



**PLANNING AND DEVELOPMENT DEPARTMENT MEMORANDUM
#14-2020**

DATE: April 13, 2020

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager 

FROM: Brook Svoboda, Director of Planning and Development 

SUBJECT: CR-68 – Karl's Farm Lift Station Agreement Assignment – Karl's Farm Metropolitan District No. 2

PURPOSE

To consider a resolution assigning the Karl's Farm Bunker Hill Lift Station Agreement from KF Developers, Inc. to the Karl's Farm Metropolitan District No. 2.

BACKGROUND

KF Developers, Inc. submitted a request regarding the assignment of the Karl's Farm Lift Station Agreement from KF Developers, Inc. to Karl's Farm Metropolitan District No. 2. The request is included as Attachment 1. The assignment will cover the financial commitment for the construction of the lift station as outlined in the Lift Station Agreement. The Metropolitan District will be the financier for the lift station.

The City is constructing this project with the developer reimbursing their pro-rata share of the cost to construct the lift station.

The assignment does not change the original terms or obligations of the Lift Station Agreement.

STAFF RECOMMENDATION

Staff recommends approval of CR-68.

BUDGET/TIME IMPLICATIONS

This request has no budgetary impacts.

STAFF REFERENCE

If Council members have any comments or questions, they may contact Brook Svoboda, Director of Planning and Development, at 303.450.8937 or bsvoboda@northglenn.org.

ATTACHMENT

1. Request for Assignment – KF Developers, Inc. dated March 11, 2020

CR-68 – Karl's Farm Bunker Lift Station Agreement Assignment – Karl's Farm Metropolitan District No. 2

ATTACHMENT 1

KF DEVELOPERS, INC
7400 E. ORCHARD ROAD, SUITE 290-S
GREENWOOD VILLAGE, COLORADO 80111

March 11, 2020

Via Email

Mr. Brook Svoboda
Director of Planning and Development
11701 Community Center Drive
P.O. Box 330061
Northglenn, Colorado 80233-8061
bsvoboda@northglenn.org

Re: City of Northglenn Lift Station Escrow Agreement — Request for Assignment

Dear Brook,

This letter is to formally request the City approve and authorize an assignment of the rights and obligations under the Lift Station Escrow Agreement between City of Northglenn and KF Developers, Inc., (“KF”) to the Karl’s Farm Metropolitan District No. 2. (“District”).

It is anticipated that Karl’s Farm Metropolitan District No. 2 will issue infrastructure bonds to fund improvements related the Karl’s Farm development. The lift station is one of the improvements to be funded from net proceeds of the bond issuance. We hereby request the City consent to such assignments prior to March 30, 2020.

If you have questions or concerns, please don’t hesitate to contact me. We sincerely appreciate your help with this matter.

Sincerely,

KF Developers, Inc.

B: 

Daniel Frank

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-68
Series of 2020

Series of 2020

A RESOLUTION CONSENTING TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE KARL'S FARM LIFT STATION AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KF DEVELOPERS, INC.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The City Council hereby consents to the Assignment and Assumption Agreement for the Karl's Farm Lift Station Agreement dated April 8, 2019, from KF Developers, Inc. to Karl's Farm Metropolitan District No. 2, attached hereto, and the Mayor is authorized to execute same on behalf of the City of Northglenn.

DATED at Northglenn, Colorado, this ____ day of _____, 2020.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

**ASSIGNMENT AND ASSUMPTION AGREEMENT
FOR THE
AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KF DEVELOPERS,
INC, REGARDING THE CONSTRUCTION OF A LIFT STATION**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT FOR THE AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KF DEVELOPERS, INC, REGARDING THE CONSTRUCTION OF A LIFT STATION (the "**Agreement**") is dated as of _____, 2020, effective _____, and is made by and between KF DEVELOPERS, INC, a _____ ("**KFD**"), and KARL'S FARM METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (the "**District**").

RECITALS

A. KFD entered into that certain *Agreement Between the City of Northglenn and KF Developers, Inc, Regarding the Construction of a Lift Station* with the City of Northglenn, Colorado (the "**City**") on April 8, 2019, which agreement is attached hereto as **Exhibit A**, and incorporated herein by this reference (the "**Lift Station Agreement**").

