



Legislation Text

File #: Res 2016-57, **Version:** 1

RESOLUTION APPROVING SETTLEMENT AGREEMENT TO RESOLVE LITIGATION - HAMMER ET AL. V. CITY OF COMMERCE CITY AND CITY OF COMMERCE CITY V. HAMMER ET AL.

Summary and Background Information :

The City Council will consider the final terms of the settlement agreement for the two litigation matters involving the right-of-way acquisition and use of property owned by David Hammer, Karen Hammer, and related companies. The Hammer properties at issue are undeveloped parcels in unincorporated Adams County on the southeast and southwest sides of the intersection of 104th Avenue and Highway 85. For an assessment of the case and the City's potential liability, please see the confidential, privileged memorandum dated March 1, 2016 (sent separately).

The major terms of the settlement are as follows, but certain exhibits and terms will be finalized after Council approval.

1. Belle Creek Intersection:
 - a. Hammer will construct relocated Belle Creek Intersection to the west of its current location. Final drawings (Exhibit 1) will be completed later.
 - b. The City will assist Hammer with obtaining CDOT permits. CDOT, with the City's assistance, has already issued an initial permit for this work.
 - c. The City must obtain the property for the relocated Belle Creek intersection by January 30, 2017, at the City's cost (including costs of creating legal descriptions). City costs are not yet determined. The City Council previously authorized use of eminent domain for this item.
 - d. Note: The City requested additional time to acquire these properties and the proposed agreement includes that additional time. Hammer has not finally confirmed his assent to these dates, but these timeframes are necessary to ensure the City can comply.
2. East Parcel:
 - a. The City will pay Hammer \$63,000 to complete access construction on the east parcel within 30 days. The previous proposal was to reimburse Hammer up to \$50,000 for the actual construction. Hammer will not be required to construct this if CDOT acquires the east parcel.
3. Engineering Costs: The City would pay 50% of Hammer's traffic engineering costs within 14 days of an invoice. The total cost to the City is not yet determined.
4. Cost of Parcels:
 - a. The City would forego any reimbursement from Hammer of the \$398,000 paid under the 2010 Possession and Use Agreement that exceeded the actual property value.
 - b. The City would pay Hammer an additional \$586,000 through the court upon execution of the

agreement.

- c. If the City does not acquire the property interests for Belle Creek on time, the City would have to pay an additional \$1,015,236.00 to Hammer.

5. 104th Ave./Old Brighton:

- a. The City will reimburse Hammer up to \$300,000 to signalize this intersection, including an up-front \$100,000 payment. The previous proposal was for the City to build these improvements. Hammer may demand that the City acquire additional right-of-way to construct these improvements. Final drawings (Exhibit 4) will be completed later.

6. Annexation/Support:

- a. Hammer will submit an annexation petition within 60 days of the City's performance. Hammer's prior annexation petition is not effective.
- b. If the City does not perform, the City would agree to providing letters of support for Hammer's development in Adams County, provided the details of such letters would have to be negotiated and could not be for a future land use application or violate existing City agreements.

7. Property:

- a. The City would release the slope easements provided under the PUA if an engineer establishes that the roadway has the necessary support and stability in the absence of the slope easement.
- b. Hammer would convey title to the City for properties subject to the PUA.

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Staff Responsible (Department Head): Brian McBroom; Robert Sheesley

Staff Member Presenting : Brian McBroom; Robert Sheesley

Financial Impact : City Expenditure: Up to approximately \$949,000 + reimbursable engineering costs and Belle Creek right of way costs; an additional \$1,015,236.00 would be payable if the City does not perform certain obligations.

Funding Source : General Fund

Staff Recommendation : Approval of the resolution authorizing the settlement and finalization of the agreement

Suggested Motion : I move to approve Resolution 2016-57