

RESOLUTION #R-96-2013

**A RESOLUTION OF THE LOVELAND CITY COUNCIL APPROVING
THE FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT FOR THE ADDITION OF TWO REGIONAL
IMPROVEMENTS**

WHEREAS, on January 20, 2004, the City of Loveland (the “City”) and the Loveland Urban Renewal Authority (“LURA”) entered into that certain Centerra Master Financing and Intergovernmental Agreement (the “MFA”), dated January 20, 2004, with Centerra Properties West, LLC (“CPW”), Centerra Metropolitan District No. 1 (the “Service District”), Centerra Public Improvement Collection Corporation (the “PIC”), and Centerra Public Improvement Development Corporation (the “PID”); and

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereafter referred to collectively as “the Parties”; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 (“First Amendment”) to include the Centerra Parkway / Crossroads Extension within the definition of “Regional Improvements” as defined in MFA Section 1.43, which First Amendment was approved by the City Council in Resolution #R-114-2006; and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 (“Second Amendment”) to address various issues associated with the Mixed Use Village Center Project and to include certain parking improvements within the definition of “Local Improvements” as defined in MFA Section 1.54, which Second Amendment was approved by the City Council in Resolution #R-75-2007; and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 (“Third Amendment”) to address the addition of certain real property to the URA Project Area, as defined in the MFA, and to set forth the terms and conditions pursuant to which the URA Project Area, as amended, shall benefit from property tax increment revenues generated from within the URA Project Area, which Third Amendment was approved by the City Council in Resolution #R-101-2008; and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 (“Fourth Amendment”) to address the formation of a new metropolitan district located within the URA Project Area, known as Centerra Metropolitan District No. 5, which Fourth Amendment was approved by the City Council in Resolution #R-32-2009; and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the MFA requires the establishment of the Regional Fund, which is a segregated account held by LURA, into which is deposited annually the Regional Allocation; and

WHEREAS, MFA Section 11.4 requires LURA to disburse to the Service District the Regional Fund to pay the cost of the construction of the Regional Improvements, to the extent the Regional Improvements meet the requirements of MFA Section 11.2 and are not constructed pursuant to MFA Section 11.3; and

WHEREAS, the Regional Improvements required to be constructed pursuant to MFA Section 11.3 have been completed; and

WHEREAS, MFA Section 1.93 defines the Regional Improvements to include: (1) the I-25 and Crossroads Boulevard Interchange Improvements; (2) the Interim I-25 and U.S. 34 Interchange Improvements; (3) the County Road 5 and U.S. 34 Structure; (4) the County Road 3E and U.S. 34 Structure; (5) the Final I-25 and U.S. 34 Interchange Improvements; and (6) the Centerra Parkway/Crossroads Extension; and

WHEREAS, MFA Section 1.93.6 provides that other Public Improvements (as defined in the MFA) may be classified as Regional Improvements under the MFA upon the agreement of the City, the LURA, and the Service District; and

WHEREAS, the Parties desire to amend the MFA to expand the list of Regional Improvements to include: (1) Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street); and (2) Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast (including an underpass at Kendall Parkway and I-25); and

WHEREAS, the Parties have negotiated the "Fifth Amendment to the Centerra Master Financing and Intergovernmental Agreement" attached hereto as Exhibit "A" and incorporated herein by reference (the "Fifth Amendment"); and

WHEREAS, after reviewing the Fifth Amendment, and receiving information from City staff and others, the City Council has determined that the Fifth Amendment will be in the best interests of the City and its citizens.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOVELAND:

Section 1. That the City Council hereby finds that the Fifth Amendment is in the best interests of the public and will serve the public purposes of (1) providing social and economic benefits to the City; (2) furthering the City's economic goals as established in the City's economic development plan; and (3) generally benefiting the public's health, safety and welfare.

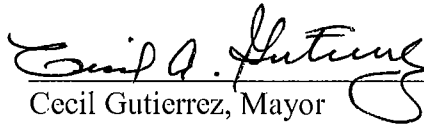
Section 2. That the Fifth Amendment is hereby approved and the Mayor is authorized and directed to execute it on behalf of the City.

