

RESOLUTION 2017-041
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUPPORTING A PRELIMINARY CONCEPTUAL FRAMEWORK AND
PARTICIPATION IN A WORKING GROUP TO ADDRESS MODIFICATION
OF THE INTERGOVERNMENTAL AGREEMENT CREATING THE
BOXELDER BASIN REGIONAL STORMWATER AUTHORITY

WHEREAS, the City of Fort Collins ("City"), Board of Commissioners of Larimer County, Colorado ("County") and Town of Wellington, Colorado ("Town") are the founding Members of the Boxelder Basin Regional Stormwater Authority ("BBRSA" or "Authority"), a separate governmental entity to be known as a drainage authority established pursuant to C.R.S. Section 29-1-204.2(1), under that certain Intergovernmental Agreement for Stormwater Cooperation and Management dated August 20, 2008, and First Amendment to Intergovernmental Agreement for Stormwater Cooperation and Management dated June 16, 2014 (collectively, the "Boxelder IGA"); and

WHEREAS, the Authority has, pursuant to the Boxelder Creek Regional Stormwater Master Plan dated October 2006 (the "Master Plan") financed, constructed and completed the Coal Creek Flood Mitigation Project, the East Side Detention Facility (also known as the Gray Lakes Project) and the Larimer/Weld Crossing Structure (each of which may be individually referred to as a "Project", or collectively as the "Projects"); and

WHEREAS, the Authority has also entered into an Intergovernmental Agreement dated November 15, 2012 (the "Timnath IGA") with the Timnath Development Authority of Colorado (the "TDA") which provides for TDAs participation in the funding for the Projects; and

WHEREAS, pursuant to the Boxelder IGA, the Authority owns, operates and maintains the Projects and assesses fees to properties located within its Service Area and benefitted by the Projects; and

WHEREAS, the Town has expressed concern about recent actions undertaken by the Authority, the cost of such actions, and the impact of fees on properties located within its jurisdiction; and

WHEREAS, the Authority has incurred unanticipated costs in connection with the Projects and is amenable to discussing a conceptual framework for restructuring the Authority's functions to reduce ongoing operational uncertainties, costs and related impacts on fee-payers; and

WHEREAS, at its meeting on May 4, 2017, the Authority Board of Directors, which includes directors appointed by the Member entities who are parties to the Boxelder IGA (City, County, and Town), adopted a motion requesting that the Authority Manager submit the attached Preliminary Conceptual Outline for Transition Process prepared by the County and attached hereto as Exhibit A and incorporated herein by this reference (the "Preliminary Conceptual Framework") to the City, County, Town, and the TDA seeking their participation in working group to discuss and formulate recommendations for modification of the Boxelder IGA and

related agreements to be brought back to Authority Board, and ultimately the governing body of each such Member entity for consideration; and

WHEREAS, the City Council finds that it is in the best interests of the City and its citizens to support the City's participation in such a working group.

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

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 supports the City's participation in a working group made up of representatives of the City, County, Town and the TDA to assess and discuss the Preliminary Conceptual Framework and formulate recommendations for possible modification of the Boxelder IGA and related agreements to be brought back to Authority Board, and ultimately the governing body of each such Member entity and the TDA for consideration.

Section 3. That the City Manager is hereby directed to appoint one or more appropriate City representatives to participate in the working group on behalf of the City, with advice and assistance from the City Attorney's Office.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 9th day of May, A.D. 2017.





Mayor

ATTEST:



City Clerk

Attachment A

Revision Date: May 2, 2017

Preliminary Outline for BBRSA Transition Process Discussion

1. **Authority Cash Flow and Maximum Financial Liability**
 - A. Authority prepares a revised cash flow analysis extending from Authority inception through the year 2031 based on accounting for all capital and operational costs; full payment of the CWCB loan; transfer payments for perpetual maintenance; and administrative costs.
 - B. Authority determines distribution of total costs and revenue for properties within the jurisdictional boundaries of the three Member entities, including reasonable assumptions for future System Development Fees and future Stormwater Service Fees.
 - C. Financial liability caps are established for the three Members, contingent upon all of the provisions outlined in this Attachment A.