B. The City, KFD, and the District have determined that it is desirable for the Lift Station Agreement to be assigned to the District in order that bond proceeds of the District may be used to partially fund construction of the lift station.

B. KFD desires to assign the Lift Station Agreement to the District, and the District desires to assume all of KFD's obligations under the Lift Station Agreement, subject to the prior written approval of the City.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Lift Station Agreement. KFD hereby assigns, conveys and sets over to the District, and the District hereby accepts, all of KFD's right, title and interest under and with respect to the Lift Station Agreement.

2. Assumption of Obligations. The District hereby assumes all obligations of KFD under and with respect to the Lift Station Agreement.

3. Conditions Precedent. KFD represents and warrants that it has satisfied all conditions precedent, as required by the Lift Station Agreement, for this assignment by KFD and assumption by the District.

4. General.

(a) This Agreement shall not be modified, amended or terminated without the express written consent of KFD, the District and the City. Notwithstanding anything to the contrary in this Agreement or the Lift Station Agreement, the District agrees and covenants to the City that it will not further assign its rights or obligations under the Lift Station Agreement without first obtaining the City's prior written consent.

(b) The parties hereto warrant and represent that they have the express authority to so execute and bind themselves and the parties for whom they are acting to the terms and provisions of this Agreement.

(c) The parties hereto warrant and represent that they have executed this Agreement, based upon their own knowledge and free will.

(d) KFD, on the one hand, and the District, on the other hand, agree that if any party hereto brings an action to enforce this Agreement or any of its terms and conditions, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and actual costs from the losing party. The parties acknowledge and agree that the City shall not be liable for any party's attorneys' fees under this section.

(e) Should any provision of this Agreement be declared or determined to be null and void, inoperative, illegal or invalid for any reason, the validity of the remaining parts, terms or provisions shall not be affected thereby and they shall retain their full force and effect and said null, void, inoperative, illegal or invalid part, term or provision, shall be deemed not to be part of this Agreement.

(f) This Agreement shall, in all respects, be interpreted, enforced and governed under the laws of the State of Colorado.

(g) The Recitals of this Agreement are incorporated herein by this reference.

(h) This Agreement merges and supersedes all prior negotiations, representations and agreements of the parties hereto, as of the date first above written.

[Signature pages follow].

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

KFD: KF DEVELOPERS, INC


By: 
Daniel Frank, President

STATE OF COLORADO)
)ss.
COUNTY OF Arapahoe)

The foregoing instrument was acknowledged before me this 16 day of March, 2020, by Daniel Frank, as President of KF Developers, Inc.

My commission expires: 03.14.2023

(SEAL) **STEVEN ZAUGG**
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20034009024
MY COMMISSION EXPIRES 03/14/2023


Notary Public

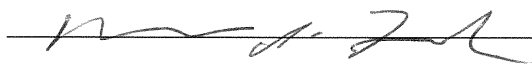
THE DISTRICT:

**KARL'S FARM METROPOLITAN
DISTRICT NO. 2**, a quasi-municipal corporation
and political subdivision of the State of Colorado

By: 

Officer of the District

Attest:

By: 

APPROVED AS TO FORM:

WHITE BEAR ANKELE TANAKA & WALDRON



General Counsel to the District

CONSENT OF CITY OF NORTHGLENN

The City of Northglenn hereby consents to the Assignment and Assumption Agreement for the Agreement Between the City of Northglenn and KF Developers, Inc, Regarding the Construction of a Lift Station.

CITY OF NORTHGLENN, COLORADO

Meredith Leighty, Mayor

ATTEST:

Johanna Small, City Clerk

EXHIBIT A
LIFT STATION AGREEMENT

SPONSORED BY: MAYOR DODGE

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-37
Series of 2019


19-34
Series of 2019

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KF DEVELOPERS, INC. REGARDING THE CONSTRUCTION OF THE KARL'S FARM LIFT STATION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Agreement between the City of Northglenn and KF Developers, Inc., attached hereto as Exhibit A, regarding reimbursement of costs for the construction of the Karl's Farm Lift Station, is hereby approved and the Mayor is authorized to execute the agreement on behalf of the City of Northglenn.


