

## **RESOLUTION NO. 2016-09-04**

### **ESTABLISHING A RESTRICTED FUND ACCOUNT FOR THE RECEIPT OF FUNDS FOR THE FUTURE CONSTRUCTION OF BEAVER AVENUE**

**WHEREAS**, the Community Resources Housing Development Corporation (“CRHDC”) previously constructed a housing project within the City of Fort Morgan named “Sol Naciente” near Beaver Avenue and Linda Street; and

**WHEREAS**, Fort Morgan Farms, LLC, and the City of Fort Morgan entered into a Development Agreement, attached hereto as Exhibit A and incorporated herein, which was later assigned to CRHDC, that details the responsibilities of CRHDC to pay for its proportionate share of the construction of Beaver Avenue when it is constructed to the North of the Sol Naciente project in accordance with City policy; and

**WHEREAS**, CRHDC desires to prepay its proportionate share of the anticipated cost of the construction Beaver Avenue in order to complete the closeout of the Sol Naciente project in compliance with funding and grant restrictions; and

**WHEREAS**, the City Council is amenable to accepting the payment in advance and further desires to earmark the funds in a restricted account or fund to ensure the funds are available upon the future construction of Beaver Avenue.

### **NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO:**

**SECTION 1:** City Council hereby accepts and agrees to hold the funds from CRHDC in the amount of \$350,000 for the sole and restricted use in the future construction of Beaver Avenue adjoining the Sol Naciente project.

**SECTION 2:** City Council hereby directs the City Manager and/or his designee to set up a separate accounting or fund as approved by the City’s auditors for the receipt of and restriction of the funds for this purpose.

**SECTION 3:** Once the funds have been received and accounted for, the City Council hereby acknowledges and releases CRHDC from its future obligations for CRHDC’s proportionate share of the construction of Beaver Avenue adjoining the Sol Naciente project as anticipated in the Development Agreement in Exhibit A.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 6th day of September, 2016, the vote upon roll call being as follows:

Ayes: Mayor Shaver, Councilmembers Anderson, Castoe, Howe, Lindell, Marler and Northrup.

Nays: None.

Absent /Abstain: None.



THE CITY COUNCIL OF THE CITY OF  
FORT MORGAN, COLORADO

BY: Ronald Shaver  
Mayor Ronald Shaver

ATTEST:

John Brennan  
John Brennan, City Clerk

STATE OF COLORADO            )  
COUNTY OF MORGAN         )    ss.        **CERTIFICATE**  
CITY OF FORT MORGAN )

I, John Brennan, City Clerk for the City of Fort Morgan, Colorado, do hereby certify and attest that the foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the Council of Fort Morgan, Colorado, and is identical to the original thereof appearing in the official records of the City of Fort Morgan, Colorado, and that the same has not been, since its adoption, in any respect, rescinded or amended.

IN TESTIMONY WHEREOF, I have hereunto set my hand and have affixed the seal of the City of Fort Morgan this 6<sup>th</sup> day of SEPTEMBER, 2016.

John Brennan  
John Brennan, City Clerk

**ANNEXATION AND DEVELOPMENT AGREEMENT  
FOR THE FORT MORGAN FARMS LLC ANNEXATION**

THIS ANNEXATION AND DEVELOPMENT AGREEMENT FOR THE FORT MORGAN FARMS LLC ANNEXATION ("Agreement") is made and entered into this 26 day of March 2013, by and between Fort Morgan Farms LLC, a Colorado limited liability company, hereinafter referred to as ("Owner"); and the CITY OF FORT MORGAN, COLORADO, a Colorado municipal corporation ("City"). The City and the Owner shall hereinafter be referred to collectively as "the Parties."

