



AGENDA ITEM: 15
MEETING DATE: 1/7/2014
TO: City Council
FROM: Gary Havener, Parks and Recreation Department
PRESENTER: Gary Havener, Parks and Recreation Director

TITLE:

A Resolution to Approve an Intergovernmental Agreement between The Lakes at Centerra Metropolitan District No. 1, the Thompson R2J School District and the City of Loveland Concerning Public Park Improvements

RECOMMENDED CITY COUNCIL ACTION:

Approve the resolution.

OPTIONS:

1. Adopt the action as recommended
 2. Deny the action
 3. Adopt a modified action (as outlined below)
 4. Refer back to staff for further development and consideration
 5. Adopt a motion continuing the item to a future Council meeting
-

SUMMARY:

This is an administrative action. The proposed Intergovernmental Agreement is a collaborative effort to fund and provide a public park area within the Lakes at Centerra Development to be located on two adjacent sites. One will be next to The Lakes at Centerra Clubhouse and Environmental Center with the second next to a future R2J School District school site. The Lakes Metro District and the School District will upfront the costs to construct these park sites with reimbursement coming from the City's collection of Park CEFs from residential units constructed in the Lakes at Centerra Development in a total amount not to exceed \$1 million.

BUDGET IMPACT:

- ☒ Positive
☐ Negative
☐ Neutral or negligible

No supplemental funding is required to fund the City's obligation under the Intergovernmental Agreement, as it will be funded up to \$1 million from the future collection of Park CEFs from residential development within the Lakes at Centerra Development.

BACKGROUND:

The Parks and Recreation Master Plan has located a future neighborhood park site in the general service area of the Lakes at Centerra Development. Over the past several years, discussions have been held regarding the location and size of a public park with the landowners and design firms for the development. Our Master Plan also suggests that co-location of park/school sites should be pursued whenever possible. The result of our discussions is a new concept for providing a park. The Lakes Metro District and the R2J School District ("School District") will be jointly designing, constructing and funding a park for public use on their two respective and adjacent park sites with the City contributing the cost of a typical neighborhood park, roughly \$1 million. Ownership of these two park sites will remain with the Lakes Metro District and the School District.

Requirements for the park sites are that they remain unfenced and open and accessible for use by the general public during normal park hours, except for certain facilities on the School District's park site during school hours, and that all expenses for operations, maintenance and repairs are the responsibility of the Lakes Metro District and the School District for their respective park sites. The design plans will be subject to City Parks and Recreation Department review and approval. The maintenance of the park sites must be in compliance with the City's park maintenance standards.

Park CEF reimbursements totaling up to \$1 million will be distributed as follows: (1) \$200,000 to the Lakes Metro District, and (2) \$800,000 to the School District. The City will collect Parks CEFs according to all CEF collections policies with reimbursement occurring only when CEFs are collected as development occurs. The park site to be constructed by the Lakes Metro District is to be completed by December 1, 2014 and the School District's site is to be completed by December 1, 2015.

REVIEWED BY CITY MANAGER:

LIST OF ATTACHMENTS:

1. Vicinity Map
2. Resolution
3. IGA (Exhibit A to the resolution)



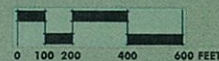
2003203.1004
December 30, 2013



Public Park Improvements Location Map

The Lakes at Centerra

Loveland, Colorado



INTERGOVERNMENTAL AGREEMENT CONCERNING PUBLIC PARK IMPROVEMENTS

This INTERGOVERNMENTAL AGREEMENT CONCERNING PUBLIC PARK IMPROVEMENTS ("Agreement") is entered into this ____ day of _____, 2013, by and among the City of Loveland, Colorado, a home rule municipality ("City"), The Lakes at Centerra Metropolitan District No. 1, a quasi-municipal corporation and a political subdivision of the State of Colorado ("Lakes District"), and Thompson R2-J School District, a political subdivision of the State of Colorado ("School District"), collectively referred to as the "Parties".

