

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 20

DATE: April 4, 2006

STAFF: Mike Smith

### SUBJECT

Resolution 2006-039 Authorizing Extension of a Lease of the City Ditch on City-owned Property at 2005 North Overland Trail in Larimer County, Colorado to Larimer County Canal No. 2 Irrigating Company Through April 5, 2008.

### RECOMMENDATION

Staff recommends adoption of the Resolution.

### EXECUTIVE SUMMARY

This Resolution authorizes the extension of a lease to Larimer County Canal No. 2 Irrigating Company of the City Ditch on the City's old Water Works Property at 2005 North Overland Trail Road. Although the original 1906 lease provided for an automatic renewal of the lease for an additional 99-year term at the Ditch Company's option, the Council's authorization at the time only authorized the lease for the initial 99 years. Pending resolution of this matter for the long term, a short term extension will allow the continued use of the City Ditch for irrigation flows on the same terms as have been in place during the original lease term, and will avoid disruption of the right to run those irrigation flows in the City Ditch for the 2006 irrigation season. In March 2005, the Council authorized extension of the lease for one year, but permanent arrangements have not yet been developed.

### BACKGROUND

In 2005, Poudre Landmarks Foundation was granted funds by the Colorado Historical Society for use to restore a drop structure in the City Ditch on the City's old Water Works property at 2005 North Overland Trail Road that is in need of replacement. In researching ownership of the City Ditch in connection with that grant, it was determined that the lease that has provided for use of the City Ditch by Larimer County Canal No. 2 Irrigating Company since 1906 was to expire on April 13, 2005. Included in the terms and conditions of the 1906 lease is a provision that allows the Ditch Company to extend the lease for an additional 99-year term, at its option. The Ditch Company had notified the City of its desire to exercise this option. However, the City Council Resolution on April 5, 1906, authorizing the lease did not authorize the extension beyond the original 99-year term. In March 2005, the Council adopted Resolution 2005-023, which authorized extension of the lease for one year, but permanent arrangements have not yet been developed. Consequently, staff is proposing to extend the lease for up to two additional years in order to avoid disruption of the irrigation flows in the Ditch and to allow time to arrange for and get proper Council authorization for more permanent arrangements. The City is a major shareholder in the Irrigating Company.

RESOLUTION 2006-039  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE EXTENSION OF A LEASE OF  
THE CITY DITCH ON CITY-OWNED PROPERTY AT  
2005 NORTH OVERLAND TRAIL IN LARIMER COUNTY, COLORADO  
TO LARIMER COUNTY CANAL NO. 2 IRRIGATING COMPANY  
THROUGH APRIL 5, 2008

WHEREAS, the City of Fort Collins (the "City") is the owner of property known as the Old Water Works Property located at 2005 North Overland Trail Road, in Larimer County, Colorado (the "Property"); and

WHEREAS, the Property contains a ditch that was originally used to carry water to the power plant that powered the Old Water Works on the Property (the "City Ditch"); and

WHEREAS, on April 5, 1906, the City Council adopted a resolution which authorized the lease of the City Ditch to Larimer County Canal No. 2 Irrigating Company (the "Ditch Company") for a period of 99 years, in exchange for construction of certain improvements and maintenance and repair of the City Ditch and related structures; and

WHEREAS, on April 13, 1906, the City and the Ditch Company entered into a lease agreement providing for the lease of the City Ditch, in exchange for construction of certain improvements and maintenance and repair of the City Ditch and related structures, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Lease"); and

WHEREAS, the Lease states that the Ditch Company may, at its option, renew the Lease for an additional ninety-nine year period, but this option to renew had not been approved by the City Council in the resolution authorizing the Lease; and

WHEREAS, the Lease expired on April 13, 2005; and

WHEREAS, on March 15, 2005, the Council approved Resolution 2005-023, authorizing only a one-year extension of the Lease to the Ditch Company; and

WHEREAS, the Ditch Company has a continued need to use the City Ditch, particularly during the coming irrigation season, and there is substantial value to the City in avoiding the disruption of irrigation flows that would result if the City Ditch were not available to convey said flows; and

WHEREAS, the Ditch Company has expressed an interest in discussing alternative types of arrangements for its use of the City Ditch, and this Lease extension would allow time for discussions regarding long-term arrangements between the City and the Ditch Company; and

WHEREAS, under Section 23-114 of the Code of the City of Fort Collins, the Council is authorized to approve by resolution the lease any and all interests in real property owned in the name of the City for a period of two years or less, provided that Council first finds that the lease is in the best interests of the City.

