

# CLARK COUNTY BOARD OF COMMISSIONERS

## ZONING / SUBDIVISIONS / LAND USE

### AGENDA ITEM

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**Petitioner:** Nancy A. Amundsen, Director, Department of Comprehensive Planning

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**Recommendation:** AG-21-900707: Consider the approval of the Agreement Between Mountain's Edge Master Association and Clark County Regarding Helen Stewart Park; authorize the Chair to sign and for other matters properly related thereto. JJ/ab (For possible action)

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#### **FISCAL IMPACT:**

None by this action.

#### **BACKGROUND:**

The Third Amendment to the Mountain's Edge Development Agreement required the developer to construct a 10 acre park within the Mountain's Edge master-planned community once the Residential Tax Fund ("RCT Fund") reached the threshold amount of \$1.6 million dollars. The RCT Fund is derived from residential construction taxes collected when building permits are issued for residential construction within the Mountain's Edge community. After consulting with County staff and the developer, it has become apparent that the \$1.6 million dollar threshold to trigger the construction of park under the Development Agreement will never be reached due to the limited number of homes remaining to be built within Mountain's Edge. The Mountain's Edge Master Association ("MEMA") approached Clark County with a proposal that will enable MEMA to utilize the funds deposited into the RCT Fund to construct the park in lieu of the developer thereby satisfying the purposes of the Third Amended Development Agreement. Thus, construction of the park may be achieved by way of approval of this Agreement and cancellation of the Development Agreement. If approved, the effective date of this Agreement will be contingent upon the cancellation of the Development Agreement in order to allow the County the flexibility to direct the funds to MEMA to complete construction of the park.

Accordingly, the District Attorney's Office recommends that the Board approve the Agreement Between Mountain's Edge Master Association and Clark County Regarding Helen Stewart Park and authorize the Chair to sign the Agreement on behalf of Clark County.

Cleared For Agenda

11/17/21

**AGREEMENT BETWEEN MOUNTAIN'S EDGE MASTER ASSOCIATION AND CLARK COUNTY REGARDING HELEN STEWART PARK**

This Agreement ("MEMA Agreement") is entered into as of \_\_\_\_\_, 2021 (the "Effective Date") by and between Clark County (the "County") and Mountain's Edge Master Association ("MEMA" or the "Association") a Nevada non-profit cooperative corporation (collectively, the "Parties").

**PURPOSE**

The Parties are entering into this MEMA Agreement for the purpose of fulfilling the purpose and objective of the Third Amended Development Agreement between Clark County and Mountains Edge, LLC, (the "Developer") (the "Development Agreement"), with respect to the construction of Helen Stewart Park. Specifically, Section 4.02(B)(3)(b)(v) of the Third Amended Development Agreement contemplated the construction of Helen Stewart Park (Park 228), a 10-acre park to be located within and for the benefit of MEMA, once the Residential Construction Tax Fund ("RCT Fund"), derived from residential construction taxes collected from building permits issued for residential construction within MEMA, reached the threshold amount of \$1.6 million (following the construction of Paiute Park (Park 125). The Development Agreement further provided that Helen Stewart Park could be built in phases in a manner agreeable to Clark County if insufficient funds were generated from the RCT Fund in order to reach the threshold amount.

After consulting Clark County staff and the Developer, it has become apparent that the \$1.6 million-dollar threshold to trigger planning and construction of Helen Stewart Park under the Development Agreement will not be reached due to the limited scope of development remaining within MEMA.

In light of the foregoing, MEMA approached Clark County with an alternative proposal that will enable MEMA to utilize the RCT Fund, and additional monies collected by Clark County, for new park construction and thereby satisfy the purposes of the Third Amended Development Agreement. After consulting with the Developer, MEMA and Clark County hereby enter into this MEMA Agreement concerning utilization of the RCT Fund and other monies for park construction within MEMA.