RECITALS

WHEREAS, the Lakes District, together with The Lakes at Centerra Metropolitan Districts Nos. 2 and 3 ("District No. 2" and "District No. 3", respectively, collectively with the Lakes District, the "Lakes Districts"), were formed pursuant to Section 32-1-101 *et seq.*, C.R.S., as amended, by order of the District Court for Larimer County, Colorado, and after approval of the eligible electors of the Lakes Districts at a regular election held on November 6, 2007, to assist in the financing, construction, installation, use, operation, and maintenance of public improvements for a residential development in the area generally located west of Houts Reservoir and Equalizer Lake, east of Boyd Lake Avenue, and south of East 37th Street; and

WHEREAS, the real property within the Lakes Districts is located wholly within the boundaries of the City and the School District, and is depicted in **Exhibit A**, attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Parties desire to see certain park and recreational amenities installed and operated in conjunction with the development of the Property, some of which will be owned and operated by the Lakes District ("Lakes District Improvements") and some of which will be owned and operated by the School District ("School District Improvements"); and

WHEREAS, the Lakes District Improvements and the School District Improvements are collectively referred to herein as the "Park Improvements;" and

WHEREAS, the Lakes District and the School District are willing to construct, operate, and maintain the Lakes District Improvements and the School District Improvements, respectively; and

WHEREAS, the City is willing to cooperate in the financing of the construction of the Lakes District Improvements and the School District Improvements by the City's collection of its park capital expansion fee imposed on new residential development on the Property as provided in City Code Chapter 16.38 ("Capital Expansion Fee") and to pay that amount directly to the Lakes District and the School District for reimbursement of their costs in constructing the Lakes District Improvements and the School District Improvements, respectively, but in a total amount not to exceed One Million Dollars (\$1,000,000); and

WHEREAS, the City is willing to collect the Capital Expansion Fee from residential development occurring on the Property and to pay said amount to the Lakes District and School District in the manner and for the purposes provided herein, provided that the Lakes District and School District own, operate and maintain their respective Park Improvements for public use; and

WHEREAS, the Parties desire to cooperate in the development and funding of the Lakes District Improvements and the School District Improvements and to enter into this Agreement to set forth their respective rights and obligations with respect to such development and funding of the Lakes District Improvements and the School District Improvements.

NOW, THEREFORE, in consideration of the promises of the Parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follow:

1. Construction of Lakes District Improvements. The Lakes District shall design and construct, or cause to be designed and/or constructed, the Lakes District Improvements, as more particularly depicted in **Exhibit B** attached hereto and incorporated herein by reference, and on that portion of the Property as more particularly described and depicted in **Exhibit C** attached hereto and incorporated herein by reference. The Lakes District shall be the owner of the Lakes District Improvements. The Lakes District shall have no obligation to construct any or all of the School District Improvements in the event the School District fails to construct any or all of the School District Improvements contemplated in Paragraph 2 of this Agreement. The Lakes District shall construct the Lakes District Improvements in accordance with the Public Improvement Construction Plans for the Millennium Northwest Fourth Subdivision, The Lakes at Centerra – Phase 1. The Lakes District shall complete the construction of the Lakes District Improvements on or before December 1, 2014.

2. Construction of the School District Improvements. The School District shall design and construct, or cause to be designed and/or constructed, the School District Improvements, as more particularly depicted in **Exhibit D** attached hereto and incorporated herein by reference, and on that portion of the Property as more particularly described and depicted in **Exhibit E** attached hereto and incorporated herein by reference. The School District shall be the owner of the School District Improvements. The School District shall have no obligation to construct any or all of the Lakes District Improvements in the event the Lakes District fails to construct any or all of the Lakes District Improvements contemplated in Paragraph 1 of this Agreement. The School District shall construct the School District Improvements in accordance with City specifications and a development plan approved by the City, such approval anticipated to occur in 2014. The School District shall complete the construction of the School District Improvements on or before December 1, 2015.

3. Reimbursement of Construction Costs. Estimates for the costs to design and construct the Park Improvements are set forth in **Exhibit F** attached hereto and incorporated herein by reference. The City hereby agrees to collect the Capital Expansion Fee and to pay it directly to the Lakes District and School District, as further described in Subparagraphs A. and B.

below, for reimbursement of the costs associated with the design and construction costs of the Park Improvements.