DATED at Northglenn, Colorado, this 8th day of April, 2019.


CAROL A. DODGE
Mayor

ATTEST:


JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:


COREY Y. HOFFMANN
City Attorney

AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KF DEVELOPERS, INC, REGARDING THE CONSTRUCTION OF A LIFT STATION

The following Agreement is made on this 8th day of April, 2019, between the City of Northglenn (the "City") and KF Developers, Inc (the "Developer") regarding the construction and construction management of a Lift Station. The City and the Developer are collectively referred to as the Parties.

WHEREAS, the City and the Developer desire to share in the costs of the construction and construction management of a Lift Station with a capacity of approximately 1 million gallons that serves both the Karl's Farm development and serves the City generally (the "Lift Station"), based on the Parties' agreed upon proportionate share of the construction cost, taking into account the Developer's impact on the expanded size of the Lift Station necessitated by Developer's proposed development;

WHEREAS, the total project cost for the construction and construction management of the Lift Station has been estimated at the cost of \$2,100,000 plus a 20% contingency for a total of \$2,520,000, based on a design previously funded by the Parties hereto in the same proportions as the proportionate share of the cost of construction set forth hereinbelow; and

WHEREAS, the Parties desire to fund the construction and construction management of the Lift Station as more particularly described in this Agreement.

TERMS

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the City and Developer hereby agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated into this Agreement, and shall be deemed terms and provisions hereof, to the same extent as if fully set forth in this Section.

2. Contribution by the Parties to the Cost of Construction and Construction Management.

A. The Parties shall contribute the total amount of \$2,520,000, in the proportionate amounts of \$705,600, reflecting a twenty-eight percent (28%) contribution by the City and \$1,814,400, reflecting a seventy-two percent (72%) contribution by the Developer (the "Funding Allocation") to the cost of construction and construction management of the Lift Station.

B. The Parties shall each contribute the amounts set forth above to a Special Account created by the City for the sole purpose of funding the construction and construction management of the Lift Station (the "Special Account"). Such amounts shall be paid into the Special Account prior to the City expending, or agreeing to spend, any

{00681892.DOCX v:1 }

1

11/20/2018
Q:\USERS\WG\AGR\2018\KARLS FARM LIFT STATION CONSTRUCT-A112018.DOCX

funds on the construction and construction management of the Lift Station. On or before ____, 2019, the City will provide formal notice of the amount due under this Agreement, and the Parties shall remit the amounts due to the Special Account no later than thirty (30) calendar days after receiving formal notice from the City that the City has received an acceptable bid in order for the City to accept a bid for the construction and construction management of the Lift Station. The City agrees to provide copies of the bids received to the Developer for review and approval together with notice of which bid the City intends to accept. If the Developer does not object to the proposed bid within five (5) days following receipt of the same, it shall be deemed that the Developer has approved the same and thereafter, the City agrees to accept a bid and award the construction and management agreement within ten (10) days following Developer's approval or deemed approval of the bid and full funding of the Special Account.

- C. The City shall not enter into any contract for the construction of the Lift Station until the City, at its sole discretion, determines that it has sufficient funding within the Special Account to contract for the total cost of constructing the Lift Station. The parties acknowledge that this does not include the design of the Lift Station which has been funded pursuant to a separate agreement.
- D. In the event the Parties, collectively or individually, do not make the contributions necessary to cause the Lift Station to be completed, the City shall have the sole discretion to terminate the Lift Station Project, and return the funds in the Special Account to the Parties in the same proportion in which they were received. The Developer hereto further waives any right to seek recovery of any funds actually paid by the City to others to pay for costs of the Lift Station Project as set forth herein.
- E. Following full funding of the Special Account and award of a construction and management contract for the Lift Station, any change orders that would increase the cost thereof by more than 10% must be approved by the City and Developer. Prior to issuing any change orders that increase the cost of the Lift Station, such cost increase must be funded by the Parties in the same proportions as set forth in Section 2A above. The City agrees to provide the Developer with copies of invoices from the contractor as well as monthly status updates on the construction schedule and completion.
- F. Upon completion of the Project, which shall be triggered by the Final Settlement by the City in accordance with the provisions of C.R.S. § 38-26-107, the City shall, within thirty (30) days thereafter, return funds, if any, remaining in the special account to the Parties in the same proportion in which they were received.

