

DATE: February 16, 2010
STAFF: Darin Atteberry/Steve Roy

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

14

SUBJECT

First Reading of Ordinance No. 013, 2010, Approving an Amendment to the Fort Collins-Timnath Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management, and Related Issues, Extending the Deadline for the City of Fort Collins to Accomplish an Amendment to the City's Growth Management Area Boundary and Extending the Deadline for the Town of Timnath to Exercise an Option to Buy the City-owned Vangbo Open Space Property.

EXECUTIVE SUMMARY

On February 17, 2009, the City of Fort Collins and the Town of Timnath entered into an intergovernmental agreement regarding annexations, growth management, and related issues. The agreement resolved certain differences that had arisen between the City and Town concerning a variety of planning and growth management issues. The agreement set one-year deadlines for the City to amend its Growth Management Area boundary and for the Town to exercise a purchase option to acquire the City-owned Vangbo Open Space property. Ordinance No. 013, 2010, would extend those deadlines for six months (with the possible extension for an additional six months) and one year respectively.

BACKGROUND / DISCUSSION

In February 2009, the City Council passed Ordinance No. 011, 2009, approving an Intergovernmental Agreement (IGA) between the City of Fort Collins and the Town of Timnath regarding Growth Management Areas (GMAs) for the two communities and associated issues authorizing the disposition of certain properties. On February 17, 2009, the Fort Collins-Timnath IGA was signed by both parties.

Section 2.2 of the Fort Collins-Timnath IGA deals with the City's GMA boundary. Specifically, Section 2.2(b) states that the City shall within one year (by February 17, 2010) seek approval by Larimer County of an amendment to the Fort Collins-Larimer County IGA changing the Fort Collins GMA boundary to be consistent with the boundary contained in the Fort Collins-Timnath IGA. Section 2.2(b) goes on to say, "...irrespective of whether or not Larimer County approves such amendment, Fort Collins shall within the same period of time (by February 17, 2010) take all actions necessary to amend the boundaries of the Fort Collins GMA as it exists independently of the Intergovernmental Agreement between Fort Collins and Larimer County..."

The City/County IGA establishes boundaries for the Fort Collins Growth Management Area ("FCGMA") that conflict with the boundaries established in the Intergovernmental Agreement and states that Fort Collins will not amend those boundaries without the consent of the County. The County has expressed concerns about amending the FCGMA as proposed by the Intergovernmental Agreement and having to provide urban level services on a long-term basis to areas which were, under the City/County IGA, to be annexed into Fort Collins.

Because of the conflicting obligations of Fort Collins under these two agreements, Fort Collins has requested that Timnath agree to extend the deadline imposed by the Intergovernmental Agreement upon Fort Collins pursuant to Section 2.2(b) of the Intergovernmental Agreement for six months (with the possible extension for an additional six months) to afford Timnath and Larimer County adequate time to resolve their differences and come to agreement about the Timnath/Fort Collins growth management area boundary.

Section 6.1 of the Fort Collins-Timnath IGA deals with an option to the Town of Timnath to purchase the City-owned Vangbo Open Space property. Again, the IGA indicates that, within one year (or by February 17, 2010), "Timnath may, at its option, exercise the right to purchase the Vangbo" property.

The extension agreement approved by this Ordinance would extend the deadline for City-County approval of the new Fort Collins GMA boundary by up to one year and would also extend the deadline for Timnath to exercise its option to purchase the Vangbo property for one year.

FINANCIAL IMPACT

There are no financial impacts of extending the deadlines.

STAFF RECOMMENDATION

Staff recommends adoption of this Ordinance on First Reading.

ATTACHMENTS

1. First Amendment to Intergovernmental Agreement

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT
 (Regarding Cooperation on Annexation, Growth Management and Related Issues)

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (“Amendment”) is made and entered into this ____ day of February, 2010, by and between THE TOWN OF TIMNATH, COLORADO, a Colorado home rule town, hereafter referred to as “Timnath”), and THE CITY OF FORT COLLINS, COLORADO, a Colorado home rule municipal corporation, hereinafter referred to as “Fort Collins”.

