

ORDINANCE NO. 025, 2019
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING A NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT
FOR CITY STORM SEWER LINES ON COLORADO STATE UNIVERSITY
RESEARCH FOUNDATION PROPERTY, INCLUDING VACATION OF
EASEMENTS GRANTED IN 1966 RIGHT-OF-WAY AGREEMENT

WHEREAS, the Board of Governors of the Colorado State University System, acting by and through Colorado State University (“Colorado State”) as grantor and the City of Fort Collins, Colorado (“City”), as grantee entered into a Right of Way Agreement dated May 27, 1966 (“ROW Agreement”) whereby Colorado State granted to the City a right of way for the construction, maintenance, servicing and operation of underground storm sewer lines upon certain properties of Colorado State University; and

WHEREAS, a portion of the storm sewer lines installed under the ROW Agreement are on real property now owned by the Colorado State University Research Foundation (“CSURF”); and

WHEREAS, the parties have reviewed the currently existing City storm sewer lines installed under the ROW Agreement and have agreed to restate the legal description to depict the specific areas in which such lines are located and currently exist as of the date surveyed on March 2, 2018; and

WHEREAS, the parties have further agreed to replace and restate the ROW Agreement in its entirety, including vacation and termination of the prior grant of easement rights for storm sewer lines set forth in the ROW Agreement and the grant of easement rights for the existing City storm sewer lines on the terms and conditions set forth in the Non-Exclusive Utility Easement Agreement attached hereto as Exhibit A and incorporated herein by this reference (the “New Utility Easement Agreement”); and

WHEREAS, the vacation of the easements for stormwater purposes granted in the ROW Agreement by approval of the New Utility Easement Agreement requires Council action by Ordinance pursuant to Section 23-115 of the Fort Collins City Code; and

WHEREAS, staff has advised Council that easements granted in the ROW Agreement for City storm sewer lines are no longer needed for public right-of-way purposes and it is in the public’s interest to vacate the same upon the grant of the easements for City storm sewer lines set forth in the New Utility Easement Agreement; and

WHEREAS, staff has advised Council that the City Engineer has routed the vacation request to, and solicited comments from potentially affected utility agencies, City staff, emergency service providers and affected property owners in the vicinity of the right of way and easements to be vacated, if any, and recommended vacation of the easements for City storm sewer lines granted in the ROW Agreement to the City’s Director of Planning, Development and Transportation, who has in turn recommended to Council vacation of the easements for City storm

sewer lines granted in the ROW Agreement upon the grant of the easements for City storm sewer lines set forth in the New Utility Easement Agreement.

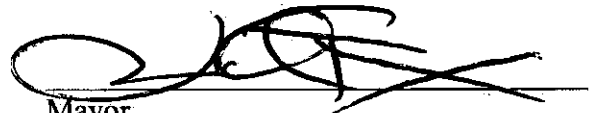
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS:

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

Section 2. That the City Council hereby vacates the easements for City storm sewer lines as set forth in the ROW Agreement upon the effective date of the New Utility Easement Agreement. Title to the vacated right-of-way shall vest in accordance with Colorado Revised Statutes Section 43-2-302.

Section 3. That the City Council hereby accepts the easements for City storm sewer lines as granted in the New Utility Easement Agreement.

Introduced, considered favorably on first reading, and ordered published this 19th day of February, A.D. 2019, and to be presented for final passage on the 5th day of March, A.D. 2019.



Mayor

ATTEST:



City Clerk




Passed and adopted on final reading on the 5th day of March, A.D. 2019.



Mayor

ATTEST:



City Clerk



Non-Exclusive Storm-water Utility Easement Agreement

This Non-Exclusive Storm-water Utility Easement Agreement ("Agreement") is entered into this _____ day of January, 2019, by and between **Colorado State University Research Foundation**, a non-profit Colorado corporation whose address is 2537 Research Blvd., Fort Collins, CO 80526 ("Grantor"), and **The City of Fort Collins, Colorado**, a municipal corporation ("Grantee").

1. **Grantor's Property.** Grantor is the owner of a certain parcel of real property located in Larimer County, Colorado, which is depicted on Exhibit A attached hereto and made a part of this Agreement by reference hereto (the "Property.")