## MUTUAL UNDERSTANDING

1. As a condition precedent to the MEMA Agreement, section 4.02 of the Development Agreement must be amended to remove the provision that authorizes the Developer to seek the use of funds available in the RCT Fund for park construction. MEMA understands that the amendment to the Development Agreement will include releasing the Developer from its obligation to design and construct Park 228 (“Helen Stewart Park”), but that the amendment will, in turn, free funds for use by MEMA subject to the discretionary approval of the Clark County Board of County Commissioners for park construction, as contemplated herein.
2. Beginning on the Effective Date, Clark County will establish and maintain a separate revenue account (the “ME Park Account”) into which it shall immediately transfer the existing funds in the RCT/Park Fund, and additional funds remaining from the Developer’s contribution toward the regional recreation center into the ME Park Account totaling approximately \$1.3 million. MEMA shall have the exclusive right to request the use of funds available in the ME Park Account for construction of Helen Stewart Park in accordance with the terms below. The County may, at its discretion, contribute additional funds from the County’s general Park District Fund into the ME Park Account in order to meet the original estimated \$1.6 million cost for designing and construction Helen Stewart Park under the Development Agreement.
3. Upon the creation and transfer of funds in the amount of \$1.3 million into the ME Park Account MEMA shall conduct a survey of its members and residents at MEMA’s own cost and expense, regarding the proposed type and location of amenities in Helen Stewart Park. MEMA will advise the Commissioner’s Office, District F, of the survey results and consult with the Commissioner’s Office in formulating a plan for park construction and improvements. Subsequently, after considering the survey results and the Commissioner’s recommendations, MEMA shall present its formulated plan at a general meeting of MEMA members regarding the timing and extent of park construction and the type of improvements for Helen Stewart Park for which it will seek approval from the Board of County Commissioners (“BCC”).

4. MEMA shall design and prepare plans for Helen Stewart Park pursuant to the same standards applicable to the Developer in the Development Agreement for design review application purposes, including a description and site plan of the type and location of amenities, and may use funds set aside in the ME Park Account for this specific purpose, subject to the limitations set forth in section 9 below. MEMA, at its convenience, shall submit a Design Review Application for the Helen Stewart Park improvement proposal.
5. The Design Review Application for Helen Stewart Park may be heard before the Enterprise Town Advisory Board and/or the Clark County Planning Commission for recommendation. The final decision on the Design Review Application, however, shall be made by the BCC. MEMA shall be responsible for providing representation at each meeting or hearing at which the Design Review Application is heard.
6. The County retains discretion regarding whether to approve, approve with conditions, or deny the Design Review Application, including the BCC's decision concerning the type and location of amenities to be constructed in Helen Stewart Park; provided, however, that approval shall not be unreasonably withheld. Upon considering the Design Review Application, BCC may direct County staff to place an item on an agenda to allocate additional funds from the County's general Park District Fund into the ME Park Account in order to meet the original estimated \$1.6 million cost for designing and constructing Helen Stewart Park under the Development Agreement.
7. Upon approval of the Design Review Application, MEMA shall cause the preparation of proposed park improvement plans, cost estimate and a construction timetable for Helen Stewart Park, and may use funds from the ME Park Account for this purpose subject to the limitations set forth in Section 9 below. The park improvement plans shall conform to the County standards for park improvements, equipment and materials that the County imposed on the Developer in the Development Agreement. The cost estimate shall be based on reasonable estimates of the market rate to complete Helen Stewart Park as proposed and shall include a twenty percent contingency in the event the actual cost to complete ultimately exceeds initial expectations.

8. MEMA shall deliver to County the proposed park improvement plans, cost estimate and construction timetable to the County for review. Upon approval from the County of the proposed park improvement plans, cost estimate and construction timetable, which shall not be unreasonably withheld or delayed, MEMA shall arrange for the construction and payment of costs to construct Helen Stewart Park.

MEMA shall notify County when construction commences. The County shall reimburse MEMA for construction costs incurred during various phases of development by way of monthly installment payments MEMA shall provide County with an estimated percentage of completion benchmark for the Park which will be certified by the respective contractors selected by MEMA and provided to the County by MEMA in conjunction with each invoice for payment. Upon receipt of the respective certification(s) and invoice(s), County shall make the reimbursement payment to MEMA, or inform MEMA in writing why it does not concur with the certification(s) or invoice(s), within thirty (30) days. MEMA shall also keep County informed of the status of Park construction by providing monthly updates to the Commissioner's Office, District F, regarding the progress of construction of the Park. County shall not be obligated to reimburse MEMA for any invoice that causes the total aggregate design and construction costs incurred by MEMA to exceed the \$1.3 million in funds initially transferred into the ME Park Account described in section 2 above or that causes the total aggregate design and construction costs incurred by MEMA to exceed the \$1.6 million in funds in the event the BCC allocates additional funds as contemplated in paragraph 6 above.

