



Memorandum

TO: Vail Town Council

FROM: Public Works and Finance Departments

DATE: August 15, 2017

SUBJECT: Resolution No. 25, Series of 2017
Approving a Development Agreement with Eagle County School District

I. SUMMARY

The purpose of this memo is to summarize the terms included in the attached resolution approving a development agreement with the Eagle County School District and the Vail Reinvestment Authority for construction of a four-level, 160 space public parking structure at Red Sandstone Elementary School.

II. BACKGROUND

On August 1st, Council approved moving forward with the project and proposed terms of a development agreement. Council also approved spending an additional \$732,000 in construction costs to enable future development of two additional levels on top of the parking structure. The final budget estimate including contingencies is \$15.0 million, with contributions from Vail Resorts of \$4.3M and Eagle County School District of \$1.5M. Remaining funding will come from the Vail Reinvestment Authority.

The following is a summary of terms that are included in the attached resolution:

- Establishes that the Town will be the owner of the Structure, and will be responsible for all contracting, warranties, etc.
- Provides that the District will contribute \$1.5 million to the project, as a lump sum payment, within 90 days of execution of the DA.
- Provides that the Town will contribute \$4.3 million to the project (Vail Resort's contribution)
- Provides that the Vail Reinvestment Authority (VRA) will contribute the balance of the project costs.
- Will eventually include plans, a budget, and a schedule.
- Sets forth the number of parking spaces (40) to be dedicated to District use during the school year, and defines "school year" based on the number of days in the District's annual calendar, plus 5%.

- Requires that the Town and the District enter into an Operations and Maintenance Agreement to provide for ongoing operations and maintenance of the Structure, including a formula to determine the District's proportionate share of the costs.
- Requires that the Town and the District execute an amendment to the current lease for the property, to modify the boundaries of the lease and to provide that the Structure cannot be expanded without the District's consent.
- Requires the Town and the District to each carry their own insurance on the structure.
- Addresses breach and penalties. If the Town walks away from the project or fails to complete the project in substantial compliance with the plans or the schedule, the Town must repay the District its \$1.5 million, plus actual costs incurred by the District. If the District walks away from the project after the Town has executed construction contracts, the District must pay the Town's actual costs associated with the early termination of those contracts, and any related costs. If the VRA fails to fund the project and the Town does not cover those costs, the District is entitled to a refund of its \$1.5 million, plus actual costs incurred.
- Includes a *force majeure* clause, meaning that the Town will not be responsible for delays in the project caused by floods, fire, etc.

A preliminary development schedule, milestones and next steps are outlined below:

- | | |
|--|---------------------|
| • Town select building program | May |
| • Execute pre-development agreement with the School District | May |
| • Enter into a design contract with design team | May |
| • Conduct soils and other sub consultant work | June |
| • Design team develops schematic and preliminary designs | May-July |
| • Pre construction prices both schematic and preliminary designs | June-July |
| • Town and Eagle County School District resolve project points | July |
| • Final legal document execution (DA) | August |
| • TOV Entitlement | August- September |
| • Vail Resorts funding commitment | August |
| • PEC final application submittal | August |
| • Construction Documents (CD's) | July-November |
| • Final CDOT approval | September |
| • Final pricing and contract execution | November |
| • Construction | January-August 2018 |

III. ACTION REQUESTED OF COUNCIL

Staff requests that Town Council approves Resolution No. 25, Series of 2017 to continue moving forward in partnership with the school district on this project. .

RESOLUTION NO. 25
Series of 2017

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL DEVELOPMENT AGREEMENT
BETWEEN THE TOWN OF VAIL, THE EAGLE COUNTY SCHOOL DISTRICT AND THE VAIL
REINVESTMENT AUTHORITY; AND SETTING FORTH DETAILS IN REGARD THERETO.**

WHEREAS, the Town of Vail (the "Town"), in the County of Eagle and State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter (the "Charter");

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected and qualified;

WHEREAS, the Town is the owner of certain real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is currently leased by the Town to the Eagle County School District (the "District") and used for the Red Sandstone Elementary School;

WHEREAS, the Town plans to construct a parking structure, a driveway and related improvements on the Property;

WHEREAS, all Parties will benefit from the Project;