**WITNESSETH:**

**WHEREAS**, Owner holds in fee simple certain real property located in Morgan County, Colorado, legally described in **Exhibit "A"** attached hereto and incorporated herein by this reference (the "Property"); and

**WHEREAS**, the Owner has petitioned the City that the Property be annexed into the City for varied density commercial uses ("Project"); and

**WHEREAS**, the City has found that the Owner's annexation petition is substantially compliant with laws of the State of Colorado and has found the Property eligible for annexation; and,

**WHEREAS**, the Property is located near jurisdictional limits of the City and the City desires for the Property to be annexed into the City; and

**WHEREAS**, the Parties therefore desire to set forth in this Agreement the terms and conditions related to the City Council's annexation of the Property.

**NOW, THEREFORE**, in consideration of the promises and covenants contained herein, and other good and valuable consideration, the receipt and adequacy of which the parties hereto acknowledge the parties agree as follows:

1. **Effective Date and Term.** This Agreement shall become effective as of the date that this Agreement has been signed by the Parties. If on or before June 28, 2012, the Property has not been annexed and zoned by the City Council in accordance with the terms of this Agreement and in accordance with the terms of any future annexation agreement negotiated by the Parties, this Agreement shall thereupon terminate and will be null and void and the Parties shall be released from all further obligations under this Agreement, provided however, that the City Manager shall have the authority with the written consent of Owner to extend the term of this Agreement for a period of up to six (6) additional months (i.e. to December 2013.)
2. **Terms and Conditions of Annexation.** The Parties agree that the Annexation Agreement shall include provisions in general accord with the following terms and conditions:

- a. *Zoning.* It is the intention and desire of the Parties that immediately after the Property is annexed by the City it shall be zoned R-3. The intent of the zoning is to provide the authorized uses for the Project.
- b. *Timing of Development.* In recognition of the size of the Property, the time required to complete development, the need for development to proceed in phases, the possible impact of economic conditions and economic cycles and varying market conditions during the course of development, the Annexation Agreement shall provide that the Owner in their sole discretion shall have the right to develop the Property in such order, at such rate and at such time as the market dictates within the structure of the Annexation Agreement.
- c. *Site Plan Review/Development Review Process.* The Annexation Agreement shall include the following attached documents, which are intended to be granted as vested property rights in accordance with the terms of the Annexation Agreement:
  - i. *Design Regulations.* Shall be as set forth in the Chapter 20 of the current Code of the City of Fort Morgan and adopted policies.
  - ii. *Development Review Process.* This Agreement will incorporate the City's current Development Review Process and schedule, with specified options if the City or the Owner cannot meet one or more of the timeframes.
- d. *Required Dedications/Improvements/Fees.* The Parties hereby agree that certain improvements shall be made to the Property in association with the annexation and development of the Property. Generally, the Owner shall be responsible for all costs and fees associated with the development of the Property including fees for services provided by the City and its Utility Enterprises. Specifically, the Owner shall be responsible for financing and constructing the following improvements in addition to the general requirements.
  - i. *Roads/Utilities.*
    - 1. The Owner shall utilize the gas, electric, water and sewer utilities provided by the City of Fort Morgan.
    - 2. Owner shall dedicate 60' (sixty foot) ROW (Linda Street). The owner will develop half of Linda Street. Owner shall construct a sidewalk within the ROW parallel to the location of Linda Street. Engineering design of Linda Street shall be conducted by the owner's engineer, and at the owner's expense. The City Engineer shall review and approve all engineering design of the street.

3. Owner shall dedicate a 100' ROW (Beaver Street) located north of Lot 1. Owner shall be responsible for a payment equal to its proportionate share of costs related to the construction of half this street.
4. Owner shall dedicate a 10' (ten foot) utilities easement along the southern edge of the property to allow for an underground culvert to extend an irrigation line.
5. Owner shall construct a sidewalk conforming with ADA requirements along Linda Street for pedestrian access to the development.
6. Owner shall construct a sanitary sewer service to the Property. The size of the pipe shall be sufficient to serve the proposed development on the property as determined by the City Engineer. Should the City determine in its discretion to install a larger pipe for future service needs of the City, at its cost, may pay for the difference in cost of materials between the sizes required for the Property and size it requests be constructed.

ii. Parks/Open Space.

