

**INTERGOVERNMENTAL AGREEMENT
REGARDING NEW CASTLE PEDESTRIAN TRAIL**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this ___ day of _____, 2014, by and between Garfield County, Colorado, acting by and through its Board of County Commissioners (the “County”) and the Town of New Castle, a Colorado home rule municipality, **acting by and through its Town Council,** (the “Town”), (the County and the Town may each be referred to herein as a “Party” or collectively as the “Parties”);

WHEREAS, the Constitution and laws of the State of Colorado permit and encourage state and local governmental entities to cooperate with one another to make the most efficient and effective use of their powers and responsibilities; and

WHEREAS, pursuant to Article XIV, Section 18(2) of the Colorado Constitution, Sections 30-11-101 and 31-15-101 of the Colorado Revised States and the provisions of the Town’s Home Rule Charter, the parties may cooperate and contract with each other to provide any function, service or facility lawfully authorized to each, including the sharing of costs, upon authorization by each of the Parties and approval by the legislative body of each; and

WHEREAS, County Road 335 is a two-lane roadway, portions of which are located within the municipal boundaries of the Town and subject to the Town’s ownership and maintenance, and other portions of which are outside the boundaries of the Town and are owned and maintained by the County, but which does not have attached sidewalks or other improvements specifically for the benefit of pedestrian traffic; and

WHEREAS, County Road 335 presently serves as the only public right-of-way connecting the residential development known as Apple Tree Park in unincorporated Garfield County to the bridge over Interstate 70 and the Colorado River which provides access to downtown New Castle from those areas on the south side of the Colorado River, including residential and commercial properties, some of which are within the municipal limits of the Town and some of which are outside the municipal limits in unincorporated Garfield County; and

WHEREAS, the Town is working towards the eventual construction of a pedestrian bridge running across the Colorado River parallel to the existing automobile bridge connecting County Road 335 to downtown New Castle; and

WHEREAS, the Parties have determined that it would be in the best interests of the health, safety and welfare of their respective citizens, including specifically their respective citizens residing and doing business on the south side of the Colorado River, to establish a dedicated, improved pedestrian route from Apple Tree Park to the site of the proposed pedestrian bridge and the I-70 intersection; and

WHEREAS, the Parties desire to enter into this Agreement regarding their respective obligations towards the construction, ownership, and maintenance of a pedestrian trail (the "Trail").

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 by reference as findings, determinations, and acknowledgments of the Parties.

2. Right of Way. The proposed alignment of the Trail and the current ownership status of the real estate parcels along said alignment are shown on **Exhibit A** hereto and are classified into three categories: (A) County Property; (B) Town Property; and (C) Private Property. The Town shall be responsible to negotiate with the owners of the Private Property to obtain a dedicated right-of-way or an easement, as determined by the Town in its discretion, for the construction, use, maintenance, repair and replacement of the Trail, which shall be not less than eighteen feet in width; provided that additional width or other requirements may be requested in connection with any temporary construction easement as determined by the Town Engineer. The Town shall also be responsible to negotiate and enter into an agreement with the owners of any ditches or water rights where any ditches or pipelines for such water may cross the alignment of the Trail, or where other private utility line crossings may be implicated. The Town shall complete all such right-of-way acquisition and contracts regarding ditch crossings or other private utility crossings no later than **June 1, 2014**; provided, however, nothing herein shall obligate either Party to initiate any condemnation proceeding unless such Party determines to do so in its sole and absolute discretion separately from the approval of this Agreement. In the event that either Party does make such determination, then it shall have until August 1, 2014, to obtain an order of immediate possession from the Garfield County District Court. If easements or dedications for the entire length of the trail right-of-way have not been completed by August 1, 2014, then either Party shall have the right to terminate this Agreement by written notice to the other Party thereafter.

3. Post-Construction Ownership and Maintenance. Until and unless otherwise agreed by the Parties, the County shall own and be responsible for future capital repair costs for that portion of the Trail within the County Property, and the Town shall own and be responsible for future capital repair costs for those portions of the Trail within the Town Property and within the areas to be acquired within Private Property. The Town shall be responsible for routine maintenance for the entire length of the Trail. For purposes of this Paragraph 3, "routine maintenance" shall include snowplowing and sanding, weed control, median mowing, drainage improvements, trash pickup, sign repair/replacement, and striping, not to exceed the sum of \$6,000 per year. If routine maintenance costs are anticipated to exceed such limitation, then the Town may apply to the County on an annual basis for contributions to such maintenance costs. In the absence of the County's agreement for any such contributions to routine maintenance, all necessary work on the Trail other than "routine maintenance" shall be deemed to be a "capital repair cost" which shall be completed in the time and manner determined necessary by the responsible Party in its discretion based upon availability of funds and other budgetary considerations.

