

Memorandum

To: Mayor and Council
From: Tom Baker and David McConaughy
Date: March 18, 2014
Re: Investment in New Hope Park and Park Lease

Purpose: The purpose of this item is to follow-up with Council on the New Hope Park Investment and Park Lease. If Council is satisfied with the terms of the lease and also the investment commitment, then we request that the Mayor be authorized to sign the lease and for the Finance Department to disburse \$10,000 from the General Fund for this investment.

Background and Discussion: At Council's February 18, 2014 meeting staff reported to Council that Conservation Trust Fund monies would not be available for this investment and that Council could use General Fund monies. Also, Council and Russell Talbott (representative of New Hope Church) discussed various elements of the lease. David McConaughy drafted a lease based upon that conversation and the Elders at New Hope have had an opportunity to review the lease (both redlined and final versions of the lease are in your packet). The Elders suggested three revisions:

- Adding the name New Hope for clarity purposes;
- Simplifying the process for New Hope to reserve the park; and
- Allowing any permanent installment of equipment to remain at the park if the agreement is voided.

This last point means that if the town installs some permanent equipment that it will stay with the park even if the agreement for town use is changed.

Recommendation: Staff recommends approval.

PARK LEASE

THIS LEASE, dated _____, is between THE FIRST BAPTIST CHURCH, GLENWOOD SPRINGS, COLORADO (dba New Hope Church), a Colorado nonprofit corporation with an address of P.O. Box 620, New Castle, CO 81647, (the "Landlord"), and THE TOWN OF NEW CASTLE, COLORADO, a Colorado home rule municipality with an address of P.O. Box 90, New Castle, CO 81647 (the "Tenant" or "Town").

1. **Premises.** The Landlord, for and in consideration of the covenants and agreements hereinafter mentioned, to be kept and performed by the Tenant, does hereby lease to the Tenant, the premises situate in the County of Garfield, State of Colorado, described as follows:

Lot C9D, Burning Mountain PUD, Phase 2

2. **Term and Rent.** Said premises, with the appurtenances, are to be leased to the Tenant from May 1, 2014 until April 30, 2017, at and for a rental totaling \$10,000 for the entire 3-year term, payable in advance upon signing this Lease.

3. **Use of Premises.** Tenant shall have the right to use the premises as a public park and recreation site, open and available to the public, subject to all applicable ordinances and regulations of the Town as applied generally to Town parks and open spaces during the term of this Lease; provided, however, that Landlord retains the right to use the premises for uses consistent with Landlord's church-related and other charitable activities. Landlord shall provide the Town with a schedule of Landlord's anticipated uses, which shall be kept updated at least two (2) weeks in advance of any scheduled activities; provided, however, that the premises shall be reserved for ~~Landlord not more than two (2) full days per week, which shall always include (unless otherwise agreed in writing between Landlord and Tenant on a case-by-case basis)~~ exclusive use by Landlord every Sunday from the hours of 8:00 a.m. until 1:00 p.m. (unless otherwise agreed in writing between Landlord and Tenant on a case-by-case basis). Neither Tenant nor Landlord will use or permit the premises to be used for any purposes prohibited by the laws of the United States or of the State of Colorado or the ordinances of the Town.

4. **Improvements.** Tenant and/or Landlord shall have the right to make such improvements and install such equipment on the premises to enhance public enjoyment and recreational activities as they may mutually agree in writing, such agreement not to be unreasonably withheld. ~~Any equipment so installed shall remain the property of the party who installs it, shall be maintained by the installing party, and may be removed by the installing party at any time or upon termination of this Lease.~~ The Town shall install and maintain a portable restroom on the premises at the Town's expense in a location to be mutually agreed between the Town and Landlord, which shall be available to the public and to Landlord and Landlord's guests or invitees during the term of this Lease. No permanent improvements shall be installed by either party except pursuant to further written agreement addressing each party's rights and obligations with respect to such improvements.

5. **Maintenance.** Each party shall be responsible to maintain any equipment installed by that party. Landlord shall be responsible for routine maintenance of the premises including landscape maintenance, weed control, mowing, and irrigation. Landlord shall install a water meter at its expense, using equipment approved by the Town, to monitor and record the total water usage for irrigation of the premises, and the Town agrees to credit Landlord's utility account with the Town for the charges relating to such irrigation on a monthly basis during the term of this Lease. Landlord shall utilize best practices including sprinklers and timers to irrigate all landscaped areas as efficiently as possible.

6. **Insurance.** Landlord shall be responsible to maintain its own insurance coverage for its own scheduled uses of the premises pursuant to Section 3, above. The Town shall maintain insurance coverage for the use of the premises by the public and by Town personnel in amounts at least equal to the liability limits of the Colorado Governmental Immunity Act, with Landlord named as an additional insured party, and the Town shall provide Landlord with a certificate of insurance evidencing such coverage upon request but no less often than annually during the term of this Lease.

7. **No Subletting.** No part of the premises will be sublet, nor will this lease be assigned, without the written consent of the Landlord being first obtained.

8. Default. In the event that either party is in default of any provision of this Lease, and if such default is not cured within ten (10) business days after written notice thereof to the breaching party, then the non-defaulting party shall have the right to declare this Lease terminated, in which case the pro-rated amount of rent for the remaining term of the Lease shall be promptly refunded to Tenant.

9. Subordination. This lease shall be subordinate to all existing and future security interests on the premises.

10. Notices. All notices shall be in writing and be personally delivered or sent by first class mail, unless otherwise provided by law, to the respective parties at the addresses set forth above.

11. Miscellaneous. If any term or provision of this lease shall be invalid or unenforceable, the remainder of this lease shall not be affected thereby and shall be valid and enforceable to the full extent permitted by law. This lease shall only be modified by amendment signed by both parties. This lease shall be binding on the parties, their personal representatives, successors and assigns. The singular shall be deemed to include the plural. Nothing herein shall be deemed a waiver or limitation of the Town's governmental immunity. All fiscal obligations of the Town shall be subject to annual budgeting and appropriation.

Landlord

Tenant

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