

March 26, 2019

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Adjourned Meeting – 6:00 PM

● ROLL CALL

PRESENT: Martinez, Stephens, Summers, Gutowsky, Troxell, Cunniff, Horak
Staff Present: Atteberry, Daggett, Coldiron

1. **Resolution 2019-039 Approving a Construction and Purchase Agreement for Condominium Units Consisting of Two Floors of a New Water Laboratory Building to be Constructed by RMI2 Properties, LLC at the Innosphere Site on East Vine Drive. (Adopted)**

The purpose of this item is to request approval of a Construction and Purchase Agreement ("C&P Agreement") pursuant to which the City's Water and Wastewater Utilities will acquire condominium units consisting of two floors containing approximately 17,600 gross square feet (the "City Units") of a new water laboratory building containing approximately 26,764 gross square feet (the "new building") to be constructed by RMI2 Properties, LLC ("RMI2" or "Developer") at the RMI2 site located at 320 East Vine Drive ("Innosphere").

Utilities currently operates two separate laboratories which are in separate buildings and which have not been significantly renovated since the 1980s. Costs associated with construction and acquisition of the new City Units are currently estimated based on conceptual plans at approximately \$11.5 million, plus equipment for the City Units and decommissioning cost for a total of \$13.5 million, to be split evenly between the Water Fund and the Wastewater Fund.

The proposal for the New Building in partnership with RMI2 stems from the completion of a laboratory master plan funded in the 2017/2018 Budgeting for Outcomes ("BFO") process. Construction of a new facility is currently included in the Utilities Capital Improvement Plan ("CIP"). Funding for preliminary design of the facility is included in the 2019/2020 City Council adopted budget.

Carol Webb, Water Resources and Treatment Director, stated this project involves a state-of-the-art lab facility to be constructed in partnership with RMI2, or Innosphere. The project involves future funding appropriations of approximately \$10.5 million from the water and wastewater funds. The project is located at 320 East Vine on a parcel just west of the current Innosphere facility.

Webb stated a master plan completed in 2018 concluded a new facility was needed to meet City objectives for laboratory space and a partnership with Innosphere met all objectives at a lower cost. The partnership is in the form of a construction and purchase agreement to design and construct a facility with three separate condominium units with the City's units on the first and second floors. The City has the option to purchase the third unit in eight years.

Eric Sutherland stated this does not comply with the City Charter in terms of competitive bidding; sub-contracting is not what was intended to be competitive per that provision. He opposed the initial City participation in the Innosphere project.

Rich Stave discussed the Water Board's dialogue related to this item and brought up questions asked by Boardmembers.

Councilmember Martinez asked how the lease would end. Webb replied this is an ownership model; therefore, the City will own its two units once a certificate of occupancy is issued. The City could sell its two units in the future.

Councilmember Cunniff requested a staff response to the Water Board questions. Webb replied one of the questions was related to the location of the facility compared to the two treatment facilities. She noted this laboratory primarily focuses on finish water testing and this location provides better access to sample sites. Demolition costs are part of the estimates.

Councilmember Cunniff asked if the funds are currently available in reserves. Webb replied in the affirmative.

Councilmember Cunniff asked if there is a scheduling advantage to working with Innospere. Webb replied in the affirmative.

Mayor Pro Tem Horak asked about the Charter provision mentioned by Mr. Sutherland. Judy Schmidt, Senior Assistant City Attorney, replied the Charter provision is intended to cover provisions in which the City hires a contractor to build a city improvement; this will not be a city improvement until the units are purchased.

Mayor Pro Tem Horak suggested the inclusion of a whereas clause to address the issue. City Attorney Daggett replied staff may want to return April 16 with a resolution addressing the \$400,000 obligation.

Councilmember Cunniff stated he cannot support this item.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to adopt Resolution 2019-039.

Mayor Pro Tem Horak noted this provides a timing advantage and monetary savings. He expressed concern about parking but supported the project overall.

Councilmember Stephens stated this is the best option for the cost and therefore the best option for rate payers.

Councilmember Gutowsky stated she will support the motion given the cost effectiveness of the project and ability to include the City's goals in construction.

