

**TOWN OF NEW CASTLE, COLORADO
RESOLUTION NO. TC 2014-15**

A RESOLUTION OF THE NEW CASTLE TOWN COUNCIL APPROVING A
SPECIAL USE PERMIT FOR A PARK AND RIDE BUS FACILITY.

WHEREAS, the Roaring Fork Transportation Authority (hereinafter “Applicant” or “RFTA”) is seeking a Conditional Use Permit for Lot C-1 of the Burning Mountain PUD, Phase 1, (hereinafter the “Property”) located in the Commercial/Retail district of the Burning Mountain PUD, Phase 1, zone to permit a “park and ride” facility to be used in connection with public bus service provided by RFTA; and

WHEREAS, pursuant to § 17.108.030 of the Town’s Municipal Code the uses proposed by Applicant are special review uses in the Commercial/Retail zone district, which are processed under the conditional use guidelines pursuant to Section 17.04.050 of the Town Code; and

WHEREAS, the Planning Commission held a duly-noticed public hearing on April 9, 2014, after which the Planning Commission passed Resolution No. PZ 2014-2 recommending that the Town Council approve the application subject to certain conditions stated therein; and

WHEREAS, pursuant to Municipal Code § 17.84.050 the Town Council hereby finds that the application:

1. is eligible for review under Section 17.84.040;
2. is generally compatible with adjacent land uses;
3. meets all requirements of Section 17.84.020, is in compliance with this title and minimizes potential adverse impact of the conditional use on adjacent properties and traffic flow;
4. is consistent with the comprehensive plan; and
5. the Town has the capacity to serve the proposed use with water, sewer, fire and police protection.

NOW, THEREFORE, BE IT RESOLVED BY THE NEW CASTLE TOWN COUNCIL AS FOLLOWS:

1. Recitals Incorporated by Reference. The foregoing recitals are incorporated by reference herein as findings and determinations of the Town Council.

2. Application. The “Application” consists of the documents and materials submitted by the Applicant as listed on Exhibit A hereto.

3. Approval. The Town Council approves the Application subject to the conditions set forth below.

4. Conditions.

A. In addition to the items listed on Exhibit A, all representations of the Applicant made verbally or in written submittals presented to the Town in conjunction with

the Application and before the Planning Commission or Town Council shall be considered part of the Application and binding on the applicant.

B. The Applicant shall reimburse the Town for any and all expenses incurred by the Town regarding this approval, including without limitation all costs incurred by the Town's outside consultants such as legal, planning, and engineering costs.

C. The proposed pedestrian path within the Town's open space and utility easement shall be subject to a license to encroach meeting the requirements of Section 12.20.100 of the Town Code.

D. The Town and RFTA shall enter into an intergovernmental agreement ("IGA") in the form attached hereto as Exhibit B. The Mayor and Town Clerk are authorized to execute the IGA on behalf of the Town. The Town Administrator is authorized to approve the final exhibit to the IGA identifying specific improvements within the Town open space easement to be owned and maintained by RFTA without further authorization by Town Council.

E. RFTA shall comply with any permits required by other governmental agencies including but not limited to the Colorado Department of Transportation, if applicable.

H. The site plan shall be revised to depict adequate onsite snow storage areas as determined by the Town Engineer and/or Public Works Director.

I. The privacy fence shall be constructed in accordance with the description at Paragraph R1 of the March 21, 2014 response memo from Sopris Engineering to the Town Engineer ("Response Memo").

J. Handrails shall be constructed as described in Paragraph R4 of the Response Memo.

K. Except as modified herein, the Applicant shall comply with its representations and agreements in the Response Memo and the revised plan set dated May 6, 2014, prepared by Sopris Engineering. Any further "final drawings" as proposed in the Response Memo shall be subject to review and approval by the Town Engineer prior to the issuance of a special review use permit.

THIS RESOLUTION was adopted by the New Castle Town Council by a vote of to on the 20th day of May, 2014.

