

RESOLUTION 2017-054
OF THE COUNCIL OF THE CITY OF FORT COLLINS
CONFIRMING A PROCESS AND TIMELINE TO SEEK POSSIBLE
RESOLUTION OF LONG TERM ISSUES REGARDING 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") (referred to collectively as the "Parties") 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 financed, constructed and completed regional stormwater facilities, including those known as the Coal Creek/Clark Reservoir Project ("Clark Reservoir Project") and the East Side Detention Facility ("ESDF") (each of which may be individually referred to as a "Project", or collectively as the "Projects"); and

WHEREAS, the Authority has 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 ESDF; and

WHEREAS, the Authority has also entered into an agreement with the North Poudre Irrigation Company ("NPIC") dated January 5, 2011, to provide funding for long-term maintenance obligations for the Clark Reservoir Project; and

WHEREAS, pursuant to the Boxelder IGA, the Authority owns, operates and maintains the ESDF, has long-term maintenance obligations for the Clark Reservoir Project, 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, on May 4, 2017, the Authority Board of Directors, which includes directors appointed by the City, County, and Town, adopted a motion requesting that the Authority Manager submit the Preliminary Conceptual Outline for Transition Process prepared by the County (the "Preliminary Conceptual Framework") to the City, County, Town, and the TDA seeking their participation in working group (the "Working Group") to discuss 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 for consideration; and

WHEREAS, on May 9, 2017 the City Council adopted Resolution 2017-041 supporting the Preliminary Conceptual Framework and the City-named representatives to participate in the Working Group; and

WHEREAS, representatives of the City, County and Town met on May 15, 2017 to discuss the Preliminary Conceptual Framework, potential alternatives offered by the Town, and the differing positions regarding the Authority's pending request to the Colorado Water Conservation Board ("CWCB") for modification of its loans (the "CWCB Loans") to be considered by the CWCB at its May, 2017 meeting (the "CWCB Loan Modification"), the Authority's Settlement Agreement and payment obligations with respect to its condemnation action pertaining to property for the ESDF to be acquired from the Day family (the "Day Settlement") and the Authority's long term obligations for perpetual maintenance and operation of the Projects; and

WHEREAS, the Town asserts that the CWCB Loan Modification and the Day Settlement require approval by unanimous vote of the City, County, and Town under the Boxelder IGA; and

WHEREAS, the City and County disagree with the Town's assertion that such approval is required because, among other things, the Day Settlement does not constitute a "borrowing, issuance of debt, or multiple fiscal year financial obligation" but is instead a legal obligation to pay for real property to be acquired through condemnation proceeding duly authorized by the Authority Board and the CWCB Loans as modified by the CWCB Loan Modification remain within the parameters already approved by the City, County and Town as set forth in the First Amendment to the Boxelder IGA; and

WHEREAS, as a result of the May 15, 2017 meeting, the City, County and Town wish to confirm the current status of their discussions regarding the issues to be addressed by the Working Group and the process and timeline they have identified to seek resolution of these issues as hereinafter set forth; and

WHEREAS, it is anticipated that a resolution or other authorizing action may be adopted by the City, the County, and the Town confirming their respective intent to proceed as hereinafter set forth.

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. The City Council hereby expresses a commitment to work in good faith through the Working Group to assess and discuss the Preliminary Conceptual Framework and the Town's alternative suggestions in response to that Framework and to 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 of the Parties and the TDA for consideration.

Section 3. Since the Authority's first payment under the CWCB Loans becomes due on July 1, 2017 unless the CWCB Loans are modified, that the City representatives to the Working Group are directed to work in good faith toward identification of and agreement in concept on an initial set of possible modifications to the Boxelder IGA (the "Potential Modifications") no later than June 28, 2017.

Section 4. Since the Authority's final payment under the Day Settlement is due no later than December 31, 2017, that the City representatives to the Working Group are directed to work in good faith toward a final agreement or agreements on modification of the Boxelder IGA that will allocate the Authority's long term obligations for perpetual maintenance and operation of the Projects and identify an appropriate fee structure that will limit the ongoing operational and maintenance costs related to operation of the Authority (as opposed to the Projects) while permitting it to maintain adequate fee revenue to fulfill its obligations under the CWCB Loans and any other obligations that must remain within the Authority, for presentation to their respective governing bodies for consideration in a time frame that will permit final action by such bodies no later than December 1, 2017.

Section 5. To provide assurance to the Authority Board without acknowledging that the Boxelder IGA requires the City's approval of the Day Settlement or any further City approval of the CWCB Loan Modification beyond that already included in the First Amendment to the Boxelder IGA, that the City Council hereby approves both the Day Settlement and the CWCB Loan Modification.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 6th day of June, A.D. 2017.





Mayor

ATTEST:



City Clerk

City Clerk