2. **Fee Collection**
 - A. All Members agree to continue collecting **System Development Fees** through 2031, promptly provide development data for the prior year to the Authority by January 1 of each calendar year, and pay System Development Fees by May 1 of each calendar year. Late payment penalties will apply.
 - B. Fort Collins and Wellington continue *Payments in Lieu of Authority Collections and Rates* per Section 5.04 of the IGA, and both agencies agree to provide payment of **Stormwater Service Fees** to the Authority by May 1 of each calendar year through 2031. Late payment penalties will apply.
 - C. Authority continues to provide billing services directly to properties located within unincorporated Larimer County. The County provides annual reimbursement to the Authority for the administrative cost of billing properties in unincorporated areas through 2031. County will participate in negotiations for annual billing service fees.
 - D. Authority will revised property billing database for residential and commercial property, as the Authority deems appropriate, after reviewing the results of the 2017 billing audit. Authority may conduct additional audit work for commercial property located within Wellington and Fort Collins.

3. **Transfer of Coal Creek/Clark Reservoir Maintenance Funding Obligation**
 - A. Authority funding obligations are outlined in the *Coal Creek Flood Mitigation and Operation Agreement* between the Authority and North Poudre Irrigation Company. North Poudre Irrigation Company owns the facility and infrastructure improvements.
 - B. This agreement provides 540 acre-feet of flood storage, which resulted in the amended FEMA flood mapping though the Town of Wellington. If the Authority becomes financially insolvent or terminates, the Authority would have the duty to notify North Poudre Irrigation Company and FEMA that the Authority no longer has the financial resources to secure the 540 acre-feet of flood storage volume.

C. Authority's Current Financial Responsibility:

- Routine maintenance payment to North Poudre Irrigation in the amount of \$1,000 per year with fixed inflation escalator of 20 percent per 20 year period.
- Bathymetric survey of reservoir bottom at 20 year intervals, and following a 100-year flood.
- Sediment removal when survey reveals a ten percent or greater loss of reservoir capacity and other repairs to channel.

D. Transfer of Maintenance Funding Obligation:

- *Flood Mitigation and Operation Agreement* is assigned by the Authority to Larimer County by December 31, 2018, in exchange for a maintenance payment from the Authority of \$1,000,000, placed in an interest earning dedicated maintenance fund at the County. Authority may require multiple years to complete this full payment.
- In perpetuity, the County provides general administration of the agreement with North Poudre Irrigation Company at the County's expense.
- Drawing from the maintenance fund, the County provides fixed annual maintenance payments to North Poudre Irrigation, provides bathymetric surveys in accordance with agreement, and provides funding for repairs and sediment removal costs in the amount that the maintenance fund exceeds a minimum balance of \$1,000,000.
- Separate IGA is developed between Fort Collins, Larimer County and Wellington to address distribution of maintenance and sediment removal costs in excess of funding provided above.

4. Transfer of East Side Detention Facility

A. Authority completed East Side Detention Facility project in 2016 and land acquisition settlement in 2017. BBRSA owns the facility and is responsible for operation and maintenance.

B. Transfer of Ownership and Maintenance:

- Ownership of property transferred to Larimer County by December 31, 2018, in exchange for a maintenance payment from the Authority of \$1,200,000, placed in an interest earning dedicated maintenance fund at the County. Authority may require multiple years to complete this full payment.
- In perpetuity, the County provides general administration of the facility; fulfills administration related duties for regulatory reporting requirements; and provides general site security responsibilities for the property.
- Drawing from the maintenance fund, the County provides facility maintenance funding in the amount that the maintenance fund exceeds a minimum balance of \$1,000,000.
- An IGA is developed between Fort Collins, Larimer County and the Town of Timnath to address distribution of additional maintenance costs in excess of the funding provided above, including continued collection of fees through the payoff period of the CWCB loan.
- Authority resolves water augmentation issue prior to facility ownership transfer in 2018.
- All Members consent to land acquisition settlement and restructuring of CWCB loan.

5. FEMA Pre-Disaster Mitigation Grant Matching Funds

- A. Members waive claim for reimbursement of matching funds contributions estimated to be approximately \$1,000,000, if allowed by law and financial policies of the Members.
- B. This amount is approximately equivalent to the perpetual maintenance payment for Coal Creek/Clark Reservoir as outlined in Section 3 above and would allow the Authority to terminate at an earlier date. Ability to waive claim for reimbursement must first be verified by all Members.