2. **Grant of Non-Exclusive Storm-Water Utility Easement: Consideration and Description.** For and in consideration of the covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the terms herein. Grantor grants and conveys to the Grantee a non-exclusive storm-water utility easement on, over, under and across the Property, subject to the conditions contained herein and more particularly described on Exhibit B attached hereto and incorporated herein (the "Easement").

3. **Purpose and Use:** Grantor grants this Easement solely for the purpose of installing, accessing, operating, inspecting, repairing, maintaining or replacing storm-water drainage improvements.

3.1. **Access.** During the term of this Agreement and subject to all provisions herein, Grantee shall have access at all times to the Easement for construction, repair, operation and maintenance of the storm-water improvements.

3.2. **Other Easements/Non-exclusive Uses.** This Easement is granted subject to all easements, rights-of-way and other matters of record previously granted and now in force and effect. Grantor makes no warranties or representations as to matters of title. Grantor may grant other easements within the Easement, so long as Grantee's use of the Easement is not unreasonably impaired. Grantee agrees to cooperate with Grantor and the recipients of other easements in the construction, installation, use and maintenance of the Easement. Grantee shall not grant any easements within or other rights to use the Easement.

4. **Agreement of Grantee.** In exchange for GRANTOR's grant of the Easement, Grantee agrees to the following terms:

4.1. **Survey.** The Grantee agrees that the legal description and depiction attached hereto as exhibits are for the purpose of generally depicting the boundaries of the Easement, and GRANTOR assumes no responsibility for the accuracy of such exhibits nor for damages resulting from inaccuracies therein.

4.2. Environment and Character of Land and Restoration. Any work or activity undertaken by Grantee in connection with this Agreement shall be so planned, designed and carried out as to interfere as little as reasonably possible with the character, appearance, and potential development of the land and the surrounding environment, including its aesthetic character. After completion of any installation, repair, operation, maintenance or replacement work undertaken in connection with this Agreement, Grantee shall restore the land and any improvements thereon to the condition immediately prior to such work.

4.3. Drawings and Specifications. Drawings and specifications for initial installation and any major repair work contemplated in this Agreement shall be submitted to Grantor or its representative for approval prior to commencement of any work. Such review and approval shall be for the purpose of determining whether or not the proposed improvements are consistent with the rights granted in this Agreement, and any approval by Grantor shall not be construed as expanding such rights, or as an approval of the technical merits or adequacy of the improvements. The Grantee shall be solely responsible for performing the work or construction in accordance with the rights granted herein and for any liability arising from the performance of such work.

4.4. Consent for Work. Except in cases of emergency and routine maintenance, Grantee shall obtain the prior consent of Grantor or its representative before undertaking any work or activity within the Easement. Such consent shall not be unreasonably withheld. All access routes to the Easement for the Grantee's construction, repair, operation, or maintenance of the Improvements shall be by route or routes reasonably designated by Grantor.

4.5. Costs. Grantor will not be responsible for any costs incurred for any installation repair, operation, maintenance or replacement of the storm-water improvements.

4.6. Surface Structures. Grantor shall prohibit all surface use unless the Grantor determines that it is incidental, necessary to the intended purpose of the Easement, and not inconsistent with the non-exclusive nature of the easement granted. In those cases where the Grantor has determined that surface use is acceptable, all surface structures or devices must be approved by Grantor, and shall be so located as to present the least possible interference to Grantor's use and preservation of the value of the surface of the land.

4.7. Maintenance. Grantee shall properly maintain all facilities and equipment erected or installed by the Grantee in connection with this Agreement. Grantor may, after written notice to Grantee, so maintain such improvements at Grantee's cost upon any failure by Grantee to properly maintain as required hereunder.

