

**RESOLUTION OF THE TOWN COUNCIL OF BASALT, COLORADO, APPROVING A PRE-DEVELOPMENT AGREEMENT WITH ROARING FORK COMMUNITY DEVELOPMENT CORPORATION AND LOWE ENTERPRISES**

**Town of Basalt, Colorado  
Resolution No. 43  
Series of 2015**

**RECITALS**

Whereas, the Town of Basalt wants to promote the redevelopment of the Pan & Fork site and improve the economic vitality of the historic downtown area desire, and

Whereas, the Town wants to work with the Roaring Fork Community Development Corporation and Lowe Enterprises to consider the redevelopment of the downtown area, and

Whereas, the Town in bringing the redevelopment of the Pan & Fork to fruition has invested over \$7.5 million dollars in public monies to remediate the floodway and floodplain and bring the site up to a condition to be redeveloped and reused, and

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BASALT, COLORADO:**

**Section 1.** The Town Council approve a Pre-Development Agreement with the Roaring Fork Community Development Corporation (RFCDC) and Lowe Enterprises.

**Section 2.**

RESOLUTION NO. 43, SERIES OF 2015, IS HEREBY ADOPTED by a vote of 5 to 2, this 11<sup>th</sup> day of August, 2015.  
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TOWN OF BASALT, COLORADO

ATTEST:

by

  
Jacques R. Whitsitt, Mayor

  
Pamela K Schilling, Town Clerk



**PRE-DEVELOPMENT AGREEMENT**  
**Town of Basalt, Roaring Fork Community Development Corporation,**  
**and Lowe Enterprises**

THIS PRE-DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the \_\_\_<sup>th</sup> day of \_\_\_\_\_ 2015 (the "Effective Date"), between the Town of Basalt, Colorado, a town of the State of Colorado (the "Town"), Roaring Fork Community Development Corporation (RFCDC) (the "Property Owner") and Lowe Enterprises (the "Developer of Record") (the Town, Property Owner and "Developer of Record" are hereby collectively referred to as the "Parties").

**RECITALS**

- A. The Parties desire to enter into this Pre-development Agreement in order to set forth matters that need to be considered in the potential development of the area(s) shown for buildings in Exhibit A.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Town and the Developer agree as follows:

1. **DEVELOPER OF RECORD.** The Town acknowledges that there are risks and costs of preliminary planning activities and other requirements associated with the preparation for a project plan for the Town and the Developer. The Town acknowledges that Lowe Enterprises is the Developer of Record for a potential project that would occur on a portion of the Property Owner's site.
2. **BASIC TERMS OF FINAL DEVELOPMENT AGREEMENT.** The Parties agree that a Final Development Agreement, satisfactory to both Parties in their sole and absolute discretion, is required to proceed with development of a final project. The specific terms of such Final Development Agreement must be negotiated between the Parties. It is presently believed that such terms must necessarily address, at a minimum, the following matters, to-wit:
  - A. Property Ownership. The Property Owner owns property (the "Property") identified as Lot 1, Basalt Community Campus and Basalt Park recorded as Reception No. 201115000.
  - B. Developer's Interest. The Developer is interested in developing a portion of Property as is currently identified in Exhibit A.
  - C. Project Area(s). The Developer would like to propose a plan based on the developable areas identified in Exhibit A. Nothing contained within this Agreement, nor shall any future agreement be deemed to

bind the Town, acting in its governmental capacity, to make any such zoning changes.

- D. Financial Considerations. The Developer is also interested in financial concessions to facilitate buildout of the property identified in Exhibit A. These concessions are in consideration of a reduction in the amount of land available for development on the Property Owner's property.
- E. Agreement on Potential Future Plans. The Parties shall consider the various potential plans and their impact on infrastructure and the public amenities necessary to support them.
- F. Financial, Tax and Incentive Impacts and Analysis. The Parties shall work diligently to define the financial, tax and incentive impacts of the project. The Town has defined the costs attributable to the Property. Those costs are identified in Exhibit B. The Town is seeking reimbursement of these costs. Additionally, the Town and Developer of Record agree to share equally in the cost incurred to have the Town's Financial Consultant, Ehlers produce a study on the potential uses of the property. Part of the study will include a report on the financial capability of the Developer of Record to undertake and complete a potential project(s) and the ability of that proposed project to repay the Town's costs.
- G. Other Matters. The parties shall also address any other matters that the Parties deem appropriate related to this Agreement.

### 3. OBLIGATION OF THE PARTIES TO PROCEED.

The obligations of the Parties to proceed beyond this Preliminary Development Agreement are dependent upon the Parties entering into a Final Development Agreement. Nothing contained herein shall (i) obligate the Town to create or approve the Development (ii) obligate the Town to create or approve an amended development plan for the Project Area(s), (iii) obligate either party to enter into a Final Development Agreement, or (iv) obligate either party to enter into property exchanges or other agreements that could be anticipated by the Developer of Record's request.

### 4. MISCELLANEOUS.

- A. Financial liability. The Town shall not be liable for any expenses or debt associated with or incurred by the development, marketing, or future management of the facility(ies).



- B. Assignability. Neither party shall assign this Agreement without the written consent of the other party.
- C. Amendments. This Agreement may be supplemented or amended only by written instrument executed by the Parties affected by such supplement or amendment.
- D. Applicable Law. To the limited extent that any provision herein may be deemed a contractual obligation, the interpretation, enforcement or any other matters relative to this Agreement shall be construed and determined in accordance with the laws of the State of Colorado. The Parties agree that the sole and exclusive jurisdiction and venue for any disputes arising hereunder shall be in any trial court located in Eagle County, Colorado.
- E. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon the Parties.
- F. Non-liability of Town Officials and Employees. No member of the governing body, official, employee, or agent of the Town shall be personally liable to Developer, or any successor in the interest to Developer, pursuant to the provisions of this Agreement, nor for any default or breach of the Agreement by the Town.
- G. Not A Partnership. The provisions of the Agreement are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Parties.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement pursuant to all requisite authorizations as of the date first above written.

**Town of Basalt, Colorado**

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

Jacque R. Whitsitt, Mayor





# Exhibit A



## LEGEND:




-  = RFCDC OWNED (Potential Building Area)
-  = TOWN OWNED (Potential Building Area)
-  = PROPOSED PARK



Exhibit B

**Roaring Fork Community Development Corporation (Reimbursables)**

		Footnote
River Restoration Design & Permitting	\$ 167,320	1
River Restoration Construction(Proportioned)		
River Improvements	\$ 497,680	
Landscaping	\$ 240,000	
Engineering, Inspection and Project Management	\$ 54,000	
Pan and Fork Site Development	\$ 837,751	1
Resident Relocation	\$ 542,038	
FEMA -- Letter of Map Revision (LOMR)	\$ 200,000	1
<b>TOTAL</b>	<b>\$ 2,538,789</b>	
<b>1 Construction Costs attributable to the RFCDC site Directly</b>	<b>1,205,071</b>	

We haven't done this price.  
M. J. G. G.