A. Collection of Capital Expansion Fee. As authorized by City Code Section 16.38.020, the City imposes the Capital Expansion Fee upon every additional dwelling unit of residential development within the Property. For any such residential activity requiring a certificate of occupancy, the Capital Expansion Fee is due and payable at the time that a final inspection for a certificate of occupancy is requested, except that if a temporary certificate of occupancy or other certificate of occupancy does not issue within thirty days after the call for inspection, the paid Capital Expansion Fee is returned to the party who paid such Capital Expansion Fee. For all other activities for which a certificate of occupancy is not required, including expansion or remodeling which creates additional dwelling units, the Capital Expansion Fee is due and payable at the time such additional space is actually occupied, except that a credit is given for any Capital Expansion Fee paid for the prior use. The City agrees to collect the Capital Expansion Fee and to pay it directly to the Lakes District and School District until such time that the Lakes District has been reimbursed in an amount up to the Lakes Reimbursement Cap and the School District has been reimbursed in an amount up to the School Reimbursement Cap, as further provided in Paragraph 3.B. below.

B. Payment of Capital Expansion Fee. The Parties acknowledge that the Lakes District Improvements shall be completed prior to the completion of the School District Improvements. At such time that the Lakes District Improvements are completed and accepted by the Lakes District and the City and prior to the completion of the School District Improvements, the City shall pay one hundred percent (100%) of its collected Capital Expansion Fee directly to the Lakes District for its costs associated with the design and construction of the Lakes District Improvements. At such time that the School District Improvements are completed and accepted by the School District and the City, the City shall pay eighty percent (80%) of its collected Capital Expansion Fee directly to the School District for its costs associated with the design and construction of the School District Improvements, and pay an amount equal to twenty percent (20%) of its collected Capital Expansion Fee directly to the Lakes District. At such time that the Lakes District has received Two Hundred Thousand Dollars (\$200,000) (the "Lakes Reimbursement Cap"), pursuant to this paragraph 3.B., the City shall thereafter pay one hundred percent (100%) of its collected Capital Expansion Fee directly to the School District. The City's obligations under this Paragraph 3 to pay its collected Capital Expansion Fee shall cease at such time as the School District has received Eight Hundred Thousand Dollars (\$800,000) (the "School Reimbursement Cap"), pursuant to this Section 3.B.

4. Change In Use of Park Improvements. In the event any Lakes District Improvements or School District Improvements are used for any purpose other than for public use, the Lakes District or School District, as applicable, shall reimburse the City for the full amount of Capital Expansion Fees it paid to the Lakes District or the School District, as applicable, in reimbursing them under this Agreement for their costs to construct the particular Lakes District Improvement or School District Improvement that is no longer available for public use. Such reimbursement will include interest at two percent (2%) plus the Federal Prime Rate, commencing upon the date the applicable Park Improvement ceases to be used for public use and accruing until the required reimbursement amount plus interest and any costs of collection are paid in full to the City.

5. Maintenance of Park Improvements. The Lakes District shall be solely responsible for the operation and maintenance of the Lakes District Improvements and any and all costs associated therewith including, but not limited to, any and all replacement and repair costs. The School District shall be solely responsible for the operation and maintenance of the School District Improvements and any and all costs associated therewith including, but not limited to, any and all replacement and repair costs. The Lakes District and the School District shall ensure that their respective Parks Improvements are maintained in accordance with City maintenance standards and practices, attached hereto and incorporated herein as **Exhibit G**. The City shall have no responsibility to operate or maintain any Park Improvements or to pay any costs associated therewith. The replacement or repair of any Park Improvements shall be subject to the approval of the City's Parks and Recreation Department.

6. Public Access. The Lakes District Improvements shall be unfenced and remain open to the public at all times, subject to normal park closure times. The School District Improvements shall be unfenced, except for certain School District Improvements that typically include a fenced enclosure, such as ball fields and soccer and football goal areas, and shall be open to the public during all non-school operating hours, subject to normal park closure times. Furthermore, the School District Improvements shall be subject to that certain Intergovernmental Agreement covering Joint Use of Facilities between the City and the School District, dated March 6, 2013, as the same has been amended and may be amended in the future from time to time, a copy of which is attached hereto and incorporated herein by reference as **Exhibit H**.

7. Term. This Agreement shall remain in full force and effect and be binding upon the Parties until such time that the Parties have fulfilled all of their obligations set forth in this Agreement.

8. Amendment. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by all Parties to this Agreement.

9. Assignment. This Agreement, in whole or in part, may not be assigned or transferred to any other party without the prior written consent of the non-assigning Parties. Any attempted assignment in violation of this paragraph shall be immediately void and of no effect.