3. Construction and Construction Management of the Lift Station. The City shall contract for, manage, and cause the construction of the Lift Station. The City shall utilize the contracting procedures set forth in the Northglenn Municipal Code for the construction and on-site construction management of the Lift Station. The City agrees to spend the amounts more

{00681892.DOCX v:1 }

particularly described in this Agreement that are received from the Developer for the construction and construction management of the Lift Station. Subject to *force majeure*, the City agrees that construction shall be completed no later than fifteen (15) months after the City issues a Notice to Proceed to the Contractor, provided that the Developer has placed its contributions in the Special Account.

4. Step-In Right. In the event the City fails to: a) diligently pursue construction of the Lift Station; or 2) complete the same as set forth in Section 3 above, then Developer or any entity that acquires property within Karl's Farm from Developer, shall have the right, after written notice of such failure to the City and the City's failure to cure the same within thirty (30) days of such notice, to step-in and assume the City's contract to construct and manage the Lift Station construction (the "Step-in Right"). Notwithstanding the foregoing, no Step-in Right shall exist unless and until: i) full funding by the Parties of the Special Account; and ii) the City awarding a contract for construction and management of the Lift Station. Following exercise of such Step-in Right, the step-in party shall have the right to submit draws to the City for payment from the Special Fund. In the event the step-in party determines that the contractor has not fulfilled its obligations, the step-in party shall have the right to terminate such construction and management agreement and enter into a new agreement, provided, however, selection of a new contractor must comply with the contracting procedures set forth in the Northglenn Municipal Code for the construction and on-site construction management of the Lift Station, and such construction must be done in accordance with the previously approved design of the Lift Station. Nothing in this Section 4 shall obligate the City to pay any amounts in excess of the amount appropriated for the construction of the Lift Station as set forth in Section 2A of this Agreement.

4. Miscellaneous.

- A. The City and the Developer are separate, independent entities and shall maintain such status throughout.
- B. It is understood and agreed that this Agreement is intended to facilitate cooperation between the City and the Developer regarding the construction and construction management of the Lift Station, but nothing in this Agreement shall be construed to establish a separate legal entity and, except as set forth herein, this Agreement does not authorize any Party to act for another for any other purpose whatsoever.
- C. Notices. Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand delivered, sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the City and the Developer. Such notice shall be deemed to have been given when deposited in the United States mail.
- D. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the City and the Developer and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

{00681892.DOCX v:1 }

- E. Integration and Amendment. This Agreement represents the entire agreement between the City and the Developer with regard to the subject matter of this agreement and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the City and the Developer. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.
- F. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.
- G. Venue. Venue for any actions under this contract shall be in Adams County, Colorado.
- H. Force Majeure. Subject to the following provisions, time is of the essence. Any delays in or failure of performance by either the City or the Developer of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, earthquake, strikes, labor disputes, regulation or order of civil or military authorities, or other causes, similar or dissimilar, which are beyond the control of the City or the Developer.

IN WITNESS WHEREOF, the City and Developer have caused this Agreement to be executed as of the day and year first above written.

CITY OF NORTHGLENN, COLORADO

By: 
Carol A. Dodge, Mayor

ATTEST:


Johanna Small, CMC, City Clerk

KF DEVELOPERS, INC



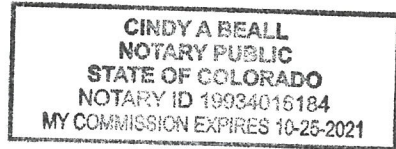
By: Daniel Frank
Its: Director


STATE OF COLORADO)
City of) ss.
COUNTY OF Denver)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 26th day of March, ~~2018~~, by Daniel Frank, as the Director of KF Developers Inc. 2019

My commission expires: 10-25-2021

(S E A L)




Notary Public