NEW CASTLE TOWN COUNCIL

By: Bob Gordon
Bob Gordon, Mayor

ATTEST:

Melody Harrison
Melody Harrison, Town Clerk



Exhibit "A"

1. Development Application
2. Checklist: Conditional Use Application (CUP)
3. Warranty Deed with Exhibit "A"
4. Burning Mountain Phase 1 PUD Subdivision Final Plat
5. Declaration of Protective Covenants for Burning Mountain PUD
6. Subdivision Improvements Agreement
7. Amended Certificate of Dedication and Ownership – Burning Mountain PUD
8. Amendment to Subdivision Improvements Agreement
9. Petition for Annexation and Annexation Agreement
10. Lot C1 Survey
11. New Castle Zoning Map
12. Horizontal and Geometric Layout
13. Grading Plan
14. Site Details
15. Planting Plan
16. Lighting Plan with legend, plan and fixture cut sheets/pictures and calculations.
17. Drainage Report
18. Drainage Basin Plan
19. Project Summary
20. CUP Code responses
21. List of property Owners within 250 feet
22. Response to RFTA CUP Review Memo from SGM date 2/19/14
23. Response to RFTA CUP Staff Preliminary Report dated 2/28/14
24. Supplemental Information dated May 6, 2014

**INTERGOVERNMENTAL AGREEMENT
NEW CASTLE PARK AND RIDE**

This Agreement ("IGA") is entered into this 20th day of MAY, 2014, by and between the Roaring Fork Transportation Authority, whose address is 2307 Wulfsohn Road, Glenwood Springs, Colorado 81601 ("RFTA") and the Town of New Castle, a Colorado Home Rule municipality whose address is P.O. Box 90, New Castle, CO 81647 (the "Town");

WITNESSETH:

WHEREAS, RFTA is the owner of certain real property in New Castle described as Lot C-1, Burning Mountain PUD, Phase 1 (the "Property"); and

WHEREAS, RFTA has applied to the Town for a Special Use Permit for a "park and ride" bus facility on the Property in connection with public bus service provided by RFTA; and

WHEREAS, the New Castle Planning Commission considered RFTA's application at a duly-noticed public hearing on April 9, 2014, and recommended approval to the Town Council subject to various conditions as set forth in Resolution PZ 2014-2; and

WHEREAS, the New Castle Town Council considered the application and the recommendation of the Planning Commission and voted to approve the application at a public meeting held on May 20, 2014, subject to conditions set forth in Resolution TC 2014-15 (the "Town Council Resolution"), including a condition that RFTA and the Town enter into this IGA; and

WHEREAS, the RFTA Executive Board considered the terms of this IGA at a public meeting held on June 12, 2014, and voted to authorize its Chairman to execute this IGA on behalf of RFTA.

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

1. Recitals. The foregoing recitals are incorporated herein as affirmative and material representations and acknowledgements of the parties.

2. Application Contents. For purposes of this IGA the "Application" includes all those documents and information identified as part of the application in the resolutions of the Planning Commission and Town Council, including but not limited to any additional information presented or statements made by the applicant and reflected in the minutes at the public hearing before the Planning Commission and at the public meeting of the Town Council.

3. License for Use of Town Open Space. Pursuant to the authority set forth in Section 12.20.100 of the Town Code, RFTA is hereby granted a license to install, maintain (to the extent of its interest), use, repair and replace certain improvements within the public open space and utility easement lying adjacent to and generally north of the Property as shown on the

final plat of Burning Mountain PUD, Phase 1, recorded with the Garfield County Clerk and Recorder on July 20, 1994, as Reception No. 466077 (the "Final Plat").

A. *Public Improvements Authorized.* The Public Improvements subject to this license are described in the Application and include a pedestrian path, stairs, an ADA-compliant ramp for persons with disabilities, landscaping, drainage improvements, and irrigation systems. The specific improvements authorized are those described on Exhibit A attached hereto (the "Offsite RFTA Improvements"). RFTA shall be solely responsible to maintain, repair and replace all such Offsite RFTA Improvements, including but not limited to irrigation, weed control and snow removal. RFTA shall repair the trail section for the benefit of the Town as depicted on Exhibit A but shall have no maintenance responsibility. RFTA shall bear no responsibility for any sewer lines located off the RFTA Property.