9. MEMA may use up to but no more than ten percent (10%) of the total funds deposited in the ME Park Account to pay for the cost incurred by MEMA to design and prepare plans for the design review application process contemplated herein, and for preparing park improvement plans, cost estimates and a construction timetable and other related costs in preparation for the actual construction of Helen Stewart Park.

10. Construction of Helen Stewart Park shall be considered "complete" when: (a) the Park is designed and constructed in conformance with the approval of the Design Review Application, including the approved plans and all amenities shown on the plans and required as a condition of the approval

therein, subject to adjustments mutually acceptable to both County and MEMA, (b) the Park has been dedicated to Clark County or a public use agreement or acknowledgment has been recorded against the property in lieu of dedication; and (c) The Park is open and available for use by the general public. Upon completion, MEMA shall either (1) dedicate the Park to Clark County; or (2) record a public use agreement or acknowledgment against the property. Clark County retains discretion to decide whether the Park should be dedicated to Clark County, or a public use agreement or acknowledgment should be recorded in lieu of dedication. MEMA shall maintain the Park in the event the Park is not dedicated to Clark County.

### GENERAL PROVISIONS

1. **Other Projects.** The rights and obligations of the Parties under this Agreement shall not be affected by any interim, unrelated projects planned and developed by MEMA using private funding, assessments, or other sources that do not implicate or exhaust the ME Park Account.
2. **Prior Agreements and Amendments.** This Agreement contains all of the agreements and understanding of the Parties with respect to any matter covered or mentioned in this Agreement, and no other agreements or understandings shall be effective for any purpose. No provision of this Agreement may be amended or added except by a written amendment signed by both Parties.
3. **Notice.** All notices required or permitted under this Agreement shall be given in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified, (b) three (3) days after deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to the party to be notified at the address for such party, or (c) one (1) day after deposit with a nationally recognized air courier service such as FedEx. Either party hereto may change its address by giving ten (10) days advance notice to the other party as provided herein. Phone and fax numbers, if listed, are for information only.

If to the County:

Attention: Director of Comprehensive Planning  
County of Clark, Nevada  
500 S Grand Central Parkway  
Las Vegas, Nevada 89155-1744  
(702) 455-4314 phone

If to the MEMA:

Attention: Community Manager  
Mountains Edge Master Association  
8090 Blue Diamond, Suite 240  
Las Vegas, NV 89178  
(702) 457-6362 phone  
(702) 253-7739 fax

4. **No Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

5. **Choice of Law/Venue.** The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Agreement, without giving effect to its conflict of law provisions. Each party hereto consents to, and waives any objection to, Clark County, Nevada as the proper and exclusive venue for any disputes arising out of or relating to this Agreement or any alleged breach thereof.

6. **Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction, or rendered by the adoption of a statute invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

7. **Relationship of the Parties.** Nothing contained herein shall constitute either party as being the agent or legal representative of the other for any purpose whatsoever, nor shall this Agreement be deemed to create any form or business organization between the Parties hereto, nor is either party granted the right or authority to assume or create any obligation or responsibility on behalf of the other party, nor shall either party be in any way liable for any debt of the other.

8. **No Third-Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended, or should be construed, to confer upon or give any person or entity not a party to this Agreement any third-party beneficiary rights, interests, or remedies under or by reason of any term,

provision, condition, undertaking, warranty, representation, or agreement contained in this Agreement.

9. **No Attorneys Fees or Costs.** In the event that any Party hereto institutes an action or proceeding relating to or arising out of this Agreement, or the transactions contemplated hereby, or in the event any party is in default of its obligations pursuant thereto, whether or not suit is filed or prosecuted to final judgment, the prevailing party shall not be entitled to its reasonable attorneys' fees and court costs incurred, in addition to any other damages or relief forwarded.

10. **Counterparts; Electronic Delivery.** This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all Parties hereto. Executed copies hereof may be delivered by facsimile or e-mail, pursuant to NRS 719.240, and upon receipt will be deemed originals and binding upon the Parties hereto, regardless of whether originals are delivered thereafter.

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

**CLARK COUNTY "County"**

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

Date: \_\_\_\_\_

[signatures continued on next page]

**MOUNTAINS EDGE MASTER  
ASSOCIATION "MEMA"**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution by HOA: \_\_\_\_\_