WHEREAS, the District is willing and able to contribute financially to the project in exchange for a right to use the parking structure;

WHEREAS, the Vail Reinvestment Authority (the "VRA") is willing and able to contribute financially to the project to fulfill the purposes and goals of the Amended Lionshead Public Facilities Development Plan;

WHEREAS, pursuant to § 18(2)(a) and (b), Article XIV of the Colorado Constitution and C.R.S. § 29-1-203, the Parties may enter into agreements with one another to cooperate in the provision of services and facilities, when so authorized by their governing bodies; and

WHEREAS, each of the Parties hereto has determined it to be in the best interest of the public health, safety and welfare to enter into this Intergovernmental Development Agreement (the "Agreement"), attached hereto as **Exhibit B**.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

1. The Agreement is hereby approved in substantially the same form attached hereto as **Exhibit B** and in a form approved by the Town Attorney, and the Town Manager is hereby authorized to execute the Agreement on behalf of the Town.
2. This resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council
of the Town of Vail held this 11th day of July, 2017.

Dave Chapin,
Mayor of the Town of Vail, Colorado

ATTEST:

Patty McKenny,
Town Clerk

INTERGOVERNMENTAL DEVELOPMENT AGREEMENT

THIS INTERGOVERNMENTAL DEVELOPMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 2017 (the "Effective Date"), by and between the Town of Vail, a Colorado home rule municipality with an address of 75 South Frontage Road, Vail, Colorado 81657 (the "Town"), and the Eagle County School District, a Colorado school district with an address of 948 Chambers Avenue, P.O. Box 740, Eagle, Colorado 81631 (the "District") and the Vail Reinvestment Authority, a Colorado urban renewal authority with an address of 75 South Frontage Road, Vail Colorado 81657 (the "VRA") (each individually a "Party" and collectively the "Parties").

WHEREAS, the District is a State of Colorado school district duly organized and operated pursuant to Article IX of the Colorado Constitution and C.R.S. § 22-30-101, *et seq.*

WHEREAS, the Town is a Colorado municipality organized and operated pursuant to its home rule charter and Colorado law;

WHEREAS, the VRA is a Colorado urban renewal authority organized and operated pursuant to C.R.S. § 31-25-101, *et seq.*;

WHEREAS, the Town is the owner of certain real property more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Property");

WHEREAS, the Property is currently leased by the Town to the District and used for the Red Sandstone Elementary School;

WHEREAS, the Town plans to construct a parking structure, a driveway and related improvements on the Property;

WHEREAS, all Parties will benefit from the Project;

WHEREAS, the District is willing and able to contribute financially to the project in exchange for a right to use the parking structure;

WHEREAS, the VRA is willing and able to contribute financially to the project to fulfill the purposes and goals of the Amended Lionshead Public Facilities Development Plan;

WHEREAS, in June 2017, the Parties entered into a Pre-Development Agreement which required a subsequent development agreement for the project to be executed by the Parties on or before August 17, 2017;

WHEREAS, the Parties agree this Agreement fulfills the obligations and intent of such Pre-Development Agreement;

WHEREAS, pursuant to § 18(2)(a) and (b), Article XIV of the Colorado Constitution and C.R.S. § 29-1-203, the Parties may enter into agreements with one another to cooperate in the provision of services and facilities, when so authorized by their governing bodies; and

WHEREAS, each of the Parties hereto has determined it to be in the best interest of the public health, safety and welfare to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual performance of the covenants, agreements, and stipulations contained herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

a. "Operation and Maintenance Costs" means the Town's actual cost to operate and maintain the Structure and the Driveway, including without limitation the cost of utilities serving the Driveway and Structure and the actual cost of snow removal for the Driveway and Structure.

b. "School Year" means the teacher contact days in the District's academic calendar each year, plus 5% of the total number of days, as indicated on a calendar to be finalized by the Town and the District on an annual basis, at least 30 days prior to the start of the School Year.

