above, the Fort Collins Museum of Discovery, Nonprofit Partner, is currently seeking approval of the Second Easement from its Executive Board.

PUBLIC OUTREACH

None.

ATTACHMENTS

First Reading attachments not included.

1. Ordinance for Consideration