

ORDINANCE NO. 009, 2021
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CONVEYANCE OF AN EASEMENT TO
LARIMER COUNTY FOR REMEDIATION ACTIVITIES
ON CATHY FROMME PRAIRIE NATURAL AREA
IN ACCORDANCE WITH THE CITY'S INTERGOVERNMENTAL AGREEMENT WITH
LARIMER COUNTY AND LOVELAND FOR CORRECTIVE MEASURES
RELATED TO THE LARIMER COUNTY LANDFILL

WHEREAS, the City is the owner or joint owner with Larimer County (the "County") of multiple parcels of land adjacent to Taft Hill Road south of Harmony Road know as Cathy Fromme Prairie Natural Area and managed by the City (the "Natural Area"); and

WHEREAS, the City is also the joint owner with the County and the City of Loveland ("Loveland"), of land adjacent to the Natural Area used as the Larimer County Landfill and managed by the County (the "Landfill"); and

WHEREAS, on December 22, 2020, the Council adopted Resolution 2020-119, approving an agreement by and among the City, Larimer County and the City of Loveland (the "IGA") regarding their mutual commitments and responsibilities related to the remediation of environmental contamination at and from the Landfill; and

WHEREAS, Section V.D of the IGA requires the City Manager to present for Council approval in January 2021 an ordinance authorizing a future easement consistent with and subject to the requirements of that provision; and

WHEREAS, specifically, Section V.D. provides as follows:

1. All parties to the IGA will rely on a Colorado Department of Public Health and Environment ("CDPHE") approval of a remediation plan to set the standards (numeric or descriptive) for environmental cleanup of the Natural Area;
2. The County will use its best reasonable efforts to avoid any disturbance of the Natural Area;
3. If notwithstanding the requirement in subparagraph 2 above, the Natural Area must be disturbed:
 - a. The County will protect (in its proposal to CDPHE) all Natural Area values stated in the Fort Collins Natural Areas and Conserved Lands Easement Policy for the Natural Area (attached to the IGA as Exhibit C);
 - b. The County proposal to CDPHE for approval will describe (1) the Natural Area values underlying or impacted by its proposal, and (2) how the strategies in the proposal attain and protect those values;

- c. Fort Collins will accept a CDPHE approval that is based on Natural Area values as determined by CDPHE after CDPHE's review of the County proposal;
- d. In January 2021, the Fort Collins City Manager will present to and recommend for approval to the Fort Collins City Council an ordinance authorizing the easement that is required for the County to implement the Landfill Corrective Measures Work, consistent with this Section V.D. This ordinance will confirm that any easement as required for the remediation plan developed and approved in accordance with this Section V.D is authorized and shall be granted (without payment of real estate-related charges) in accordance with this Section, subject only to the general resource protection standards, and standards and guidelines for restoration in the Fort Collins Natural Areas and Conserved Lands Easement Policy. Any costs incurred by the County in complying with these objective requirements of the Easement Policy shall be Remediation Costs. If the ordinance referenced in this paragraph is not approved in January, 2021 and has not been authorized at such time as a need for an easement arises in the future, the failure to approve such an ordinance shall be considered a breach.
- e. By way of example but not limitation, although Fort Collins strongly disfavors phytoremediation on the Natural Area, if the Landfill Corrective Measures Work as approved by CDPHE requires such phytoremediation after consideration of the matters set forth in this Section V.D, the easement will include authorization for phytoremediation; and

WHEREAS, as the County's remediation work has not yet been designed, proposed to or approved by CDPHE, City staff does not yet know whether the implementation of the remedy will require activities on the Natural Area and, if so, what the nature and extent of the activity on the Natural Area will be; and

WHEREAS, after development of the remedy in accordance with the IGA, the City Manager and City Attorney will confer and prepare an easement describing the Easement Area and incorporating the resource protection and restoration guidelines standards as set forth in the IGA (the "Easement"); and

WHEREAS, the County will pay the City's administrative fees for processing its application for the Easement; however, the IGA provides that the County will not be charged for the value of the Easement because the City is a joint owner of the benefitted Landfill property and the remediation effort will benefit the City as well as the County; and

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

WHEREAS, under Section 23-114 of the City Code, any sale or lease of City property interests must be for an amount equal to or greater than the fair market value of such interests unless the City Council determines that such sale or lease serves a bona fide public purpose based on the five factors listed in Section 23-114; and

WHEREAS, conveying the Easement to the County for less than fair market value serves a bona fide public purpose because:

- (1) The use to which the Easement will be put promotes the health and safety of the citizens of Fort Collins by monitoring groundwater for contamination so that it can be controlled and remediated;
- (2) The use to which the Easement will be put supports the City Council's commitment to environmental health as outlined in the Strategic Plan;
- (3) The financial support provided by the City through the below-market conveyance of the Easement will be leveraged with other funding and assistance from the County;
- (4) The grant of the Easement will not result in any direct financial benefit to any private person or entity, except as an incidental consequence that is not substantial relative to the public purpose being served;
- (5) Conveying the Easement to the County at less than fair market value will not interfere with current City projects or work programs, hinder workload schedules or divert resources needed for primary City functions or responsibilities; and

WHEREAS, accordingly, it is the Council's desire to authorize the City Manager, in consultation with the City Attorney, to present the Easement to the Mayor for signing under the authority granted in this Ordinance when the City Manager determines it is appropriate after the successful completion of the steps described above.

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

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

Section 2. That the City Council hereby finds that the conveyance of the Easement to the County in accordance with the IGA as provided herein is in the best interests of the City and serves a bona fide public purpose.

Section 3. That the Mayor is hereby authorized to execute such documents as are necessary to convey the Easement to the County on terms and conditions determined by the City Manager and City Attorney to be 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 or effectuate the purposes of this Ordinance or the IGA.

Introduced, considered favorably on first reading, and ordered published this 5th day of January, A.D. 2021, and to be presented for final passage on the 19th day of January, A.D. 2021.

ATTEST:



City Clerk



Passed and adopted on final reading on the 19th day of January, A.D. 2021.

ATTEST:


City Clerk


Mayor