RECITALS

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the “Intergovernmental Agreement”); and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement requires that by February 17, 2010, Fort Collins seek the approval of Larimer County (the “County”) to amend the boundaries of the Fort Collins Growth Management Area (the “FCGMA”) to match the boundaries that were established by the Intergovernmental Agreement; and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement also provides that irrespective of whether or not Larimer County approves the amendment of the FCGMA, Fort Collins must, within the same period of time, take all actions necessary to amend the boundaries of the FCGMA independently of the intergovernmental agreement between Fort Collins and Larimer County dated November 21, 2000 (the “City/County IGA”); and

WHEREAS, the City/County IGA establishes boundaries for the FCGMA that conflict with the boundaries established in the Intergovernmental Agreement and states that Fort Collins will not amend those boundaries without the consent of the County; and

WHEREAS, the County has expressed concerns about amending the FCGMA as proposed by the Intergovernmental Agreement and having to provide urban level services on a long-term basis to areas which were, under the City/County IGA, to be annexed into Fort Collins; and

WHEREAS, because of the conflicting obligations of Fort Collins under these two agreements, Fort Collins has requested and Timnath has agreed to extend the deadline imposed by the Intergovernmental Agreement upon Fort Collins pursuant to Section 2.2(b) of the Intergovernmental Agreement for two six-month periods to afford Timnath and the County adequate time to resolve their differences and come to

agreement about the boundary between the Timnath Growth Management Area and the FCGMA; and

WHEREAS, in consideration of Timnath's willingness to grant the aforesaid extension, Fort Collins is willing to extend for one year the "option period" established in Article 6 of the Intergovernmental Agreement within which Timnath has the right to purchase from Fort Collins certain open space known as the Vangbo Property.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Section 2.2(b) of the Intergovernmental Agreement is hereby amended to extend the period of time within which Fort Collins must amend the FCGMA, so as to read in its entirety as follows:

(b) Fort Collins shall seek the approval of Larimer County to amend the boundaries of the FCGMA in accordance with Section 2.2(a) above by August 17, 2010; provided, however, if Larimer County approval has not been obtained by August 17, 2010, then Fort Collins shall have until February 17, 2011, to amend the FCGMA in accordance with Section 2.2(a) above. In addition, and irrespective of whether or not Larimer County approves such amendment, Fort Collins shall within the same period take all actions necessary to amend the boundaries of the FCGMA as it exists independently of the Intergovernmental Agreement between Fort Collins and Larimer County, Colorado dated November 21, 2000, to conform the FCGMA to the limitations of Section 2.2(a) above, it being the intention and agreement of the parties that the requirements of Section 2.1 shall apply to the (as hereby described and amended) FCGMA boundaries irrespective of any action by Larimer County.

2. Section 6.1 of the Intergovernmental Agreement is hereby amended by changing the word "twelve (12)" in the first line thereof to "twenty-four (24)", so as to read in its entirety as follows:

6.1 Option to Purchase. During the twenty-four (24) month period immediately following the Effective Date of this Agreement (the "Option Period"), Timnath may, at its option, exercise the right to purchase the Vangbo Property from Fort Collins ("Purchase Option") for the amount of \$1,417,664.00 plus interest on such amount from August 15, 2005 (the date that Fort Collins acquired the Vangbo Property) to the closing date of the Option Transaction (collectively, the "Option Purchase Price") by providing written notice to Fort Collins within the Option Period of the exercise of its Purchase Option ("Option Notice"). The interest rate, which is designed to recover for the Fort Collins Natural Areas fund the amount of interest that would have been generated had the amount of \$1,417,664.00 not been used by Fort Collins to purchase the Vangbo Property, shall be calculated based on the average interest that would have been earned on such amount in each calendar year (the "Average Annual Interest").

Rate”), and shall be capped at the rate of four percent (4.0%). For purposes of calculating the interest rate, Fort Collins shall provide Timnath with evidence of the Annual Average Interest Rate. In the event Timnath exercises its Purchase Option, the parties shall cooperate in the preparation and execution of any necessary documentation to effectuate the purchase and sale of the Vangbo Property and the transfer of title to Timnath (the “Option Transaction”) and shall close the Option Transaction within one (1) year following the date of the Option Notice.