B. *Subordination to Town's Rights.* The license granted herein shall be subordinate to the Town's rights to install, use, maintain, repair and replace utilities within the easement area including but not limited to an existing sewer line. If the Town needs to perform excavation or other work within the easement, barring an emergency or other exigent circumstances, the Town shall make reasonable efforts to give RFTA advance notice of any such work and to take such reasonable steps as may be practical without added expense to minimize any disturbance to the Offsite RFTA Improvements. The Town shall have no liability resulting from any disturbance to the Offsite RFTA Improvements resulting from any such utility work.

C. *Insurance.* For so long as this license remains in effect, RFTA agrees to maintain property insurance covering the license area and the Property with coverage at least equal to the limits of liability under the Colorado Governmental Immunity Act and with the Town named as an additional insured party. RFTA shall provide a certificate of insurance to the Town evidencing such coverage upon request but no less often than annually.

D. *Term of License.* The license granted herein shall be terminable by either party upon written notice of not less one (1) year. If the Town terminates the license then RFTA shall have no further responsibility to restore the license area, and any remaining improvements therein shall be deemed to be the property of the Town.

4. Public Improvements. All improvements to be dedicated to the Town (the "Public Improvements"), if any, shall be shown on the final construction plans, which shall be subject to review and approval of the Town Engineer prior to any grading or construction work on the Property. Pursuant to Chapter 16.32 of the Town Code, RFTA shall provide a performance guaranty for the construction of all such improvements by requiring the contractor to post a performance bond naming the Town as an additional beneficiary. The Town Administrator shall have the discretion to accept and approve an alternative security arrangement if reasonably requested by RFTA after the effective date of this Agreement without further authorization by the Town Council.

A. *Observation and Inspection.*

- i. Pre-Construction Meeting. RFTA shall hold a pre-construction meeting between the Town Engineer and RFTA's engineer and contractor for the purpose of discussing all construction issues that will be required for this project.
- ii. Construction Inspection by RFTA. RFTA shall be responsible for ensuring that its licensed professional engineer provides construction inspection services as necessary to allow RFTA's engineer to provide a stamped certification, when improvements are submitted to the Town for acceptance, that the public Improvements have been constructed in accordance with the Plans and Specifications approved by the Town.
- iii. Construction Observation by the Town. The Town shall have the right to make engineering inspections at reasonable intervals and at RFTA's expense during construction of the Public Improvements. Observation, acquiescence in or approval by any engineering inspector of the construction of any physical facilities, at any particular time, shall not constitute Town acceptance of any Public Improvements. Town approvals shall be made only after completion of construction and in the manner hereinafter set forth. To assist the Town in monitoring the installation of the Public Improvements, a supervisor employed by RFTA shall inspect the Public Improvements on at least a weekly basis, and shall provide the Town Engineer with supervisor's field and inspection notes relating to the installation of the Public Improvements. The supervisor shall regularly apprise the Town Engineer of the status of the work on the Public Improvements. Further, RFTA at its own expense shall have an approved geotechnical engineer monitor the methods of construction and backfill to ensure such work is being completed in conformance with the approved plans and specifications and accepted standards for such work. The Town agrees to respond to requests for interim inspections in a timely manner and to respond not later than ten (10) business days after a request for a final inspection. Nothing in this paragraph shall be construed to constitute an acceptance by the Town of the Public Improvements, which approval and acceptance shall only occur pursuant to subparagraphs (B) and (C) below.

B. *Completion of Public Improvements; Approval.* RFTA shall complete all Public Improvements no later than November 1, 2015. Said period may be extended in writing by Town staff for a period of up to six (6) months, provided the contractor's performance bond or alternative security approved in accordance with this Agreement remains in place. Upon the completion of construction of the Public Improvements, RFTA or its engineer shall certify in writing that the improvements have been completed in conformance with the final approved plans and specifications and submit to the Town a completed acceptance checklist utilizing a form approved by the Town. Thereafter, and within ten (10) business days after a request for final inspection, the Town Engineer shall inspect the Public Improvements and notify the parties in writing and with specificity of their conformity or lack thereof to the plans and specifications. RFTA shall make all corrections necessary to bring the Public Improvements into conformity

