

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 13

DATE: November 4, 2003

STAFF: Greg Byrne

### SUBJECT

---

Resolution 2003-119 Authorizing the City Manager to Grant Revocable Permits to Xcel Energy and the U.S. Environmental Protection Agency on Certain City Property Under and Adjacent to the Poudre River for Environmental Investigation and Remediation Activities.

### RECOMMENDATION

---

Staff recommends adoption of the Resolution.

### FINANCIAL IMPACT

---

There is no financial impact associated with the proposed access agreements. City staff is recommending that no compensation be required for the grant of access rights.

### EXECUTIVE SUMMARY

---

In order to allow environmental investigation and remediation work to proceed in and adjacent to the Poudre River between Gustav Swanson Natural Area and the Northside Aztlan Center property, the City will need to grant revocable permits, in the form of license agreements, to Xcel Energy and the U.S. Environmental Protection Agency. At this time the specific work plans for the work to be carried out are not completed. However, because there is an ongoing release of tarry material into the Poudre River, the work will need to proceed promptly once the details of the plans are completed. Consequently, staff is recommending that the City Council adopt this Resolution in order to authorize the City Manager to enter into the necessary license agreements, including such terms and conditions as may be necessary to protect the interests of the City and minimize impacts to the City's property.

### BACKGROUND

---

In 2001, the City initiated an EPA-funded Brownfield Pilot Project that was intended to assess the environmental conditions in the vicinity of the City's Northside Aztlan Center located between Willow Street and the Poudre River to the northeast of the downtown area, for the purpose of facilitating the development of a new Northside Center on the property and the development of other property in the area. In late 2002, a seep of thick dark material was observed in the Poudre River adjacent to the Aztlan Center property. Since that time, additional investigation of the nature and source of this release has proceeded, funded with additional EPA

Brownfields grant funding. The seep, which subsided or was not observable during portions of the year, has again been observed in this River in the autumn of 2003, with the drop in the water level in the River.

Based on the information available at this time, EPA and the Colorado Department of Public Health and Environment ("CDPHE") have indicated that they believe the source of the seep material is associated with the manufactured gas plant ("MGP") that operated in the early 1900s on property now owned by Schrader Oil Company across Willow Street from the Aztlan Center property. Poudre Valley Gas, the company that operated the MGP, was acquired by Public Service Company, which has since become a part of Xcel Energy. Xcel Energy has been actively involved in evaluating the seep, and has agreed in concept to investigate and take appropriate temporary action prevent the seep from continuing to be released into the River. Xcel and EPA are working to negotiate an Administrative Order on Consent related to the work Xcel will proceed to carry out.

Because most of the property along the Poudre River, and some portions of the Poudre River channel, are owned by the City, City staff recommends that the City proceed to negotiate the license agreements that will be needed to provide for access to the River and allow the investigation and remediation work to proceed. At this time, the specific scope of the work to be completed has not been finalized, although it appears that access across both the Gustav Swanson Natural Area to the north of the River, and the Aztlan Center property to the south of the River, will be needed. Generally, the work is likely to include diversion of some River flows within the River channel, the use of large equipment in the bed of the River and along its banks, and some drilling and trenching in and near the River. Portions of the City's properties may be needed for staging, equipment storage and other related work, and public access to the areas of Xcel's activities will need to be controlled. In order to facilitate allowing the work to proceed as quickly as possible once the scope of work is finalized, City staff recommends that the City Council authorize the City Manager to enter into license agreements with Xcel Energy and EPA that will provide for the needed site access and use, and will minimize, to the extent feasible, the impacts on the City's property.

RESOLUTION 2003-119  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CITY MANAGER TO GRANT  
REVOCABLE PERMITS TO XCEL ENERGY AND  
THE U.S. ENVIRONMENTAL PROTECTION AGENCY  
ON CERTAIN CITY PROPERTY UNDER AND ADJACENT TO  
THE POUUDRE RIVER FOR ENVIRONMENTAL  
INVESTIGATION AND REMEDIATION ACTIVITIES

WHEREAS, the City of Fort Collins (the "City") is the owner of various properties to the north, south and under the Poudre River between College Avenue and Linden Street, including Gustav Swanson Natural Area (the "Natural Area") to the north of the River, and the Northside Aztlan Center property, including the property on which the United Way Building is situated (collectively referred to as the "Aztlan Property") to the south of the River; and

WHEREAS, the City has, through the U.S. Environmental Protection Agency ("EPA") Brownfields grant program undertaken an ongoing investigation of environmental conditions on the Aztlan Property and its environs; and

WHEREAS, in connection with the City's environmental investigations, a seep of tarry material in the Poudre River, in the general location shown on the drawing attached hereto as Exhibit "A", has been observed and has prompted further investigation and review by the EPA and the Colorado Department of Health and Environment ("CDPHE"); and

WHEREAS, in order to identify the source and nature of the seep into the River, and to prevent the immediate and ongoing release of the tarry material into the River, EPA has directed that additional investigation and remediation activities in and around the River must proceed in the coming weeks; and

WHEREAS, based on the information currently available, the source of the seep is believed by EPA and CDPHE to be upgradient of City property, and the seep is believed to have its origins in the manufactured gas plant and related operations that took place on the property to the south of Willow Street and the Aztlan Property in the early to mid 20th century; and

WHEREAS, Xcel Energy ("Xcel"), the successor-in-interest to the manufactured gas plant operations, is in the process of negotiating with EPA an Administrative Order on Consent that would provide for Xcel to carry out certain investigation and remediation activities in and adjacent to the River; and

WHEREAS, in order for the proposed investigation and remediation work to be initiated and completed, Xcel and EPA will require permission from the City to access and conduct work on the Natural Area and the Aztlan Property, and the bed of the Poudre River; and

WHEREAS, in order to facilitate the completion of said work, and to cooperate with EPA, CDPHE and Xcel in addressing environmental conditions of concern on and affecting the Aztlan Property, the River and other adjacent properties, City staff has recommended that the

City Council authorize the City Manager to negotiate and enter into license agreements with Xcel and EPA by which the City will grant the required access; and

WHEREAS, the detailed plans for the investigation and remediation work to be completed, including necessary backfill and restoration of the affected area upon completion of that work, are not yet available, but shall be subject to review and approval by the City Manager in order to ensure that no avoidable adverse impacts upon the Natural Area or Aztlan Property or other City improvements will result from the activities on those properties; and

WHEREAS, Article XI, Section 10, of the Charter of the City of Fort Collins authorizes the Council to permit the use or occupation of any street, alley, or public place, provided that such permit shall be revocable by the Council at its pleasure, whether or not such right to revoke is expressly reserved in such permit.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the City Manager is hereby authorized to execute such documents as are necessary to grant such revocable permits to Xcel and to EPA as may be consistent with the terms and intended purpose of this Resolution, together with such additional terms and conditions as the City Manager, in consultation with the City Attorney, deems necessary or appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted at a regular meeting of the City Council of the City of Fort Collins commenced on the 4th day of November A.D. 2003.

---

Mayor

ATTEST:

---

City Clerk