2. Project.

a. Plans. As more particularly described in the final design and construction plans attached hereto as **Exhibit B** and incorporated herein by this reference (the "Plans"), the Town will cause a public parking structure to be constructed on a portion of the Property containing approximately 160 parking spaces (the "Structure"), along with an access driveway (the "Driveway") and related improvements, including without limitation the necessary improvements to the lower parking lot on the Property and the Frontage Road (the "Related Improvements") (collectively the "Project").

b. Budget. The budget for the Project is attached hereto as **Exhibit C** and incorporated herein by this reference (the "Budget").

c. Schedule. The Parties intend that the Project will be developed and constructed in accordance with the schedule attached hereto as **Exhibit D** and incorporated herein by this reference (the "Schedule").

d. Owner. The Parties agree the Town is the owner of the Property and will be the owner of the Project. The Town will be identified and named as the owner in all relevant design and construction agreements, which agreements will be negotiated and entered into solely by the Town.

e. Contracts. The Town's contracts for construction shall contain provisions to ensure the timely completion of the Project, including penalties to be imposed upon the contractors for delay. The Parties agree to cooperate in and facilitate the execution of any additional agreements, easements, or rights-of-way necessary to implement the purposes of this Agreement.

e. Permits. The Town will obtain any necessary access permits from the Colorado Department of Transportation ("CDOT").

3. Share of Parking Spaces. In exchange for the District's financial contribution to the Project, as outlined below, the District will be entitled to use of certain parking spaces in the Structure is as follows:

a. Use. The District may use up to 40 parking spaces on the uppermost level of the Structure during each School Year. The Town shall provide the District with parking passes for use of the District's 40 spaces, and the District will control the distribution of its parking passes and is responsible for the replacement cost of lost or damaged passes. At the conclusion of each School Year, and until the start of the next School Year, the District's allocated parking spaces will be returned to the Town for unrestricted public use.

b. Signage. The Town shall install and maintain adequate signage restricting the appropriate parking spaces to District use, at the Town's sole cost.

4. Construction Costs. The Parties' financial contributions for the construction of the Project are as follows:

a. District. The District shall pay a lump sum of \$1.5 million to the Town within 90 days of the Effective Date. The District's lump sum payment satisfies the District's entire financial contribution toward the construction costs for the Project, including any additional improvements to the Structure, such as restrooms, public art or security features. Any costs incurred by the District prior to the date of this Agreement are the District's own costs, and shall not be set off from the \$1.5 million payment. The costs for the District's representative shall be borne by the District, and shall not be set off from the \$1.5 million payment.

b. Town. The Town shall pay \$4.3 million toward the cost of the Project, which funds were provided by Vail Resorts by separate agreement.

c. VRA. The VRA shall pay the balance of the Project costs.

5. Operations and Maintenance.

a. General. The Parties agree the Town will operate the Structure, and the Town may outsource operations and maintenance of the Parking Structure to one or more third-party contractors, which contractor(s) will be selected and managed solely by the Town. The operation of the Structure will be governed by a separate operations

agreement to be negotiated between the Town and the District (the "Operations Agreement").

b. Costs. The District's proportional share of Operation and Maintenance Costs shall be 13.017%, which shall be due and payable on an annual basis in accordance with the Operations Agreement. The Town shall set an Operations and Maintenance Costs budget annually in consultation with the District.

6. Lease Amendment. Within 60 days of the Effective Date, the Town and the District shall negotiate and execute an amendment to the lease agreement between the Town and the District for the Property to address the changes to the Property caused by this Agreement and construction of the Driveway, Structure and other improvements. The Lease Amendment shall also provide that the Structure shall not be expanded without the prior written consent of the District.

7. Insurance. The Town and the District shall both carry insurance coverage for the Structure as determined necessary by the risk carriers of each Party and at the respective cost of each Party. The Town and the District shall each name the other as an additional insured on its policy.

8. Term and Termination.

a. Unless otherwise terminated as provided herein, the term of this Agreement shall commence upon the Effective Date and shall terminate upon completion of the Project.

b. Any Party may terminate this Agreement upon written notice to each of the other Parties delivered prior to the date on which the Town becomes obligated to any contractor for construction of the Project. After such time, there shall be no right to terminate this Agreement, and any attempt to terminate shall constitute a breach of this Agreement, subject to the remedies set forth in Section 9.