Councilmember Cunniff stated he does not completely trust the cost/benefit analysis and expressed concern this has been rushed. City Manager Atteberry replied the need for this facility has been documented for several years; however, there has been some need to move forward due to work that has already occurred on Innosphere's part.

Councilmember Cunniff agreed with the master plan and benefits of owning a lab; however, he suggested a short-term program could be utilized while other alternatives are considered.

City Manager Atteberry stated the partnership and collaboration aspects are important.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Stephens, to table this item until Item Nos. 2 and 3 are completed. Yeas: Cunniff, Horak, Troxell, Gutowsky, Stephens, Martinez and Summers. Nays: none.

THE MOTION CARRIED.

● **Consideration of a Motion to go into Executive Session.**

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, that the City Council go into executive session for the purpose of meeting with the City attorneys and City management staff to discuss the following matters as permitted under City Charter, Article 2, Section 11, City Code, Section 2-31(A)(2), and Colorado Revised Statute Section 24-6-402(4)(b): specific legal questions related to pending litigation regarding the City's public nudity ordinance and the manner in which particular policies, practices or regulations of the City related to the public nudity ordinance may be affected by existing or proposed provisions of federal, state or local law.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Summers, Gutowsky, Troxell, Cunniff, Horak

(Council went into executive session at this point and returned at 7:31 p.m.)

4. **Possible Motion Directing the City Attorney on Next Steps Related to Litigation Regarding the City's Public Nudity Ordinance. (Adopted)**

The purpose of this item is for Council to provide possible direction to the City Attorney on the next steps she should take related to pending litigation challenging the City's public nudity ordinance.

Rich Stave questioned recreational aspects of nudity and stated freedom of assembly is important to preserve.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to authorize and direct the City Attorney to take initial steps to preserve the City's right to seek review by the U.S. Supreme Court of the U.S. 10th Circuit Court of Appeals recent decision on the City's public nudity litigation while also exploring settlement of the litigation and continuing with the litigation if no settlement is reached.

Councilmember Martinez stated he would support the motion despite his opinion this is postponing an issue this Council should be addressing.

Mayor Pro Tem Horak disagreed and stated this is keeping options open for the next Council.

Councilmember Stephens stated she would not support the motion as she does not want to spend City funds to further pursue litigation.

Councilmember Summers commented there are several states under the 10th Circuit Court of Appeals; therefore, this decision will have far reaching impacts.

Councilmember Gutowsky supported taking extra time to consider options.

Mayor Troxell stated he would support the motion.

RESULT: MOTION ADOPTED [6 TO 1]
MOVER: Gerry Horak, District 6
SECONDER: Ross Cunniff, District 5
AYES: Martinez, Summers, Gutowsky, Troxell, Cunniff, Horak
NAYS: Stephens

- Return to Discussion of Resolution 2019-039 Approving a Construction and Purchase Agreement for Condominium Units Consisting of Two Floors of a New Water Laboratory Building to be Constructed by RMI2 Properties, LLC at the Innosphere Site on East Vine Drive. (Adopted)

Mayor Troxell reintroduced the item per the motion to table.

City Attorney Daggett presented new Resolution language which documents Council's concern about the procurement process, that the agreement requires the developer to use competitive bidding for sub-contracts and materials, discusses the relationship of the Charter to the larger real estate transaction and addresses the initial payment as an exception to the competitive purchase process.

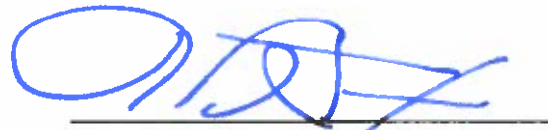
Mayor Pro Tem Horak and Councilmember Stephens accepted the language as part of the main motion.

Councilmember Cunniff stated the language addresses his concern about the indirect purchasing; however, he stated he would not support the motion given the analysis of alternatives. He suggested standardizing the cost/benefit analysis process in the future.

RESULT: RESOLUTION 2019-039 ADOPTED AS AMENDED [6 TO 1]
MOVER: Gerry Horak, District 6
SECONDER: Kristin Stephens, District 4
AYES: Martinez, Stephens, Summers, Gutowsky, Troxell, Horak
NAYS: Cunniff

● **ADJOURNMENT**

The meeting adjourned at 7:56 PM.



Mayor

ATTEST:



City Clerk

