

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 27

DATE: February 7, 2006

STAFF: John Stokes

### SUBJECT

---

Resolution 2006-012 Authorizing the Amendment of the Intergovernmental Agreement Between the City of Fort Collins and Larimer County Regarding the Management of Fossil Creek Regional Open Space.

### RECOMMENDATION

---

Staff recommends adoption of the Resolution.

### FINANCIAL IMPACT

---

The amended Intergovernmental Agreement requires that the City become the managing entity for Fossil Creek Regional Open Space on January 1, 2010, if the property has been annexed into the City, instead of upon annexation of the property. The annual operating costs of the property are estimated to be approximately \$150,000 a year. The City's Natural Areas Program would absorb these costs and pay for them by using dedicated funding from Open Space, Yes!, and the County's Help Preserve Open Space sales tax initiatives.

### EXECUTIVE SUMMARY

---

Staff is proposing to amend the Intergovernmental Agreement (IGA) between Fort Collins and Larimer County regarding the management of Fossil Creek Regional Open Space (FCROS). The current IGA calls for management of FCROS to shift from the County to the City immediately upon annexation of the area by the City. The amended IGA delays the shift to the City until 2010.

### BACKGROUND

---

FCROS has been a joint conservation project between Fort Collins and Larimer County dating back to the late 1990's. Since that time, the City and the County have collectively acquired 844 acres of land in fee ownership. The City and County each own a 50% interest in the fee properties. In 2001, the City and County entered into an IGA that called for the County to manage the property and for the City and County to share the costs of building infrastructure to accommodate public visitation.

In 2003, FCROS was opened to the public. There are 2.2 miles of walking trails at FCROS and the property is managed primarily as a bird sanctuary. It is regarded as one of the best places for bird observation in northern Colorado. Based on user surveys, county staff estimates that FCROS receives over 40,000 visitors a year, and the number of visitors continue to increase as the property becomes better known to the public.

The City recently has decided to move ahead with the southeast Growth Management Area expansion and annexation, an area that includes FCROS. Based on the existing IGA, the City would immediately become responsible for managing the property upon annexation. City and County staff have agreed that it would be better to delay the planned transfer of management responsibilities from the County to the City. Based on these discussions, the option recommended by City and County staff is for the transfer to occur in 2010.

At this time, the County spends about \$150,000 a year managing FCROS. Costs to the City's Natural Areas Program can be expected to be similar. This is a substantial management and financial responsibility for the City that will be delayed several years as a result of the proposed amendment. The Natural Areas Program has factored the cost of managing FCROS into its long-term financial plans and believes that it will be able to accommodate these costs and provide adequate staffing.

RESOLUTION 2006-012  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT  
BETWEEN THE CITY OF FORT COLLINS AND LARIMER COUNTY  
REGARDING THE MANAGEMENT OF FOSSIL CREEK REGIONAL OPEN SPACE

WHEREAS, on January 16, 2001, the City Council adopted on second reading Ordinance No. 3, 2001, authorizing an Intergovernmental Agreement by and between the City and Larimer County related to the joint acquisition and ownership of seven properties in the Fossil Creek Reservoir area totaling 833 acres, for an estimated total purchase price of \$7.7 million, and authorizing the conveyances contemplated therein; and

WHEREAS, in January 2001, the City and Larimer County entered into that certain Intergovernmental Agreement Concerning the Fossil Creek Reservoir Area Properties (the "IGA"), consistent with Ordinance No. 3, 2001; and

WHEREAS, on April 1, 2003, the City Council approved Resolution 2003-046, which authorized the amendment of the IGA in order to redistribute certain costs of improvements and certain responsibilities; and

WHEREAS, on April 15, 2003, the City and County executed that First Amendment to the IGA; and

WHEREAS, the IGA currently requires the City to become the managing entity of the subject properties, which are operated by the County as Fossil Creek Reservoir Regional Open Space, upon annexation of the properties; and

WHEREAS, discussions regarding the annexation of the properties have been underway, and the annexation is expected to move forward; and

WHEREAS, City and County staff are in agreement that it will be mutually beneficial for the City and County to delay the transition of management of the properties until January 1, 2010, rather than at the time of annexation; and

WHEREAS, in order to document the modifications to the IGA described herein, City staff has negotiated with the County the proposed Second Amendment to Intergovernmental Agreement Concerning the Fossil Creek Reservoir Area Properties attached hereto as Exhibit "A" and incorporated herein by this reference (the "Second Amendment"); and

WHEREAS, the City is authorized to enter into intergovernmental agreements to provide any function, service or facility, such as a grant agreement, as provided in Article II, Section 16 of the Charter of the City of Fort Collins and Section 29-1-203, C.R.S.; and

WHEREAS, Ordinance No. 3, 2001, expressly provided that although the IGA was initially approved by ordinance, future amendments to the IGA not otherwise provided for in that Ordinance may be approved by the Council by resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Mayor is hereby authorized to enter into the Second Amendment to the IGA.

Passed and adopted at a regular meeting of the City Council held this 7th day of February, A.D. 2006.

---

Mayor

ATTEST:

---

City Clerk

**SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT  
CONCERNING THE FOSSIL CREEK RESERVOIR AREA PROPERTIES**

This SECOND AMENDMENT to Intergovernmental Agreement Concerning the Fossil Creek Reservoir Area Properties ("Second Amendment") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between the CITY OF FORT COLLINS, COLORADO and LARIMER COUNTY, COLORADO as follows.