1. The Parties agree that City staff will recommend a fee in lieu of park development. The owner agrees to pay its proportionate share for park dedication and to dedicate open space, all as set forth in Chapter 20 of the Fort Morgan Municipal Code.

iii. Storm Drainage/Filling of Property.

iv. Owner shall construct all storm water conveyance facilities necessary to properly drain precipitation from all portions of the Property as approved by the City Engineer. Building Permit Fee.

1. Owner shall pay all applicable building permit fees associated with any construction that is completed on the Property.

v. Water and Wastewater System Development Fee and Water Rights Fee.

1. Owner acknowledges the uniqueness of the City's water system and the regulations related to providing potable water to the City users. Owner shall purchase and transfer to the City all additional water rights in the form of Colorado Big Thompson ("C-BT") shares needed to meet any water usage that exceeds the allotment of water related to any tap purchased by the Owner for development on the Property. Such transfer shall be done no later than ninety (90) days after the building permit is issued by the City. Owner shall purchase the C-BT shares from the City for \$11,000 per unit or for current market value, whichever is less. Owner may also pay the City market value and a five percent (5%) administrative

cost and the City will procure the C-BT units on behalf of the Owner.

2. Owner shall pay all costs associated with the exclusion of the Property from the Morgan County Quality Water District ("Quality") of \$100.00 per acre as required under the 2001 intergovernmental agreement between the City and Quality prior to the second reading and approval of the annexation ordinance.
3. Owner shall execute a JOINT STIPULATION FOR AN ORDER FOR EXCLUSION OF TERRITORY FROM THE DISTRICT to be filed under Civil Action NO. 13,282, Morgan County District Court. Execution of this stipulation shall be done prior to the second reading and approval of the annexation ordinance.

e. *Financial Information.*

- i. The Parties recognize, given the size of the Property, that coordinated development of the Property will require the installation of major infrastructure improvements, many of which may be required to be installed in the early phases of development. The Parties agree that Owner shall be responsible for all financing of public improvements required under this agreement.

f. *Vested Property Rights.*

- i. The Annexation Agreement, the Zoning Approvals, and the matters identified in this Agreement at Sections c and d of this Paragraph 2, upon approval by the City, shall constitute site-specific development plans and shall be vested for a period of two (2) years after the date of the Annexation Agreement all in accordance with Section 20-3-140 of the Land Use Code. The Parties acknowledge that the vested property rights contemplated herein are not intended to apply to any matters other than as specifically identified in this paragraph, nor to the City's building and fire codes or other similar technical codes, such as the technical standards for street design contained in the City's Engineering requirements.

3. **Payment of City's Costs.** Concurrently with the execution of this agreement, the Owner shall execute an Agreement for Payment of Development Review Expenses Incurred by the City in substantially the form attached hereto as **Exhibit "B"** and incorporated herein by reference.
4. **City Council Approval.** Notwithstanding any of the provisions of this Agreement, nothing herein shall be construed to require the City Council to approve the proposed annexation or zoning of the Property, to approve the Annexation Agreement or the Concept Plan, or in any way obligate the City Council to grant such approvals. The Owner further acknowledges and agrees that the annexation and zoning of the Property, as proposed in this Agreement, are subject to the legislative



Phone No. 970-482-5789  
Fax No. RLGRAVES@hotmail.com

With copy to:

**Community Resources and Housing Development Corporation (CRHDC)**  
**Al Gold, Executive Director**  
**7305 Lowell Blvd Suite 200 Westminster, CO 80030**  
**Phone No. 303-428-1448**

