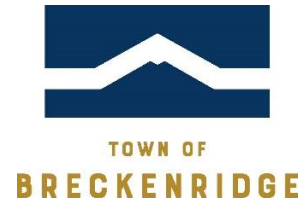




**TOWN OF
BRECKENRIDGE**

Town Council Work Session
Tuesday, June 11, 2019, 3:00 PM
Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

- I. TOUR OF THE NEW WATER PLANT AND TARN DAM (3:00-4:30pm)**
- II. PLANNING COMMISSION DECISIONS (4:30-4:35pm)**
Planning Commission Decisions
- III. LEGISLATIVE REVIEW (4:35-5:00pm)**
Ordinance to Adopt a Cable Franchise Agreement (Second Reading)
Ordinance to Amend Peak 8 Hotel Agreement (Second Reading)
- IV. MANAGERS REPORT (5:00-5:45pm)**
Public Projects Update
Parking and Transportation Update
Housing and Childcare Update
Committee Reports
Breckenridge Events Committee
- V. EXECUTIVE SESSION - Negotiations (5:45-7:00pm)**



Memo

To: Breckenridge Town Council Members
From: Peter Grosshuesch, Director of Community Development
Date: June 5, 2019
Subject: Planning Commission Decisions of the June 4, 2019 Meeting

DECISIONS FROM THE PLANNING COMMISSION MEETING, June 4, 2019:

CLASS A APPLICATIONS: None.

CLASS B APPLICATIONS: Preliminary hearing only.

CLASS C APPLICATIONS:

1. Breckenridge Peaks Residence, 210 S. Pine Street, PL-2019-0147

A proposal to construct a new 5,727 sq. ft. single family residence with 5 bedrooms, 5.5 bathrooms, and a FAR of 1:3.89. *Approved.*

TOWN PROJECT HEARINGS: None.

OTHER:

The Planning Commission was given an update on the Conservation District Stakeholder Group meetings and the consensus on primary topics of concern.



NOT TO SCALE

Breckenridge South



Breckenridge Peaks
Residence, 210 S.
Pine Street

Collins Residence,
106 S. High Street

PLANNING COMMISSION MEETING

The meeting was called to order at 5:30 p.m. by Chair Giller.

ROLL CALL

Christie Mathews-Leidal
Mike Giller
Dan Schroder

Jim Lamb
Steve Gerard
Lowell Moore

Ron Schuman

APPROVAL OF MINUTES

With no changes, the May 21, 2019 Planning Commission Minutes were approved.

APPROVAL OF AGENDA

With no changes, the June 4, 2019 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

CONSENT CALENDAR:

1. Breckenridge Peaks Residence (CK), 210 S. Pine Street, PL-2019-0147

With no call-ups, the Consent Calendar was approved as presented.

PRELIMINARY HEARINGS:

Prior to the hearing, Mr. Schuman noted that he knows the owner of the Collins Residence and the owner briefly mentioned to him he wanted to build a new home. Mr. Schuman said he remained impartial and the Commission agreed he should stay for the hearing.

1. Collins Residence (CK), 106 S. High Street, PL-2019-0068

Mr. Kulick presented a proposal to remove a non-historic modular home and construct a new 4 bedroom, 5 bathroom single family residence with two car garage along South High Street. Janet Sutterley, Architect, was present.

The following specific questions were asked of the Commission:

1. Roof Design - Staff believes the rear module's roof design should be simplified into a more reminiscent roof style from the 19th century to better meet Priority Design Standard 121. Does the Commission Agree?
2. Windows and Doors - Staff recommends a reduction of glazing to the two square windows in the eave on the west façade of the front house, the horizontally oriented windows in the eave of the main house's north side, the horizontally oriented windows in the east eave of the rear house and the French Doors on the connector and rear house to comply with Design Standards 91, 95, 96, 128. Does the Commission support this recommendation?
3. Building Materials – Staff finds the proposed board formed, ribbed concrete is not an appropriate building material and therefore does not comply with Priority Design Standard 125. Does the Commission agree?
4. Connector - Staff finds the length of the proposed connector acceptable but finds the design needs to be simplified by eliminating the French Doors in order to comply with Priority Design Standard 80/A. Does the Commission agree?