**WHEREAS**, part of 2 of Article 1 of Title 29, C.R.S. authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each, including the sharing of costs; and

**WHEREAS**, in January 2001, the parties hereto entered into that certain Intergovernmental Agreement Concerning the Fossil Creek Reservoir Area Properties by and between them, which set forth the agreement between them concerning the sharing of costs and responsibilities for the acquisition, ownership, improvement, and management of the Properties as described therein; and

**WHEREAS**, on April 15, 2003, the parties entered into a Amendment to Intergovernmental Agreement Concerning the Fossil Creek Reservoir Area Properties (the "First Amendment"), by which the parties updated certain terms of acquisition and improvement of the Properties; and

**WHEREAS**, the Intergovernmental Agreement Concerning the Fossil Creek Reservoir Area Properties as amended by the First Amendment remains in full force and effect as of the date of this Second Amendment and is referred to herein as the "Agreement"; and

**WHEREAS**, the parties have as of the date of this Second Amendment acquired the property interests as planned in the Agreement, and have constructed improvements upon and made available for public use the Fossil Creek Reservoir Regional Open Space, as a County Open Space facility; and

**WHEREAS**, the parties have recently determined that a modification to the designation of the Managing Entity for the Properties would be mutually beneficial and would allow for a reasonable gradual transition of responsibilities for the Properties; and

**WHEREAS**, accordingly, the parties have agreed to this Second Amendment to document and describe modifications related to the agreed upon change to the Managing Entity provisions.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree to amend the Agreement as follows:

1. Section C.1 of the Agreement is hereby amended to read as follows:

1. Through the end of calendar year 2009, Larimer County shall be the Managing Entity and shall be responsible for the management of the Properties in accordance with the Management Plan described herein below. In the event all of the Properties are annexed into the City of Fort Collins on or before January 1, 2010, the City shall on January 1, 2010 become the Managing Entity, and the City shall thereafter be responsible for all financial obligations of the Managing Entity herein described or described in the original IGA for the property. As of January 1, 2010, Larimer County's financial responsibility for costs or improvements as Managing Entity shall cease. Notwithstanding the foregoing, Larimer County will retain its ownership interest in the Fossil Creek Regional Open Space and shall have the authority presently stated in the Management Plan and original IGA to approve any changes to the Management Plan and to approve any construction of additional improvements on the property. In addition, the City specifically agrees to undertake, at its expense subject to annual appropriation by the City Council of the City in its sole discretion of revenues sufficient and intended for such purposes, all the management obligations required by GOCO in the original grant agreement at City expense.

2. Section C.6 of the Agreement shall be renumbered to Section C.3, and shall be amended to read as follows:

3. In the event of emergency or unusual circumstances requiring immediate response, the Managing Entity shall be entitled to use reasonable discretion in responding to such circumstances, regardless of the expressed terms of the Management Plan, provided that reasonable efforts are made to consult with the non-managing party regarding the proper course of action.

3. Section C.7 of the Agreement (as amended by the First Amendment) shall be renumbered to Section C.4, and shall be amended to read as follows:

4. The Management Plan identifies various improvements to be made to the Properties, including, without limitation, such items as Recreational Improvements, Landscape Improvements, and Habitat Improvements. Until such time as the City becomes the Managing Entity, the parties shall share equally the costs associated with implementing the various improvements to the Properties, provided that any such improvements shall be mutually planned, scheduled, designed and agreed to in advance by the parties. After the City becomes the Managing Entity, the Managing Entity shall be responsible for implementing any additional improvements to the Properties, except as otherwise expressly agreed by the parties.

4. Section C.8 of the Agreement shall be renumbered to Section C.5, and shall be amended to read as follows:

5. The Management Plan identifies the location of a Regional Trail to be constructed on the Properties at a future date. The City shall be responsible for the costs

associated with the design, construction and maintenance of the Regional Trail. The Managing Entity shall be responsible for the costs of patrol and enforcement of the Regional Trail and the use by that Trail of the general public, consistent with regulations applicable generally to trails managed by the Managing Entity and subject to annual appropriation by the City Council of the City in its sole discretion of revenues sufficient and intended for such purposes.

5. Section C.9 of the Agreement shall be renumbered to Section C.6, and shall be amended to read as follows:

6. The Managing Entity shall be financially responsible for the management costs associated with the Properties subject to annual appropriation by the City Council of the City in its sole discretion of revenues sufficient and intended for such purposes. "Management costs" shall be defined to include normal and customary expenses associated with day-to-day use and operation of the Properties.

6. Section C.10 of the Agreement shall be renumbered to Section C.7.

7. Section C.11 of the Agreement shall be renumbered to Section C.8, and shall be amended to read as follows:

8. Any revenues generated by use or operation of the Properties, including but not limited to revenues from leases, licenses, profits or other agreements for said use, shall be retained by the Managing Entity for use only for the cost of management of the Properties for the current or future years; provided, however, that the Management Plan may provide that any accumulated revenues not needed for current or reasonably anticipated future management costs may be used for improving the Properties. Revenues generated by the sale of easements, rights-of-way or title interest in the Properties shall be shared by the parties in accordance with their ownership interest in the Properties.

8. Section C.12 of the Agreement is hereby deleted.

9. Section C.13 of the Agreement is hereby deleted.

10. The Agreement shall remain in full effect and unmodified, except as expressly set forth in this Second Amendment.

11. This Amendment shall be effective upon the date of the last party to sign.

**IN WITNESS WHEREOF**, the parties have executed this Second Amendment to the Agreement as set forth below.

**CITY OF FORT COLLINS, COLORADO**

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Sr. Assistant City Attorney

**LARIMER COUNTY, COLORADO**

**Dated:** \_\_\_\_\_

**By:** \_\_\_\_\_  
Chair, Board of County Commissioners

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
County Attorney