9. **No Third-Party Beneficiaries.** This Agreement is made solely for the benefit of the Parties hereto and is not intended to nor shall be deemed to confer rights on any other person or entity not named as one of the Parties to this Agreement.
10. **Governing Law and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado. In addition, the Parties hereto recognize that there are legal constraints imposed upon the City by the constitutions, statutes and rules and regulations of the State of Colorado and of the United States and imposed upon the City by its Home Rule Charter and Municipal Code, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. 'Notwithstanding any other provision of this Agreement to the contrary, in no event shall any of the Parties exercise any power or take any action that would be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such manner so as to be effective and valid under applicable law. Should any of the Parties institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be proper and exclusive in the District Court of Morgan County, Colorado.
11. **Binding Effect.** This Agreement shall constitute an offer by the Owner, which may be withdrawn at any time prior to acceptance by the City. If not accepted and signed by the City on or before December 1, 2013, this offer shall be deemed withdrawn and shall be null and void and of no further force or effect. Upon execution of this Agreement by all Parties, this Agreement shall be binding upon and inure to the benefit of the Parties and of their respective personal representatives, successors, heirs, trustees and assigns, and shall constitute covenants and equitable servitudes running with the Property. This Agreement shall be recorded at the Owner's expense with the Clerk and Recorder of Morgan County, Colorado.
12. **Headings.** The headings of this Agreement are for convenience of reference only and shall not be considered in construing or interpreting any section of this Agreement.
13. **Time of the Essence.** Time is of the essence of each and every term, covenant, condition and provision of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date set forth below.

CITY OF FORT MORGAN,  
COLORADO, a Colorado municipal  
corporation  
By: \_\_\_\_\_  
Terry McAlister, Mayor

ATTEST:

\_\_\_\_\_  
John Brennan, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jeffrey A. Wells, City Attorney

Owners:  
By: \_\_\_\_\_

**Robert L Graves, Owner,**  
**Fort Morgan Farms LLC.**

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF MORGAN     )

The foregoing was acknowledged before me this 26<sup>th</sup> day of March 2013  
by Robert L. Graves, of Fort Morgan Farms, LLC.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_ My Commission Expires 08/17/2013



\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**[LEGAL DESCRIPTION OF PROPERTY]**