with the approved plans and specifications. RFTA shall at its expense have "as-built" drawings prepared by a professional engineer and a registered land surveyor, which drawings shall include all legal descriptions the Town may require. RFTA shall also prepare a summary of the actual construction costs of all Public Improvements to be dedicated to the Town. The "as-built" drawings and costs summary shall be forwarded to the Town for review and approval. Once the as-built drawings and costs summary are approved, and any and all corrections are completed, the Town Engineer shall promptly notify the parties in writing that all Public Improvements are in conformity with the plans and specifications, and the date of such notification shall be known as the "Engineering Acceptance Date." The Town shall be under no obligation to provide any water service until all water-related Public Improvements (if any) are brought into conformance with the approved plans and specifications as determined by the Town Engineer.

C. Town Council Acceptance; Conveyance. Within thirty (30) days of the Engineering Acceptance Date, RFTA shall execute a bill of sale conveying any portion of the Public Improvements constituting personal property to the Town, free and clear of all liens and encumbrances. The matter shall be submitted to the Town Council for final acceptance in accordance with the procedures set forth in Section 16.32.020 of the Town Code. The effective date of any resolution of acceptance under said section shall be known as the "Final Acceptance Date." In light of the fact that RFTA is a public entity of which the Town is a member, the Town Council hereby waives any requirement for the provision of additional collateral to secure warranty obligations pursuant to Section 16.32.020(B) of the Town Code.

D. Warranty. RFTA shall assign to Town simultaneous with the Bill of Sale any contractor warranties with regard to all Public Improvements and facilities conveyed to the Town pursuant to this IGA for a period of two (2) years from the Final Acceptance Date. RFTA shall also warrant all landscaping improvements regardless of whether they are to be dedicated to the Town for two (2) years after planting. RFTA shall make a good faith effort to obtain contractor warranties as follows:

- i. Any and all facilities conveyed shall be free from any security interest or other lien or encumbrance; and
- ii. Any and all facilities so conveyed shall be free of any defects in materials or workmanship for a period of two (2) years, as stated above; and
- iii. The title conveyed shall be good and its transfer rightful.

6. Water. The estimated water usage for the Property in connection with the uses described in the Application is 2.1 EQRs. RFTA shall pay the water tap fee required by the Town Code prior to construction.

7. Snow Removal. RFTA agrees and acknowledges its responsibility for snow storage and removal pursuant to Chapter 12.08 of the Town Code.

8. Fees and Expenses. RFTA agrees to reimburse the Town for any and all fees and expenses actually incurred by the Town in connection with or arising out of the development

approvals referenced in Resolution TC 2014-15 and this IGA, including without limitation all of the Town's planning, engineering, surveying, and legal costs, copy costs, recording costs, and other expenses. RFTA shall pay all such fees shown on the then-current invoices of the Town before recording of the SIA. RFTA shall have no obligation to pay for any fees associated with fees incurred by Town Consultants to evaluate alternative drainage improvement options offsite during the pendency of the Application, which the Town has determined not to pursue at the present time. All fees billed to RFTA shall be specifically itemized with regard to the actual work performed. RFTA's engineer will design the final agreed upon design, and RFTA's contractor will construct the improvements.

9. Voluntary Agreement. Notwithstanding any provision of the Town Code, this IGA is the voluntary and contractual agreement of RFTA and the Town. RFTA agrees that all terms and conditions of this IGA, including specifically the payment of fees, the dedication of real or personal property, and the completion of infrastructure improvements, and all terms and conditions of Resolution TC 2014-15 are agreed to and constitute the voluntary actions of RFTA.