Commissioner Questions / Comments:

- Ms. Leidal: You noted in the staff report that this is between two historic structures. Looking at the photos in the packet, have we analyzed the heights of those structures? (Mr. Kulick pulled up photos on the screen.) Also, roof eaves, I know you're getting close to two setbacks, the south and the rear, we can allow encroachments up to 18" into the setback. Where are we on the roofs? (Ms. Sutterley said she will answer during her presentation.)
- Mr. Giller: The stone retaining wall is within a couple of feet of the historic house. Did you consider that? (Mr. Kulick: I looked at it in terms of being at 4 feet and didn't draw attention under policy 7R. I can look into it in terms of how it will impact the historic house. Mr. Giller: I realize it's preliminary, but take a look at it and let us know.)
- Mr. Gerard: Is the driveway hardscape where the paving strips terminate? (Mr. Kulick: Yes, it is.)

Janet Sutterley, Architect, Presented:

There are three things I want to discuss; connectors, windows and roof forms. First I want to talk about your questions. Christie: to the north is Dave Tyler's house, the yellow house. We have elevations for the floors to make sure we were in the correct place and feel we are in scale with that with the front of the house stepping up to a story and a half. We also looked at street alignment and we feel like we looked at it a lot. We're a little lower than the floor elevation of the house to the south. In terms of the retaining wall, it starts at nothing and it's a pretty low wall (pointed on the plans). On the north side, where we are taking negative three points and going to a three foot setback, our roof overhangs and chimney will encroach into that. Then on the south side we are allowing the setback plus 6 inches for the overhang.

With respect to the connector, as Chris mentioned, it's a voluntary connector but we feel it's an important design feature. If we look at the south elevation, the proportions are correct for the mass in the back and front. In doing so, probably the main thing with the connector is a gable over the door, three doors shown, and as you noticed from the site plan it's far back and you can't see the connector unless you're in the driveway. The whole south elevation is the courtyard. It's not unlike the Christmas house (206 S. French St.) where the south side is open for light. (Photos were handed out of the Christmas house). It's a very similar connector situation.

In terms of windows, also on the handout is a horizontal window, which is historic in a historic opening. We looked at the horizontal windows we'd like to make them more like the historic ones. The ones on the East side we will change to vertical. So in terms of the front, I looked for examples of a similar scale and proportion of the westernmost front element and couldn't find any with two transoms above so we can fix that too. I think the Collins's main concern is having French doors off the bedroom in the back. We will propose a 2/3 light door with a balcony railing in front that would conceal the bottom three feet of the doors. They would really like that. They would also like a more interesting window in the back. They didn't want to have just double hung windows all over the house. We have examples around town of other windows that are angled. Recently the Ploss residence had glazing on the façade. I'd like to hear from you on thoughts on the windows.

The massing of the roof of the east building. This is where I actually disagree that it's too complicated. We have a large rectangle and most of it is built into the hill so you don't perceive that. I don't want to have a big barn roof that would be wide. The idea is to keep the east building as low, small scale, and proportional and the roof forms are a classic T shape roof. If you look at the west elevation, they wanted to do a straight wall to push the master over, but I think it looks better to have a step in the wall. The first roof element that gets introduced to address it is the low roof. It starts to step the mass in from those sides and I think it looks better. That's my strategy on the west side. On the south side, I disagree that it's too complicated, it's a basic gable. I'm starting to step the mass in so it's smaller. I like the steep pitch roof and felt it was proportionally correct. It will look like an outbuilding and the materials will present that as a different structure. It has one dormer. The reason I have a dormer is that we want light from the south side. I kept the plate lines lower and needed a dormer. On the east elevation, there was an easy fix to make the shed roof come down in a classic form. To me, it was a way to break up the massing and keep it small looking. I felt like if I fix that shed roof it's as much

as I'd like to do. In terms of the Priority Design Standard 121, as I go down the bullets on that policy, the roof shapes have a significant impact because they can be seen from higher elevations. This backs up to a hill and as viewed from the east it's not offensive. The second point, gables that were popular in the 19th century, these are similar to those used historically. Many gable roofs were accented with dormers and were used in limited numbers on buildings and we have only one.