A PARCEL OF LAND SITUATED IN THE SW1/4 SECTION 5, TOWNSHIP 3 NORTH, RANGE 57 WEST OF THE SIXTH PRINCIPAL MERIDIAN, MORGAN COUNTY, COLORADO AND BEING A PORTION OF THAT PARCEL OF REAL PROPERTY DESCRIBED IN THE DOCUMENT AT RECEPTION #841642 OF THE OFFICIAL RECORDS OF MORGAN COUNTY, AND BEING BOUNDED ON THE NORTH BY THE NORTH RIGHT-OF-WAY OF BEAVER AVENUE EXTENDED EAST, ON THE WEST BY THE EAST LINE OF THE JUDICIAL JAIL ADDITION AS SHOWN ON THE PLAT RECORDED IN PLAT BOOK 6, PAGE 14 OF THE OFFICIAL RECORDS OF MORGAN COUNTY AND BY THE EAST LINE OF THE MORGAN COUNTY HUMAN SERVICES PARCEL AS RECORDED IN BOOK 1019 AT PAGE 688 OF THE OFFICIAL RECORDS OF MORGAN COUNTY, ON THE SOUTH BY THE NORTH LINE OF THE SALUD BUSINESS PARK SUBDIVISION AS RECORDED AT RECEPTION #1500264 OF THE OFFICIAL RECORDS OF MORGAN COUNTY, THE NORTH LINE OF THE EXCEPTION PARCEL AS RECORDED IN BOOK 1067, PAGE 701 OF THE OFFICIAL RECORDS OF MORGAN COUNTY AND THE EXTENSION OF THE NORTH LINE OF SAID EXCEPTION PARCEL AND ON THE EAST BY A LINE PARALLEL TO AND OFFSET 1917.48 FEET EAST FROM THE WEST LINE OF SAID SECTION 5 BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF EAST BEAVER AVENUE AND THE EAST LINE OF SAID JUDICIAL JAIL ADDITION, WHENCE THE WEST QUARTER CORNER OF SAID SECTION 5 BEARS N 54°45'05" W A DISTANCE OF 1641.93 FEET; THENCE S 00°00'29" W ALONG THE EAST LINE OF SAID JUDICIAL JAIL ADDITION, A DISTANCE OF 100.00 FEET TO A POINT ON THE EXTENSION OF THE SOUTH RIGHT-OF-WAY LINE OF EAST BEAVER AVENUE; THENCE S 89°50'49" W ALONG THE EXTENSION OF THE SOUTH RIGHT-OF-WAY LINE OF EAST BEAVER AVENUE A DISTANCE OF 246.30 FEET TO THE NORTHEAST CORNER OF MORGAN COUNTY HUMAN SERVICES PARCEL AS DESCRIBED IN BOOK 1019 PAGE 688; THENCE S 00°01'08" W ALONG THE EAST LINE OF SAID MORGAN COUNTY HUMAN SERVICES PARCEL A DISTANCE OF 599.88 FEET TO THE SOUTHEAST CORNER OF SAID MORGAN COUNTY HUMAN SERVICES PARCEL, ALSO BEING A POINT ON THE NORTH LINE OF THE SALUD BUSINESS PARK, AS DESCRIBED IN RECEPTION NO. 1601461; THENCE N 86°32'25" E ALONG THE NORTH LINE OF SAID SALUD BUSINESS PARK A DISTANCE OF 414.20 FEET TO THE NORTHEAST CORNER OF SAID SALUD BUSINESS PARK, ALSO BEING THE NORTHWEST CORNER OF THE EXCEPTION PARCEL AS DESCRIBED IN BOOK 1067 PAGE 701; THENCE N 87°05'59" E ALONG THE NORTH LINE OF SAID EXCEPTION PARCEL AND THE EXTENSION OF THE NORTH LINE OF SAID EXCEPTION PARCEL A DISTANCE OF 409.60 FEET; THENCE N 00°01'00" W A DISTANCE OF 656.08 FEET TO A POINT ON THE EXTENSION OF THE NORTH RIGHT-OF-WAY LINE OF EAST BEAVER AVENUE; THENCE S 89°52'28" W ALONG THE EXTENSION OF THE SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 575.85 FEET TO THE POINT OF BEGINNING CONTAINING 12.22 ACRES MORE OR LESS.

**"Exhibit B"**

**CITY OF FORT MORGAN**

**AGREEMENT FOR PAYMENT OF  
REVIEW AND DEVELOPMENT EXPENSES INCURRED BY THE CITY  
ANNEXATION, SUBDIVISION AND ZONING PROCESSES**

**THIS AGREEMENT** ("the Agreement") is entered into this 26 day of March 2013 by and between the City of Fort Morgan, Colorado, a Colorado municipal corporation, ("the City") and **Fort Morgan Farms LLC**, a Colorado corporation ("the Applicant").

**WHEREAS**, the Applicant owns or is the authorized agent of the owner of certain property situated in the Morgan County, Colorado described on **Exhibit A**, attached here to and incorporated herein by reference ("the Property");

**WHEREAS**, the development review process includes review of all aspects of land use including, but not limited to, annexation, subdivision, zoning, change of land use, site plan review, installation of public improvements, dedication of lands and the availability of and feasibility of providing utility services;

**WHEREAS**, the Applicant desires to develop the Property and has made application to the City for approval of annexation and zoning of the Property;

**WHEREAS**, the Parties recognize that the land use fees as specified by the Municipal Code of the City may not be adequate to fully cover the City's expenses incurred during the application process, including but not limited to, legal publications, notices, reproduction of materials, public hearing expenses, recording of documents, planning fees, engineering fees, attorney fees, special consultant fees, and fees for administrative time of City staff as provided for in Sections of the Code;

**WHEREAS**, the Parties hereto recognize that the City will continue to incur expenses through the entire development review process until final completion of the development including but not limited to: legal publications, notices, reproduction of materials, public hearing expenses, recording of documents, planning fees, engineering fees, attorney fees, special consultant fees, and fees for administrative time of City staff, security, permits and easements; and

**WHEREAS**, the City has customarily incurred significant expenses associated with ensuring an applicant's compliance with design and construction specifications for public improvements, such as roads, drainage improvements, and water and sanitary sewer improvements, and these expenses oftentimes exceed the land use fees paid by the applicant as part of the customary review processes.