4.8. Indemnification. Grantee agrees to indemnify, defend and hold harmless Grantor against all liability, loss and expense and against all claims and actions based upon or arising out of Grantee's use of the Easement or arising out of injury or death to persons or damage to property, caused by any acts or omissions of Grantee, its successors, assigns, agents or contractors. In the event that Grantee contracts for any work to be performed in the Easement, Grantee shall require its contractors and subcontractors to indemnify, defend and hold harmless

Grantor, its employees and agents from any and all claims, damages and liabilities whatsoever for injury or death to persons or damage to property arising from the contractors' and/or subcontractors' actions or inactions. All contractors and subcontractors shall be required by Grantee to abide by and follow the provisions of this Easement.

4.9. Compliance with Rules and Regulations. Grantee will comply with all reasonable rules and regulations regarding the use of the land which have been or may be adopted by Grantor, to the extent such compliance does not unreasonably interfere with Grantee's use of the Easement as contemplated in this Agreement.

4.10. Removal of Access Routes and Work Areas. Routes of access to the Easement and work areas used for construction, repair, operation, maintenance or removal of Grantee's storm-water improvements shall be as few as necessary, and, if access involves areas outside of existing drives and parking areas, Grantee shall destroy and remove them, restoring the land in the manner provided in paragraph 4.2 above. Should Grantee fail to restore the land as required herein, Grantor may, after written notice to Grantee, take such action necessary to restore the land, and Grantee shall be liable for actual reasonable costs incurred in completing such restoration.

5. Rights Reserved by Grantor. Grantor reserves all rights (including mineral rights) in the land described, and the right to occupy and use it for all purposes not inconsistent with the rights granted herein to the Grantee.

5.1. Continuous Use, Right of Entry for Condition Broken. This Agreement is conditional on Grantee's continuous use of the Easement for the purposes described herein, and if the Grantee shall cease to use the Easement for the described purposes, Grantor shall have the right to re-enter the said unused premises and terminate this Agreement by bringing an action of ejectment or an equivalent action after having given notice of Grantor's election to so terminate in the manner specified in Section 6.5 of this Agreement.

5.2. Right to Relocate. Grantor reserves the right, at Grantor's cost, to relocate the Easement and any storm-water improvements constructed by Grantee hereunder so long as such relocation does not adversely impact the purpose of the Easement and the performance of said improvements.

6. Other Terms and Conditions. The parties agree to the following additional terms and conditions:

6.1. Additional Use. Use of the Easement for any purpose not specified herein shall require prior amendment of this Agreement, executed in the same manner as this Agreement.

6.2. Non-Assignability. Neither this Agreement nor the Easement may be assigned by the Grantee in whole or in part without Grantor's prior written consent.

6.3. Successors. Subject to the limitations on assignment set forth in paragraph 6.2 herein, this Agreement shall be binding on the parties' legal successors.

6.4 No Third Party Beneficiary: It is expressly understood and agreed that the enforcement and conditions of this Agreement and all rights contained herein relating to enforcement, shall be strictly reserved to Grantor and the Grantee. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third person or entity. It is the express intention of Grantor and the Grantee that any such person or entity, other than Grantor or the Grantee, receiving benefits under this Agreement shall be deemed an incidental beneficiary only.

6.5. Representatives and Notice. Any reference to actions by Grantor herein shall include the Grantor or its designated representative. For the purposes of this Agreement, the parties designate the following persons as their representatives and list the following addresses for the delivery or mailing of notices and other communications:

Representative for the Grantee:

Real Estate Services Manager
City of Fort Collins
P.O. Box 580
Fort Collins, CO 80522-0580

With a Copy to:
City Attorney's Office
P.O. Box 580
Fort Collins, CO 80522-0580

Representative for GRANTOR:

Colorado State University Research
Foundation
P.O. Box 483
Fort Collins, CO 80522
OR for delivery:
2537 Research Boulevard
Fort Collins, CO 80526

Any notice required or desired to be given under this Agreement shall be delivered or mailed by certified mail to the addresses listed above.

7. Jurisdiction. The laws of the State of Colorado and the rules and regulations issued pursuant thereto shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, that provides for arbitration by any extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations shall be considered null and void. Nothing contained in any provision incorporated herein by reference which purports to negate this or any other special provision in whole or in part shall be valid or enforceable or available in any action at law whether by way of complaint, defense, or otherwise.

8. Severability. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this Agreement to the extent that the agreement of the parties is capable of execution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written above.