10. Breach by RFTA; Town's Remedies. In the event of any default or breach by RFTA of any term, condition, covenant or obligation under this Agreement, the Town Council shall be notified immediately. The Town may take such action as it deems necessary to protect the public health, safety, and welfare; to protect lot buyers and builders, and to protect the citizens of the Town from hardship. The Town's remedies include:

- A. The refusal to issue to RFTA any building permit or certificate of occupancy; provided, however, that this remedy shall not be available to the Town until after the affidavit described below has been recorded;
- B. The recording with the Garfield County Clerk and Recorder of an affidavit, approved in writing by the Town Attorney and signed by the Town Administrator or his designee, stating that the terms and conditions of this Agreement have been breached. At the next regularly scheduled Town Council meeting, the Town Council shall either approve the filing of said affidavit or direct the Town Administrator to file an affidavit stating that the default has been cured. Upon the recording of such an affidavit, no further permits shall be issued, and the Property shall not be sold, encumbered or conveyed to any third party. An affidavit signed by the Town Administrator or his designee and approved by the Town Council stating that the default has been cured shall remove this restriction;
- C. A demand on the security given for the completion of the Public Improvements including a demand against the contractor's bond;
- D. The refusal to consider further development plans within the Property; and/or
- E. Any other remedy available at law.

Unless necessary to protect the immediate health, safety, and welfare of the Town or Town residents, the Town shall provide RFTA ten (10) days' written notice of its intent to take any

action under this paragraph during which ten-day period RFTA may cure the breach described in said notice and prevent further action by the Town. Furthermore, unless an affidavit as described above has been recorded with the Garfield County Clerk and Recorder, any person dealing with RFTA shall be entitled to assume that no default by RFTA has occurred hereunder unless a notice of default has been served upon RFTA as described above, in which event RFTA shall be expressly responsible for informing any such third party of the claimed default by the Town.

11. Assignment. This Agreement may not be assigned by RFTA without the prior written consent of the Town, which consent shall not be unreasonably withheld and shall be based upon the financial capability of the proposed assignee to perform the terms of this Agreement. In the event RFTA desires to assign its rights and obligations herein, it shall so notify the Town in writing together with the proposed assignee's written agreement to be bound by the terms and conditions contained herein.

12. Waiver of Defects. In executing this Agreement, RFTA waives all objections it may have concerning defects, if any, in the formalities whereby it is executed, or concerning the power of the Town to impose conditions on RFTA as set forth herein, and concerning the procedure, substance, and form of the ordinances or resolutions adopting this Agreement.

13. Modifications. This Agreement shall not be amended, except by subsequent written agreement of the parties.

14. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

15. Invalid Provision. If any provisions of this Agreement shall be determined to be void by any court of competent jurisdiction, then the remainder of this Agreement shall be interpreted to as fully as possible give force and effect to the intent of the parties as evidenced by the original terms and conditions of this Agreement, including the invalidated provision.

16. Governing Law. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Garfield County, Colorado.

17. Attorneys' Fees; Survival. Should this Agreement become the subject of litigation to resolve a claim of default in performance, to the extent permitted by law the prevailing party shall be entitled to attorneys' fees, expenses, and court costs. All rights concerning remedies and/or attorneys shall survive any termination of this Agreement.

18. Authority. Each person signing this Agreement represents and warrants that he is fully authorized to enter into and execute this Agreement, and to bind the party it represents to the terms and conditions hereof.

19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall be deemed one and the same instrument.

20. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective three (3) mail delivery days after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to Town:

Town of New Castle
P. O. Box 90
New Castle, CO 81647
Phone (970) 984-2311
FAX (970) 984-2312

with a copy to:

David H. McConaughy, Esq.
Garfield & Hecht, P.C.
420 Seventh Street, Suite 100
Glenwood Springs, CO 81601
Phone (970) 947-1936
FAX (970) 947-1937

Notice to RFTA:

RFTA Chief Executive Officer
2307 Wulfsohn Road
Glenwood Springs, Colorado 81601
Phone (970) 384-4982
Fax (970) 384-4870

with copies to:

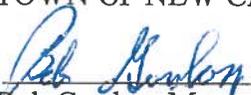
RFTA Chief Counsel
Director and Assistant Director, Project
Management & Facilities Operations

2307 Wulfsohn Road
Glenwood Springs, Colorado 81601
Phone (970) 384-4982
Fax (970) 384-4870

WHEREFORE, the parties hereto have executed duplicate originals of this Agreement on the day and year first written above.

TOWN OF NEW CASTLE, COLORADO

ROARING FORK TRANSPORTATION
AUTHORITY


Bob Gordon, Mayor

Attest: 
Town Clerk


Dan Blankenship, Executive Director