10. Notices and Place for Payments. Any notice or payment required under this Agreement or any notice desired to be given by any Party to this Agreement shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; sent by electronic mail; or sent by a nationally recognized receipted overnight delivery service for earliest delivery the next day. Any such notice shall be deemed to have been given as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit in the United States mail, postage prepaid; when by electronic mail, on the day sent if sent on a day during regular business hours (9 a.m. to 5 p.m.) of the recipient, otherwise on the next day at 9 a.m.; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses of the mailing, electronic transmitting, or delivering of notices shall be as follows:

If to the City: City of Loveland
Gary Havener, Director of Parks & Recreation
500 East Third Street
Loveland, Colorado 80537
Email: Gary.Havener@cityofloveland.org

With a copy to: City of Loveland
City Attorney
500 East Third Street
Loveland, Colorado 80537
Attn: John Duval
Email: john.duval@cityofloveland.org

If to the Lakes District: The Lakes at Centerra Metropolitan District No. 1
1627 E. 18th Street
Loveland, Colorado 80538
Attn: Peggy Dowswell
Email: peggyd@pinnacleconsultinggroupinc.com

With a copy to: Icenogle Seaver Pogue, P.C.
4725 S. Monaco St., Suite 225
Denver, Colorado 80237
Attn: Alan D. Pogue
Email: APogue@ISP-law.com

If to School District: Superintendent of Schools
Thompson School District R2-J
800 S. Taft Avenue
Loveland, Colorado 80537
Attn: _____
Email: _____

11. Further Assurances. The Parties shall execute such additional documents or instruments and shall take such action as may be reasonably necessary or required to carry out the terms and provisions of this Agreement.

12. Waiver. No waiver by any Party to this Agreement of any term or condition of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition of this Agreement, nor shall any waiver of a breach of any provision of this Agreement be deemed to constitute a waiver or any subsequent breach of the same provision.

13. Subject to Annual Appropriations. The City and the School District do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The City's and School District's respective financial obligations hereunder are therefore subject to annual appropriation. The Lakes District represents and agrees that its financial obligations under

this Agreement are not subject to annual appropriation because the Lakes District has held a TABOR election, on November 6, 2007, at which its eligible electors approved the Lakes District's issuance of \$50,000,000 of debt for the purpose of constructing park and recreation improvements, thereby authorizing the Lakes District to bind itself to its multi-fiscal year obligations under this Agreement.

14. Governmental Immunity. Nothing in this Agreement shall be construed to be a waiver, in whole or in part, of any right, privilege, or protection afforded the City, the Lakes District, or the School District pursuant to the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S. and under any other law.

15. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Colorado. Venue for any action brought to enforce the terms of this Agreement shall only be in the District Court in and for Larimer County, Colorado.

16. Severability. In any clause or provision of this Agreement is adjudged invalid and/or unenforceable by a court of competent jurisdiction or by operation of any law, such clause or provision shall not affect the validity of this Agreement as a whole, but shall be severed herefrom, leaving the remaining Agreement intact and enforceable.

17. Attorneys' Fees. In the event that litigation is brought by any Party hereto in connection with this Agreement, the prevailing Party(ies) shall be entitled to recover from the opposing Party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any terms, conditions, or provisions hereof.

18. Headings. Paragraph headings used in this Agreement are for convenience of reference only and shall in no way define, control, limit or otherwise affect the meaning or interpretation of any provision of this Agreement.

19. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective successors and permitted assigns.

20. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter set forth herein and supersedes all prior agreements, understandings, discussions, representations, or warranties made by any Party.

21. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

(Remainder of page left intentionally blank.)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

CITY OF LOVELAND, COLORADO
A Municipal corporation

Cecil Gutierrez, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:


City Attorney

THE LAKES AT CENTERRA METROPOLITAN
DISTRICT NO. 1, a quasi-municipal corporation
and political subdivision of the State of Colorado



By: Kim L. Perry, President

ATTEST:



By: Jay Hardy, Vice President

THOMPSON R2-J SCHOOL DISTRICT, a
political subdivision of the State of Colorado

By: _____

Its: School Board President

ATTEST:

_____, Secretary