3. No Further Modification. Except as expressly amended by this Amendment, the Intergovernmental Agreement is unmodified and shall continue in full force and effect.
4. Binding Agreement. Both Timnath and Fort Collins intend that this Amendment shall be binding upon them.
5. Amendments. This Amendment may only be amended, changed, modified or altered in writing signed by both parties hereto.
6. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.
7. Jointly Drafted; Rules of Construction. The parties hereto agree that this Amendment was jointly drafted, and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.
8. Defined Terms. Capitalized terms used in this Amendment but not otherwise defined herein shall have the meanings set forth in the Intergovernmental Agreement.

[Remainder of Page Intentionally Left Blank. Signature Pages Follow.]

IN WITNESS WHEREOF, the parties of executed this Agreement the day and year first above written.

THE TOWN OF TIMNATH, COLORADO

By: _____
Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

THE CITY OF FORT COLLINS, COLORADO

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

ORDINANCE NO. 013, 2010
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING AN AMENDMENT TO THE
FORT COLLINS-TIMNATH INTERGOVERNMENTAL AGREEMENT
REGARDING COOPERATION ON ANNEXATION, GROWTH MANAGEMENT,
AND RELATED ISSUES, EXTENDING THE DEADLINE FOR THE CITY OF
FORT COLLINS TO ACCOMPLISH AN AMENDMENT TO THE CITY'S
GROWTH MANAGEMENT AREA BOUNDARY AND EXTENDING THE DEADLINE
FOR THE TOWN OF TIMNATH TO EXERCISE AN OPTION TO BUY THE
CITY-OWNED VANGBO OPEN SPACE PROPERTY

WHEREAS, on February 17, 2009, Timnath and Fort Collins entered into an intergovernmental agreement relating to annexation, growth management and related issues, which agreement resolved certain differences that had arisen between the parties regarding a variety of planning and growth management issues (the "Intergovernmental Agreement"); and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement requires that by February 17, 2010, Fort Collins seek the approval of Larimer County (the "County") to amend the boundaries of the Fort Collins Growth Management Area (the "FCGMA") to match the boundaries that were established by the Intergovernmental Agreement; and

WHEREAS, Section 2.2(b) of the Intergovernmental Agreement also provides that irrespective of whether or not Larimer County approves the amendment of the FCGMA, Fort Collins must, within the same period of time, take all actions necessary to amend the boundaries of the FCGMA independently of the intergovernmental agreement between Fort Collins and Larimer County dated November 21, 2000 (the "City/County IGA"); and

WHEREAS, the City/County IGA establishes boundaries for the FCGMA that conflict with the boundaries established in the Intergovernmental Agreement and states that Fort Collins will not amend those boundaries without the consent of the County; and

WHEREAS, the County has expressed concerns about amending the FCGMA as proposed by the Intergovernmental Agreement and having to provide urban level services on a long-term basis to areas which were, under the City/County IGA, to be annexed into Fort Collins; and

WHEREAS, because of the conflicting obligations of Fort Collins under these two agreements, Fort Collins has requested that Timnath agree to extend the deadline imposed by the Intergovernmental Agreement upon Fort Collins pursuant to Section 2.2(b) of the Intergovernmental Agreement for six months (with the possible extension for an additional six months) to afford Timnath and Larimer County adequate time to resolve their differences and come to agreement about the Timnath/Fort Collins growth management area boundary; and

WHEREAS, Timnath has also requested that Fort Collins extend for one year the “option period” established in Article 6 of the Intergovernmental Agreement within which Timnath has the right to purchase from Fort Collins certain open space known as the Vangbo Property; and

WHEREAS, the City Council has determined that the amendment to the IGA between Fort Collins and Timnath is in the best interests of the City and that the Mayor should be authorized to execute it.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to enter into an amendment to the Intergovernmental Agreement Regarding Cooperation on Annexation, Growth Management and Related Issues extending the deadline for the City to accomplish an amendment to the City’s Growth Management Area boundary and extending the deadline for the Town of Timnath to exercise an option to buy the City-owned Vangbo Open Space property for the periods of time described above.

Introduced, considered favorably on first reading, and ordered published this 16th day of February, A.D. 2010, and to be presented for final passage on the 2nd day of March, A.D. 2010.

Mayor

ATTEST:

City Clerk

Passed and adopted on final reading on the 2nd day of March, A.D. 2010.

Mayor

ATTEST:

City Clerk