**NOW THEREFORE**, for and in consideration of the foregoing premises and of the mutual promises and conditions hereinafter contained, it is hereby agreed as follows:

1. The Applicant agrees to reimburse the City for the expenses and fees incurred by the City in reviewing and processing the Application, upon submittal of an invoice. For purposes of this Agreement, "Application" shall mean and include all documentation, data, and information submitted to the City in order to seek or obtain approval of development of or land use approval for the Property, including but not limited to site plans, engineering and surveying documentation, engineering and other professional reports and studies, and any construction documentation required to authorize the construction of public or other improvements within the Property.
2. Applicant shall pay all invoices submitted by the City within thirty (30) days of the City's delivery of such invoice. Failure by the Applicant to pay any invoice within the specified time shall be cause for the City to cease processing the Application, cease development of the Property, deny approval of the Application, withhold the issuance of building permits or certificates of occupancy and for the City to exercise such rights and remedies as are otherwise available to it in law or equity or under the applicable provisions of the City Code.
3. Except where the law or an agreement with the City provides otherwise, the Applicant may terminate its Application at any time by giving written notice to the City. The City shall take all reasonable steps necessary to terminate the accrual of costs to the Applicant and file such notices as are required by the City's regulations. The Applicant shall be liable for all costs incurred by the City in terminating the processing of the Application.
4. If the Applicant fails to pay the fees and costs required herein when due, the City may take those steps necessary and authorized by law to collect the fees and costs due, in addition to exercising those remedies set forth in Section 2, above. The City shall be entitled to recover from the Applicant all court costs and attorney fees incurred in collection of the balance due, including interest on the amount due from its due date at the rate of 18% per annum.
5. The City will account for all funds expended and fees and expenses incurred by the City as a result of the development review of the Application throughout the development process. Statements of expenses incurred will be made available to the Applicant by the City. Expenses to be charged to the Applicant's account shall include, but shall not be limited to legal publications, notices, reproduction of materials, public hearing expenses, recording of documents, planning fees, engineering fees, attorney fees, special consultant fees, fees for administrative time of City staff, security, permits and easements. Within 60 days after the completion of the processing of the application by the City, the City will provide the Applicant with a statement of account and will refund to the Applicant any funds paid by the Applicant that were not expended by the City, except where the Parties expressly agree to the contrary.

6. Applicant's obligation to pay the costs and expenses provided for in this Agreement shall exist and continue independent of whether the Application, or any part thereof, is approved, approved with conditions, denied, withdrawn, or terminated by the City or the Applicant prior to a final decision in the process. The Applicant agrees to pay all expenses regardless of whether the City approves or denies the Application. The City shall not be estopped or otherwise limited or precluded from denial or conditional approval of the Application by the terms, conditions, or obligations of this Agreement.

IN WITNESS WHEREOF, the City and the Applicant have caused this Agreement to be duly executed on the day and year first above written.

APPLICANT

By: [Signature] Date of Applicant's Signature: 3-26-13

- ✓ Owner of Property
- Authorized Agent of Owner

Print Name: Robert L. Graves  
Position/Title: Owner, Fort Morgan Farms, LLC

STATE OF COLORADO )  
 ) ss.  
COUNTY OF MORGAN )

Acknowledged before me this 26<sup>th</sup> day of March, 2013,

by Robert L. Graves.

[Signature]  
Notary

My Commission Expires: \_\_\_\_\_ My Commission Expires 08/17/2013



**CITY OF FORT MORGAN, COLORADO**

Date of City's Execution:

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Terry McAlister, Mayor

ATTEST:

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City Clerk