Section 3. That the City Manager is authorized, as he deems necessary and in consultation with the City Attorney, to agree to minor amendments to the Fifth Amendment on behalf of the City provided that such amendments are consistent with the purposes of this Resolution and protect the City's interests.

Section 4. This Resolution shall take effect on the date and at the time of its adoption.

ADOPTED this 5th day of November, 2013.




Cecil Gutierrez, Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:

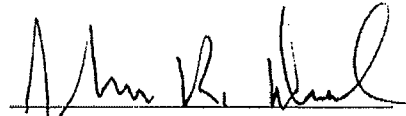

City Attorney

EXHIBIT "A"

**FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

**FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND
INTERGOVERNMENTAL AGREEMENT**

THIS FIFTH AMENDMENT TO THE CENTERRA MASTER FINANCING AND INTERGOVERNMENTAL AGREEMENT (the "Fifth Amendment") is entered into this ____ day of _____, 2013, by and among the **CITY OF LOVELAND, COLORADO**, a Colorado home rule municipality (the "City"); the **LOVELAND URBAN RENEWAL AUTHORITY**, a body corporate and politic ("LURA"); **CENTERRA PROPERTIES WEST, LLC**, a Colorado limited liability company ("CPW"); **CENTERRA METROPOLITAN DISTRICT NO. 1**, a quasi-municipal corporation and political subdivision of the State of Colorado (the "Service District"); **CENTERRA PUBLIC IMPROVEMENT COLLECTION CORPORATION**, a Colorado non-profit corporation (the "PIC"); and the **CENTERRA PUBLIC IMPROVEMENT DEVELOPMENT CORPORATION**, a Colorado non-profit corporation (the "PID")."

WHEREAS, the City, LURA, CPW, the Service District, the PIC and the PID shall be hereinafter referred to collectively as the "Parties"; and

WHEREAS, the Parties have entered into that certain Centerra Master Financing and Intergovernmental Agreement dated January 20, 2004, (together with the First, Second, Third, and Fourth Amendments described below, referred to herein collectively as "the MFA") to provide, among other things, for the financing of "Public Improvements" and "Regional Improvements" related to the development of Centerra, as these terms in quotes are defined in the MFA; and

WHEREAS, the Parties entered into that certain First Amendment to the Centerra Master Financing and Intergovernmental Agreement dated December 5, 2006 ("First Amendment"); and

WHEREAS, the Parties entered into that certain Second Amendment to the Centerra Master Financing and Intergovernmental Agreement dated November 20, 2007 ("Second Amendment"); and

WHEREAS, the Parties entered into that certain Third Amendment to the Centerra Master Financing and Intergovernmental Agreement dated October 28, 2008 ("Third Amendment"); and

WHEREAS, the Parties entered into that certain Fourth Amendment to the Centerra Master Financing and Intergovernmental Agreement dated April 7, 2009 ("Fourth Amendment"); and

WHEREAS, capitalized terms not otherwise defined herein shall have the meaning given them in the MFA; and

WHEREAS, the MFA requires the establishment of the Regional Fund, which is a segregated account held by LURA, into which is deposited annually the Regional Allocation; and

WHEREAS, MFA Section 11.4 requires LURA to disburse to the Service District the Regional Fund to pay the cost of the construction of the Regional Improvements, to the extent the Regional Improvements meet the requirements of MFA Section 11.2 and are not constructed pursuant to MFA Section 11.3; and

WHEREAS, the Regional Improvements required to be constructed pursuant to MFA Section 11.3 have been completed; and

WHEREAS, MFA Section 1.93 defines the Regional Improvements to include: (1) the I-25 and Crossroads Boulevard Interchange Improvements; (2) the Interim I-25 and U.S. 34 Interchange Improvements; (3) the County Road 5 and U.S. 34 Structure; (4) the County Road 3E and U.S. 34 Structure; (5) the Final I-25 and U.S. 34 Interchange Improvements; and (6) the Centerra Parkway/Crossroads Extension; and

WHEREAS, MFA Section 1.93.6 provides that additional Regional Improvements may be classified upon the agreement of the City, the LURA, and the Service District; and