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

Section 1. That the Council hereby finds that extension of the Lease of the City Ditch to the Ditch Company for irrigation purposes for a period of up to two (2) additional years through April 5, 2008, is in the best interests of the City of Fort Collins.

Section 2. That the City Manager is hereby authorized to execute an agreement extending the Lease through April 5, 2008, consistent with the terms of this Resolution, upon such terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City, including any necessary corrections to the legal description of the City Ditch that do not result in a material increase or change in character of the intended lease area.

Passed and adopted at a regular meeting of the City Council held this 4th day of April, 2006.

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Mayor

ATTEST:

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City Clerk

## LEASE.

THIS INSTRUMENT, made this 12<sup>th</sup> day of April, A. D. 1906, between the City of Fort Collins, hereinafter designated as the City, party of the first part, and The Larimer County Canal No. 2 Irrigating Company, a corporation, hereinafter designated as the Company, party of the second part,

WITNESSETH: That the said City, for and in consideration of the sum of One Dollar, the receipt of which is hereby acknowledged, and for the further consideration of the covenants and agreements hereinafter set forth to be kept and performed by said Company, its successors and assigns, has leased and demised and does hereby lease and demise unto said Company, that certain ditch right of way known as the City Ditch, said ditch having its headgate on the south bank of the Cache la Poudre River near La Porte, Colorado, and running thence in a southeasterly direction to the power plant belonging to the system of water works of said City.

TO HAVE AND TO HOLD the above described premises, with the appurtenances, unto said Company, its successors and assigns, for the period of ninety-nine years from and after the date of the ensembling of these presents, upon the following conditions.

First: That said Company will receive the said ditch in the condition it is now in; that it will put it in first class repair, and maintain it in first class condition for the uses and purposes for which it is to be used, without charge or expense to said City.

Second: That said Company will without unreasonable delay enlarge said ditch to a capacity sufficient to carry the water decreed to said Company, together with the amount

of water necessary to operate said power plant as the same has been heretofore operated.

Third: That during the term of this lease the dam and headgate belonging to said ditch will be maintained and kept in good repair by said Company at its own expense.

Fourth: That said Company will construct and maintain the necessary structures and provide all the sufficient means for the proper diversion of the waters to which the parties hereto are entitled at said power plant, so that the power rights now and heretofore enjoyed by said City will not at any time be impaired; and that at any and all times when said City or its grantees may desire to operate said power plant, for any purpose whatever, said Company will permit the water necessary therefor to be carried in said ditch and applied to said power plant without cost and without hindrance of any kind.

Fifth: Said Company shall have full control and operation of said leased premises; and for the purpose of enlarging and keeping the same in repair as hereinabove stipulated said Company shall have the right to take and use from the land belonging to said City <sup>and</sup> ~~or~~ from the ditch right of way, and upon which said ditch is situated all the dirt necessary, without cost; provided, however, that such control and operation of said premises will at no time interfere with the full operation of said power plant by said City or its grantees.

Sixth: Said Company shall be liable for any and all damages which may be caused to persons or to property by reason of its, the Company's, negligence in failing to keep said premises in proper repair and safe condition.

Seventh: At the expiration of the term of this lease the same may be renewed for a like period on the same terms, at the option of said Company.

It is further expressly agreed and understood by the parties hereto that so long as said Company faithfully performs the foregoing conditions this lease shall be in full force and effect, but in the event of failure of said Company to faithfully perform any of said conditions, then said City may, upon giving thirty days notice, declare this lease null and void. If, at the expiration of said thirty days said Company is still in default as to the performance of said conditions, said Company hereby agrees in case of forfeiture of its rights under this lease that it will vacate said premises without requiring said City to pursue its remedy at law.

IT WITNESSETH HEREBY said City has caused its name to be affixed by its Mayor, and its corporate seal attached by its City Clerk, by virtue of a resolution adopted by its City Council at a meeting held on the 5th day of April, A. D. 1906, and said Company has caused its corporate name to be hereunto subscribed by its president, and its corporate seal to be hereunto affixed by its secretary, by virtue of a resolution adopted at a meeting of its Board of Directors held on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 1906, the day and year first above written.

Attest:-

*W. H. Bennett*  
City Clerk.

The City of Fort Collins, Colorado,  
by

*J. H. Bennett*  
Mayor.

THE LARSEN COUNTY CANAL  
NO. 2 IRRIGATION CO.

Attest:-

*J. L. Howard*  
Secretary.

by

*M. A. Drake*  
President.