9. Breach and Remedies.

a. District. If the District fails to timely pay the lump sum of \$1.5 million or terminates this Agreement after the date on which the Town becomes obligated to any contractor for construction of the Project, the District shall be in breach of this Agreement. Upon such breach, the Town shall be entitled to retain as much of the \$1.5 million payment as necessary to cover its actual costs related to the Project as of the date of termination, including without limitation any early termination penalties due to any contractors and other related costs.

b. Town. If the Town fails to complete the Project in substantial compliance with the Plans and the Schedule, which may be revised by agreement of the Town and the District, the Town shall be in breach of this Agreement. Upon such breach, the District shall be entitled to a full refund of the \$1.5 million lump sum payment, plus any actual costs related to the Project incurred by the District as of the date of termination.

c. VRA. If the VRA fails to comply with its obligation to pay the costs of the Project and the Town does not pay such costs, so the Project is not completed, the District shall be entitled to a full refund of the \$1.5 million lump sum payment, plus any actual costs related to the Project incurred by the District as of the date of termination.

10. Miscellaneous.

a. Notice. Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

b. Books and Records. The Town will make available to the District and the VRA upon reasonable notice all agreements, records and documents reasonably necessary to confirm or audit the Town's requests for payment hereunder.

c. Severability. If any provision of this Agreement is determined to be void by a court of competent jurisdiction, such determination shall not affect any other provision hereof, and all of the other provisions shall remain in full force and effect.

d. Integration. This Agreement represents the entire agreement between the Parties with respect to the subject matter hereof, and all prior or extrinsic agreements, understandings or negotiations shall be deemed merged herein.

e. Waiver. No provision of this Agreement may be waived to any extent unless and except to the extent the waiver is specifically set forth in a written instrument executed by the Party to be bound thereby.

f. Modification. This Agreement may only be modified by subsequent written agreement of the Parties.

g. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any legal action arising out of this Agreement shall be in Eagle County, Colorado.

h. No Third Party Beneficiaries. No third party is intended to or shall be a beneficiary of this Agreement, nor shall any third party have any rights to enforce this Agreement in any respect.

i. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Parties and nothing contained in this Agreement shall be construed as making the Parties joint venturers or partners. In no event shall any Party or its employees or its representatives be considered or authorized to act as employees or agents of any other Party.

j. Force Majeure. No Party shall be liable for a failure to perform as required by this Agreement to the extent such failure to perform is caused by a reason beyond the control of that Party or by reason of any of the following occurrences, whether or not caused by such Party: strikes, labor disturbances or labor disputes of any character,

accidents, riots, civil disorders or commotions, war, acts of aggression, floods, earthquakes, acts of God, explosion or similar occurrences; provided that such Party shall exercise its best efforts to provide the best possible alternative performance and to prevent the foregoing occurrence from obstructing full performance.

k. Contingency; No Debt. Pursuant to Article X, § 20 of the Colorado Constitution, any financial obligation of either the Town or the District under this Agreement are specifically contingent upon annual appropriation of funds sufficient to perform such obligation. This Agreement shall never constitute a debt or obligation of either the Town or the District within any statutory or constitutional provision.

l. Governmental Immunity. Nothing herein shall be construed as a waiver of any protections or immunities that any Party or its officials, representatives, attorneys and employees may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

EAGLE COUNTY SCHOOL DISTRICT

ATTEST:

TOWN OF VAIL

Patty McKenny, Acting Town Manager

ATTEST:

Tammy Nagel, Deputy Town Clerk

VAIL REINVESTMENT AUTHORITY

ATTEST:

Exhibit C

Project Budget

Eagle County School District	1,500,000
Town of Vail	<u>12,781,769</u>
Sub Total	14,281,769

Additional Town of Vail for Future Expansion	<u>732,000</u>
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15,013,769

Town of Vail Contribution is made up of the following:

Vail Resorts Parking Investment	4,300,000
Vail Reinvestment Authority	9,213,769

EXHIBIT D

preliminary development schedule

Town select building program	May
Execute pre-development agreement with the School District	May
Enter into a design contract with design team	May
Conduct soils and other sub consultant work	June
Design team develops schematic and preliminary designs	May-July
Pre construction prices both schematic and preliminary designs	June-July
Town and Eagle County School District resolve project points	July
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