WHEREAS, the Parties desire to amend the MFA to expand the list of Regional Improvements to include: (1) Boyd Lake Avenue from U.S. 34 north to Kendall Parkway (37th Street); and (2) Kendall Parkway from Boyd Lake Avenue on the northwest to US 34 on the southeast (including an underpass at Kendall Parkway and I-25); and

WHEREAS, MFA Section 17.1 provides that the Parties may amend the MFA by an instrument signed by all of the Parties; and

WHEREAS, the Loveland City Council approved this Agreement in Resolution _____ and also approved it sitting as the LURA's governing body in Resolution _____.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and adequacy of which the Parties acknowledge, the Parties agree as follows:

DEFINITIONS

1. That unless the context clearly indicates otherwise, all capitalized terms used in this Fifth Amendment shall have the meaning given to them in the MFA.

2. That for purposes of this Fifth Amendment, the term "Boyd Lake Avenue" shall mean a public roadway running from U.S. Highway 34 north to Kendall Parkway (37th Street), together with all underground utilities located within the public right-of-way which also qualify as Local Improvements, as generally depicted on **Exhibit A** to this Fifth Amendment, attached hereto and incorporated herein by reference.

3. That for purposes of this Fifth Amendment, the term “Kendall Parkway” shall mean a public roadway running from U.S. Highway 34 northwest to Boyd Lake Avenue (including an underpass at Kendall Parkway and I-25), together with all underground utilities located within the public right-of-way which also qualify as Local Improvements, as generally depicted on **Exhibit B** to this Fifth Amendment, attached hereto and incorporated herein by reference.

REGIONAL IMPROVEMENT DESIGNATION

4. That Section 1.93 of the MFA shall be amended by the addition of the following:

1.93.8 Boyd Lake Avenue, which may be constructed in its entirety in one phase or in multiple phases; and

1.93.9 Kendall Parkway, which may be constructed in its entirety in one phase or in multiple phases; and

5. The designation herein of Boyd Lake Avenue and Kendall Parkway as Regional Improvements shall not relieve any adjacent or benefitted land owner, other than CPW and its Affiliates, from the land owner’s obligation to fund a portion of such improvements as required by City Regulations.

MISCELLANEOUS

6. That the City, LURA, and the Service District each finds and determines that the execution of this Fifth Amendment is in the best interest of the public health and general welfare of the City, LURA, and the Service District respectively, and that it will serve the public purposes of providing significant social and economic benefits to the City, LURA, and the Service District.

7. That except as expressly provided in this Fifth Amendment, all other terms and conditions of the MFA shall remain unchanged and in full force and effect.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have executed this Fifth Amendment or counterpart copies thereof as of the date first written above.

CITY OF LOVELAND, COLORADO, a Colorado
municipal coporation

By: _____
Cecil Gutierrez, Mayor

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

LOVELAND URBAN RENEWAL AUTHORITY,
a Colorado body corporate and politic

By: _____
Cecil Gutierrez, Chairman

ATTEST:

By: _____
_____, Secretary

APPROVED AS TO FORM:

City Attorney

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

By: _____
Kim L. Perry, President

ATTEST:

By: _____
Tom Hall, Secretary

CENTERRA PUBLIC IMPROVEMENT
COLLECTION CORPORATION, a Colorado non-
profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PUBLIC IMPROVEMENT
DEVELOPMENT CORPORATION, a Colorado
non-profit corporation

By: _____
Jay Hardy, President

ATTEST:

