

RESOLUTION No. 2017-09-07

AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR THE RECONSTRUCTION OF THE UPPER PLATTE AND BEAVER CANAL AND FINAL SETTLEMENT RESOLUTION

WHEREAS, during the development of Riverview Commons and the construction of Canal Street, it was alleged that the development affected the rights of the Upper Platte and Beaver Canal Company (UP&BC Company) to operate and maintain their canal; and,

WHEREAS, in 2008 UP&BC Company initiated litigation against the developer of Riverview Commons and the City of Fort Morgan; and,

WHEREAS, the City and UP&BC Company entered into a Settlement Agreement on November 14, 2012 ("2012 Agreement") wherein they intended to resolve their dispute with regard to the canal right of way and easement and Canal Street, the pending litigation, to allow for restoration of the Company's easement and canal bank, and to address the City's requests for improvements and construction on or near the canal; and,

WHEREAS, subsequent to the 2012 Agreement, the City removed the old bridge that provided access prior to the development of Riverview Commons which was identified in the litigation as a cause of concern for the canal bank failure and ice damming issues; and,

WHEREAS, the City repaired failures of the south side of the canal pursuant to the 2012 Agreement which was identified in the litigation as a cause for concern for canal bank failure because material was washing into the canal causing additional strain on the canal; and,

WHEREAS, the 2012 Agreement provided ambiguities concerning the canal bank restoration, disagreements to the vacation of property by the City of areas of private property and other public rights of way not included in the 2012 Agreement; and,

WHEREAS, a new Developer desires to develop the property within the Riverview Commons development but cannot until the dispute is resolved; and,

WHEREAS, the City has been working with UP&BC Company, the future Developer of the property, and the Pueblo Bank and Trust that currently holds title to the developable lots in Riverview Commons (collectively the "Parties") to resolve the ongoing dispute; and,

WHEREAS, the Parties to the Settlement Agreement desire to resolve any ongoing disputes concerning the restoration of the canal bank, the access to and

development of lots within the Riverview Commons development, the use of Canal Street, and access to adjacent properties through mutual agreement and eliminate litigation.

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

SECTION 1: The City Council hereby authorizes the Mayor to execute an **AGREEMENT FOR THE RECONSTRUCTION OF THE UPPER PLATTE AND BEAVER CANAL AND FINAL SETTLEMENT RESOLUTION** upon final negotiations of terms, preparation of exhibits to the agreement, and review of the City Attorney's Office.

INTRODUCED, PASSED, APPROVED AND ADOPTED this 19th day of September, 2017, the vote upon roll call being as follows:

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

Nays: None.

Absent/Absent/Absent/Absent/Absent/Absent/Absent/Absent/Absent/Absent



THE CITY COUNCIL OF THE CITY OF FORT MORGAN, COLORADO

BY: *Ronald Shaver*
Ronald Shaver, Mayor

ATTEST:

John Brennan
John Brennan, City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)
CITY OF FORT MORGAN)

ss.

CERTIFICATE

I, John Brennan, City Clerk of the City of Fort Morgan, Colorado, do hereby certify that the above and foregoing **Resolution** is a true, perfect and complete copy of the **Resolution** adopted by the City Council 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 affixed the seal of the City of Fort Morgan this 19th day of September, 2017.



John Brennan, City Clerk