

ORDINANCE NO. 028, 2024  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
APPROVING AND AUTHORIZING THE EXECUTION OF AN  
AMENDMENT TO A RECIPROCAL STORMWATER DRAINAGE  
EASEMENT AGREEMENT WITH SUN FOOTHILLS FORT  
COLLINS, LLC, AND RATIFYING THE ORIGINAL CONVEYANCE

A. The City owns a parcel of undeveloped real property located south of Trilby Road and east of South College Avenue as shown and described on Exhibit “A”, attached and incorporated herein by reference, as part of the City’s affordable Housing Land Bank Program (the “City Property.”)

B. Sun Foothills Fort Collins, LLC, (“Sun”) intends to develop housing on a parcel of land adjacent and to the north of the City Property as shown and described on Exhibit “B”, attached and incorporated herein by reference (the “Sun Property.”)

C. The City and Sun executed a Reciprocal Stormwater Drainage Easement Agreement dated September 7, 2022, and recorded in the records of the Larimer County Clerk and Recorder on October 13, 2022, at Reception No. 20220061510 (the “Agreement”).

D. Under the Agreement Sun acquired a storm drainage easement approximately 1.025 acres in size over the City Property and the City acquired an easement for stormwater detention in a 7.84-acre pond on the Sun Property, as shown on Exhibit “C” (the “Sun Easement”) and Exhibit “D” (the “City Easement”) respectively (together, the “Easements”).

E. The City Council approved the exchange of the Easements on August 16, 2022, pursuant to Ordinance No. 087, 2022 (the “2022 Ordinance.”) The 2022 Ordinance was missing the exhibits that defined the location of the Easements, and the Council wishes to ratify its action taken to authorize the exchange of the Easements.

F. In 2023 Sun asked to modify the description of the Sun Easement to include an additional 694 square feet of the City Property, which modification will increase the size of the Sun Easement by only 1.5% and will not substantially change its location, purpose, or impact on the City Property. The revised description of the Sun Easement is attached as Exhibit “E” and incorporated herein by reference (the “Revised Sun Easement.”)

G. City staff also asked to modify language in the Agreement regarding the Parties’ rights of access across each other’s properties to state that access shall be by means of any roads, lanes or parking areas or, if none, by a route reasonably acceptable to the owner of the property, and subject to an obligation to repair any resulting damage to such property, and Sun has agreed to that proposed amendment.

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

I. In addition, Section 23-114 of the City Code requires that any sale or other conveyance of property interests approved under section 23-111(a) be for an amount equal to or greater than the fair market value of such interest.

J. Because the proposed change in size of the Sun Easement is negligible and the value of the Sun Easement is still outweighed by the value to the City of the City Easement, and because addressing Sun's request provided an opportunity to renegotiate other terms of the Agreement, City staff believes that it is not necessary to charge Sun additional consideration for the requested amendments.

K. Upon the City's grant of the Revised Sun Easement Sun will terminate and vacate the original Sun Easement.

In light of the foregoing recitals, which the Council hereby makes and adopts as determinations and findings, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. The City Council hereby ratifies its prior approval of Ordinance No. 087, 2022 and declares it was the City Council's intent to grant the Sun Easement as described on Exhibit "A" in exchange for the City Easement described on Exhibit "B", and that such exchange was effective as of the date of the Agreement.

Section 2. The City Council finds that amending the Agreement, including granting the Revised Sun Easement, on the terms and conditions described herein, is in the best interests of the City.

Section 3. The City Council authorizes the Mayor to execute an amendment to the Agreement conveying the Revised Sun Easement to Sun 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, including, but not limited to, any necessary changes to the legal description of the Revised Sun Easement, as long as such changes do not materially increase the size or change the character of the interests to be conveyed.

Introduced, considered favorably on first reading on February 6, 2024, and approved on second reading for final passage on February 20, 2024.

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Mayor

ATTEST:

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Interim City Clerk

Effective Date: March 1, 2024

Approving Attorney: Ingrid Decker