By: _____
Joshua Kane, Secretary/Treasurer

CENTERRA PROPERTIES WEST, LLC
a Colorado Limited Liability Corporation

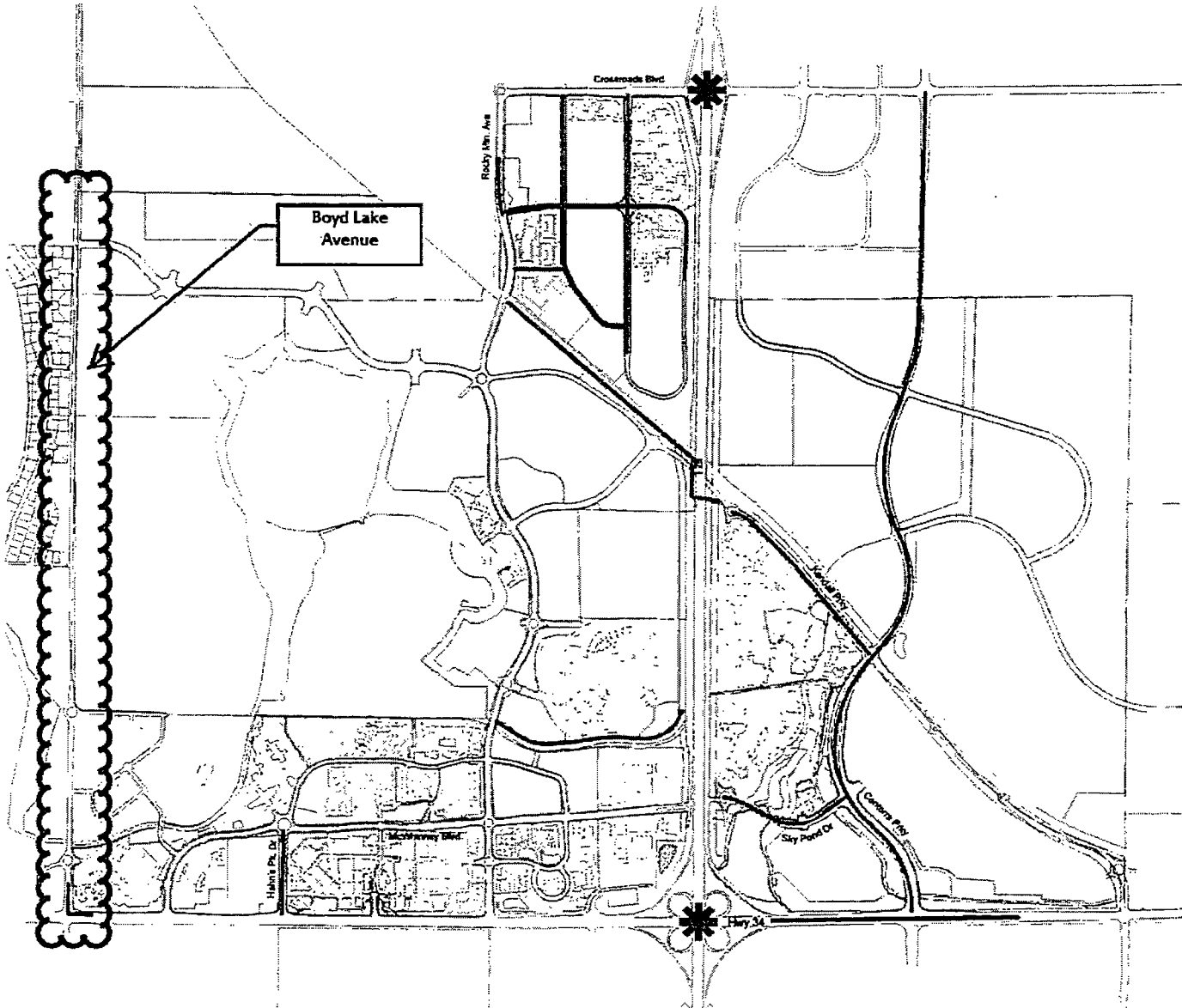
By: McWhinney Real Estate Services, Inc.,
a Colorado Corporation, Manager

By: _____
Douglas L. Hill, Executive Vice President





EXHIBIT A

Depiction of Boyd Lake Avenue

Boyd Lake Avenue Regional Improvement



LEGEND

-  Metro District Boundary
-  Constructed Public Roads, Water, and Sanitary Sewer
-  Public Trails
-  Interchange - Interim Safety Improvements Completed

Note: This information and/or its use is subject to the terms, conditions, and limitations of the license agreement between the user and McWhinney. The information shown here is subject to change at any time.