Commissioner Questions / Comments:

- Ms. Leidal: I wanted to know how many feet in height. (Ms. Sutterley: We can mark that up for the next meeting.)
- Ms. Leidal: You're proposing a Dutch lap siding and you told us that they used it in Eberlin. Our Design Standard 125 says 4", and your report says 4.5-5", can you get it as close to 4" as possible? (Ms. Sutterley: Yes, it just has a slightly different profile. To be better in compliance it would be good to go to a smaller.)
- Mr. Giller: Do you have a roof plan? (Ms. Sutterley: Not yet.)
- Mr. Gerard: What kind of material are you using in the outdoor area? (Ms. Sutterley: The owners are talking about stamped colored concrete.)
- Mr. Moore: On the connector, where the French doors are, what alternatives do you have there that are still operable? (Ms. Sutterley: A single door with two windows would be an option.)
- Mr. Schuman: Are there French doors on the east side too? Janet: Yes.
- Ms. Leidal: On the south elevation, the main story, it's a bedroom. Does staff have concern about the separation because windows are usually paired? Chris: No, not compared to others.

The hearing was opened for public comment. No public comment and the hearing was closed.

Commissioner Questions / Comments:

- Mr. Lamb: For the roof design, I disagree with staff. It's a complex roof and I think there's precedent and I didn't find it objectionable. Agree with (staff's interpretation) windows. Agree with building material. The connector, Janet said it's not visible from anywhere unless you're in the driveway. I always thought you can do your "sins" as long as they're not visible. No one will see the French door so I'm ok with it. It's a good start and a lot of things are already in the process of being fixed. (Mr. Kulick: What about the dormer of length of connector?) I'm ok with those.
- Mr. Moore: I would comment on the dormer on the connector. I'm not sure that was traditionally used, in my experience the connectors have been more simple than this. Is there some way to get it to look more traditional. The roof shape I agree, the East unit is appropriate and fits in. I think it's appropriate. Windows and doors I agree with staff.
- Mr. Schuman: Roof design is complicated and I echo the comments on the roof plan to see better. It looks busy and I think once I see a roof plan I might support but right now I believe staff is correct. Windows and doors, the two windows on the west are not appropriate. French doors in connector I echo Jim's thoughts. Diamond window isn't appropriate. The next set of plans we see will be more finished and we'll have a better idea of glazing. Building materials I agree with staff. Connector, this was submitted before the new standards so I think we need to stick with the old formula for connectors. That was the intent of getting this project in before the standards changed. It's a good start.
- Ms. Leidal: Thank you for saving the spruce tree on the south and using paver strips. It's a good looking building but we do need some revisions to comply with historic standards. The roof design is complex and I agree with staff. It's not meeting Policy 121. Windows and doors I agree with staff. I appreciate you working to meet those. Building materials, thank you for working to address concerns and reducing the reveal for the lap siding to come into compliance. Connector I'm fine with the length and it's appropriate. I agree with staff about the simple gable roof and the door. Great start.

- Mr. Schroder: I agree some simplifying could occur. Looking at the outbuilding, we talked about the garage portion but looking at the entire mass, it does step and I think that's part of the complication. I'm in support of the dormer because one is acceptable. Windows and doors, it was clear there is excessive void to solid, so we want to meet the policy. Building materials, some things need to change to meet the policy. The connector, the length is appropriate. The dormer on the connector isn't appropriate because the connector is meant to be simple.
- Mr. Gerard: I'd like to see the pavers extend further toward the garage. There's a lot of hardscape back there. Moving them back would maintain the look from the street rather than hardscape. There is a lot of glazing. I like the idea on the rear building with French doors. I don't like the triangle window. I agree with what the others say about the connector. I can live with one set of French doors but it is a busy area. Length of connector is fine. I'm with Dan, I like the dormer on the south elevation and you can get by with one. It seems functional. The north elevation gets busy and a roof line would let us see that better. We've talked about the horizontal windows, there are some historic ones but I think it could be too much. They look out of place. Building materials are going to be corrected so that will be fine. Great project.
- Mr. Giller: It's a handsome design and generally compatible. Chris's review was good. Roof massing is too complex, the design standards point to something simpler. I encourage you to simplify that. Windows and doors should be reduced. Connector, the length is ok. French doors are compatible. The retaining wall, I'd like to see the retaining wall more respective of the stone house. The compatibility with the houses on either side warrants simplification of this design to be compatible. The homes on Harris street look like this and are handsome, but looking at this design there's difference with the ones on either side. Good start and I look forward to the next submission.