Colorado State University Research Foundation

By: _____
Kathleen Henry, President

Approved as to form:

Donna Baily
Senior Legal Counsel

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2019 by Kathleen Henry, as President for Colorado State University Research Foundation.

My commission expires _____.
Witness my hand and official seal.

Notary Public

GRANTEE:

**THE CITY OF FORT COLLINS, COLORADO
a Municipal Corporation**

Date: _____

By: _____
Darin A. Atteberry, City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

Date: _____

STATE OF COLORADO)
) ss
COUNTY OF LARIMER)

The foregoing instrument was acknowledged before me this _____ day
of _____, 2019, by Darin A. Atteberry as City Manager and
_____ as City Clerk of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires:

Notary Public

EXHIBIT B

**DESCRIPTION OF A UTILITY EASEMENT TO BE CONVEYED
TO THE CITY OF FORT COLLINS
(CSURF, SECTION 23-7-69)**

A STRIP OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 7 NORTH, RANGE 69 WEST OF THE SIXTH P.M.; CITY OF FORT COLLINS, COUNTY OF LARIMER, STATE OF COLORADO; BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF LARIMER COUNTY ASSESSOR PARCEL NO. 97231-00-902 (SAID PARCEL BOUNDED ON THE WEST BY CENTRE AVENUE, ON THE NORTH BY UNIVERSITY PLACE P.U.D., ON THE EAST BY LOT 5 OF THE HAUSER SUBDIVISION, AND ON THE SOUTH BY THE PARCEL DESCRIBED IN THE WARRANTY DEED RECORDED JULY 17, 2013 AT RECEPTION NO. 20130057135) THAT LIES EAST OF THE UTILITY EASEMENT DESCRIBED IN THE NON-EXCLUSIVE UTILITY EASEMENT AGREEMENT RECORDED APRIL 12, 2016 AT RECEPTION NO. 20160025393.

CONTAINING 3,842 SQUARE FEET (0.088 ACRES), MORE OR LESS, AND BEING SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY OF RECORD OR THAT NOW EXIST ON THE GROUND.

I HEREBY STATE THAT THE ABOVE DESCRIPTION WAS PREPARED BY ME AND IS TRUE AND CORRECT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, BELIEF, AND OPINION.

JOHN STEVEN VON NIEDA, COLORADO P.L.S. 31169
FOR AND ON BEHALF OF THE CITY OF FORT COLLINS
P.O. BOX 580, FORT COLLINS, CO 80522



EXHIBIT A

EXHIBIT OF
UTILITY EASEMENT TO BE CONVEYED TO THE CITY OF FORT COLLINS
(CSURF, SECTION 23)

PROSPECT RD.

UNIVERSITY PLACE P.U.D.

COLORADO STATE
UNIVERSITY RESEARCH
FOUNDATION (PARCEL NO.
97231-00-902)

BOARD OF GOVERNORS OF THE COLORADO STATE
UNIVERSITY SYSTEM, REC. NO. 20130057135

CENTER AVE

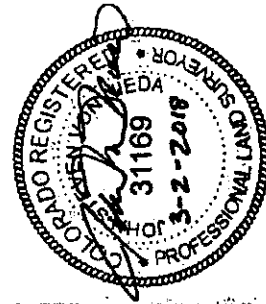
20' WIDE ELEC. UTIL. ESMT. TO CITY, REC. NO. 20160025393

LOT 5,
HAUSER SUBD.

EASEMENT AREA
(3,842 S.F.)



FEBRUARY 23, 2018
1"=100'



THIS EXHIBIT'S SOLE INTENT IS TO GRAPHICALLY REPRESENT AND AUGMENT THE ATTACHED PROPERTY DESCRIPTION. IT DOES NOT REPRESENT A MONUMENTED LAND SURVEY AS DEFINED IN C.R.S. 38-51-102. IN THE EVENT OF DISCREPANCIES BETWEEN THIS EXHIBIT AND THE ATTACHED PROPERTY DESCRIPTION, THE INFORMATION CONTAINED WITHIN THE ATTACHED PROPERTY DESCRIPTION SHOULD BE RELIED UPON.