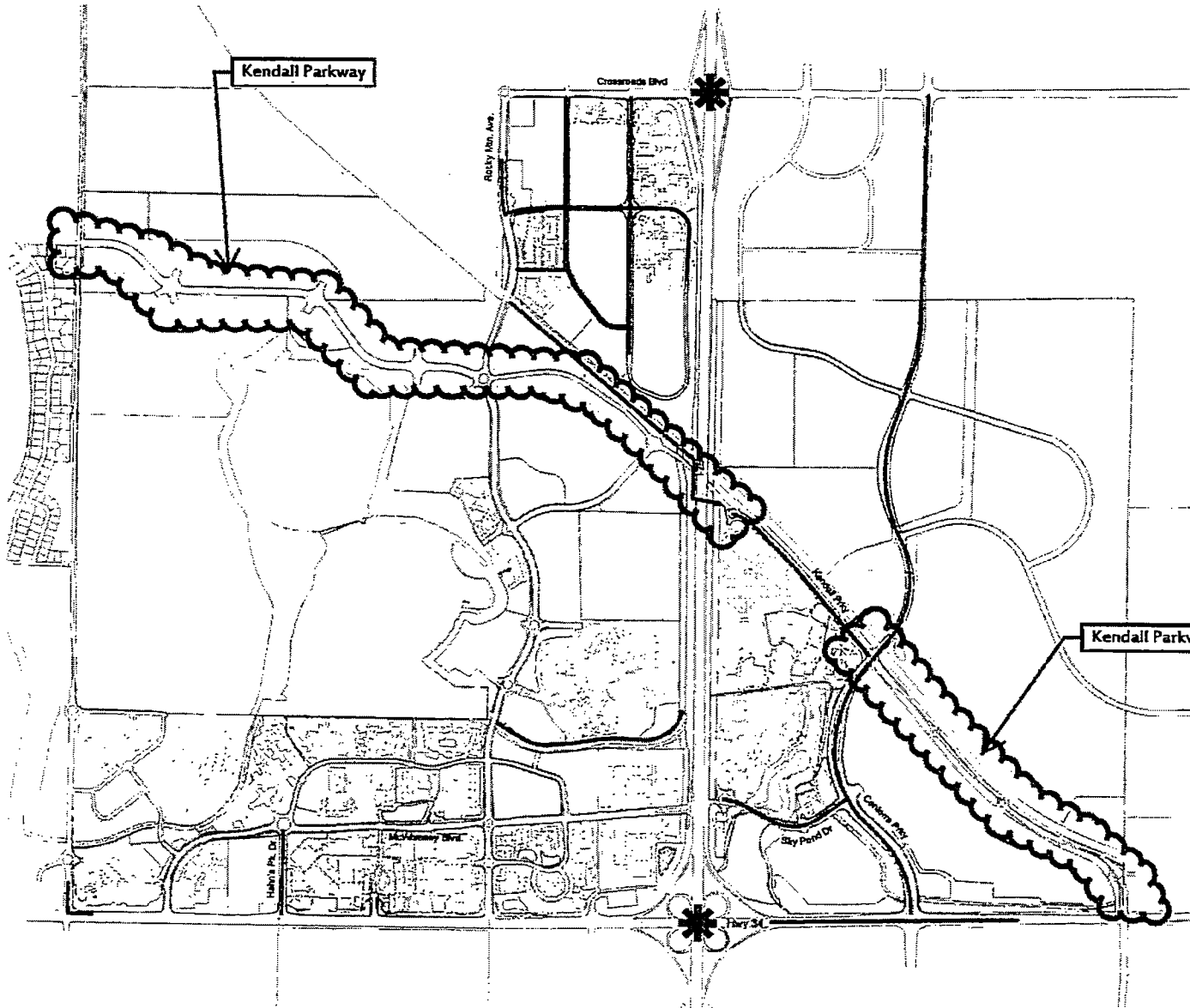


EXHIBIT B

Depiction of Kendall Parkway



Kendall Parkway Regional Improvement



LEGEND

- Metro District Boundary
- Constructed Public Roads, Water, and Sanitary Sewer
- Public Trails
- Interchange- Interim Safety Improvements Completed

Note: The information and/or drawings although deemed to be reliable, is conceptual in nature and MWHINNEY and/or its affiliates make no warranty as to accuracy. The information shown here is subject to change at any time.