4. Policing. Without limiting the general duties and jurisdiction of the Garfield County Sheriff in any way, the Parties agree that the Town shall have primary responsibility for police enforcement for the entire length of the Trail. To the extent that portions of the Trail may be outside the municipal boundary of the Town, the Town and County agree that they have a mutual aid agreement in place, the intent of which is to authorize the New Castle Police Department to assist the Sheriff with policing such areas. The Parties may enter into a separate mutual aid agreement with additional provisions; provided, however, in the absence of such separate agreement it is the intention of the Parties for this Paragraph 4 to authorize the New Castle Police to engage in policing activities to assist the Sheriff with respect to the Trail.

5. Construction. The Town, acting through the Town Engineer, shall have responsibility to design the Trail, to solicit, obtain and award bids for construction work subject to any applicable requirements of the Town of New Castle Procurement Code, and to supervise and manage the construction project. The deadline for completion shall be December 31, 2014, subject only to punchlist items for minor corrective work and a warranty period of at least two years following substantial completion as determined by the Town.

6. Monetary Contributions. The County agrees to contribute funds from its Conservation Trust Fund towards the design and construction of the Trail not to exceed the total sum of \$900,000 (the "County Contribution").

- a. The County Contribution shall be disbursed on the basis of costs actually incurred by the Town and supported by written documentation, such as paid invoices and the like. No advanced payments will be made. Upon presentment of sufficient written documentation that the Town has paid the first \$150,000.00 toward the Trail, the Town shall then be eligible for reimbursement, and County Contribution funds will be released.
- b. The BOCC or its designated County Representative shall authorize disbursement of County Contribution funds up to the amount of the written documentation and as nearly as practicable in increments of \$150,000 or more.
- c. Disbursement of County Contribution funds based on presentment of sufficient written documentation shall continue in this manner until the Trail is completed or the County Contribution award is tendered or expired, whichever occurs first. In no case shall the BOCC reimburse more than the \$900,000.00 County Contribution amount.
- d. If the total cost of the Trail is less than \$900,000.00, the BOCC shall not be obligated to provide the County Contribution beyond the total cost.
- e. No portion of the County Contribution shall be used for the benefit of any specific business or corporation.
- f. Requests for disbursement with all supporting documentation shall be sent to:

County Manager
Garfield County, Colorado
108 8th Street, Suite 213
Glenwood Springs, CO 81601

7. Grants. The Parties agree to cooperate and work together in good faith to apply for any grant monies that may be available in connection with the construction of the Trail or this Agreement. In the event that the total project costs, including design, survey, construction and supervision, exceeds County Contribution, then any grant monies so obtained shall first be used to offset or reduce the Town's costs and shall then be applied, if applicable, to reduce the County Contribution.

8. Permits. The Town shall be responsible to obtain any permits that may be necessary from any state, federal, or local jurisdiction, and the County agrees to cooperate with and join in any permit applications to the extent necessary as determined by the Town Engineer. Except for approval of this Agreement by their respective governing bodies, neither the Town nor the County shall be required to apply to one another for any Town or County permit in connection with the Trail or the subject matter of this Agreement.

9. Entire Agreement. Except only as provide above in Paragraph 4, this is the entire Agreement of the Parties with request to the subject matter hereof and supersedes any prior agreements or understandings.

10. Amendments. This Agreement may be modified only in writing signed by authorized representatives of the Parties hereto.

11. Severability. In the event that any provision of this Agreement is found to be void or unenforceable, all remaining provisions shall remain intact and enforceable and shall be interpreted to effectuate, as nearly as possible, the original intentions of the Parties based upon the entire Agreement, including the invalidated provision.

12. TABOR. All monetary obligations of the Parties extending beyond the current fiscal year in which this Agreement is entered into shall be subject to annual budgeting and appropriation. The Parties represent and acknowledge that they have each budgeted and appropriated sufficient funds to meet their respective obligations under this Agreement in fiscal year 2014.

13. Notices. Any notices pursuant to this Agreement shall be in writing and shall be deemed effective three (3) business days after mailing via U.S. Mail, postage prepaid, addressed as follows:

To the County:

County Manager
Garfield County, Colorado
108 8th Street, Suite 213
Glenwood Springs, CO 81601

To the Town:

Town Administrator
New Castle Town Hall
P.O. Box 90
New Castle, CO 81647

With a copy to:

David H. McConaughy, Esq.
Garfield & Hecht, P.C.
420 Seventh Street #100
Glenwood Springs, CO 81601

SO AGREED this ___ day of _____, 2014.

BOARD OF COUNTY COMMISSIONERS, GARFIELD COUNTY

By: _____
Chair

Attest: _____
County Clerk

TOWN OF NEW CASTLE

By: _____
Mayor

Attest: _____
Town Clerk