OTHER MATTERS:

1. Town Council Summary (Memo Only)
2. Handbook of Design Standards Update

Mr. Truckey: Mike and Steve who are part of the group today, thank you. We wrapped up the work and it was really appreciated. We had some issues early on with push back, but we think we've reached a consensus. It's something that shows we've responded to the state, but considers and respects property and the community. Most of the consensus points stayed the same, we are allowing one module size addition on the back, but the thing we talked about today was mass bonus. The group decided on a maximum of 15% mass bonus with negative points associated. We also clarified on additions that the height can be half story taller than the principle structure. We did talk about connectors and had debate about the width and limiting vs. not limiting. We came up with a reasonable compromise. Most of the other recommendations stay the same.

Commissioner Questions / Comments:

Ms. Leidal: Thank you for all the hard work. Was a breezeway with one side open or both sides open for positive points? (Ms. Puester: Both sides.) Ms. Leidal: Are they eligible if they had one side open? Ms. Puester: I don't think it would pass. Ms. Leidal: When you modify the standards, can we draft something so we don't get the U-shape like we had on French street? Mr. Giller: Like a set back. Ms. Puester: We talked about it being substantial as viewed from the street, so it would need to be visually subordinate.

Mr. Truckey: I want to recognize how hard all the staff worked on all this.

Mr. Grosshuesch: As of July 5th, after 27 years in this job, I will be stepping down as Director of Community Development and transitioning to a half time position in the Town Manager's Office. Mark Truckey will be taking my place, and Julia Puester will be replacing Mark.

ADJOURNMENT:

The meeting was adjourned at 6:44 pm.

Mike Giller, Chair



Memo

To: Breckenridge Town Council Members
From: Shannon Haynes, Assistant Town Manager
Date: 6/5/2019
Subject: Ordinance Approving a Franchise Agreement with ALLO Communications

On Tuesday, May 28th Town Council reviewed at first reading an ordinance approving a franchise agreement that authorizes Allo Communications, a cable provider, to use the Town's rights-of-way to install its equipment and operate its cable system. Without a franchise agreement the cable provider could not legally use the Town's rights-of-way to operate its business.

Upon review, Council requested three changes to the agreement for second reading. As requested the following changes have been made:

- Section 1.1 defining Access and Section 12.2 clarifying connections to public facilities – The definition has been expanded to include educational institutions that are state licensed in addition to those that are state accredited. Further, pre-schools have been added to examples of institutions expected to receive "Educational Access".
- Section 4.9 detailing Performance Expectations – Increased performance evaluations from "no more frequently than once every two (2) years to "no more frequently than annually".
- Section 10.14 detailing Underground Construction and Use of Poles – All references to the use of utility poles and aerial installation have been removed.

Any references to Comcast have been removed.

As referenced at first reading, Town Council has the authority to grant non-exclusive, revocable franchise agreements with entities engaged in the construction, operation, maintenance, reconstruction and rebuilding of cable systems that provide services in Breckenridge. The attached franchise, between the Town and Allo Communications, complies with the requirements and limitations of the Town Charter, and the Town ordinance governing franchise agreements.

Tim Berry and I will be available at the June 11th work session to answer any questions.

1 **FOR WORKSESSION/SECOND READING – JUNE 11TH**

2
3 COUNCIL BILL NO. ____

4
5 Series 2019

6
7 AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF
8 BRECKENRIDGE AND ALLO COMMUNICATIONS, LLC, A NEBRASKA LIMITED
9 LIABILITY COMPANY

10
11 WHEREAS, the Town of Breckenridge is authorized by Article XIII of the Breckenridge
12 Town Charter, Section 4-12-3 of the Breckenridge Town Code, and other applicable law, to
13 grant one or more non-exclusive, revocable franchises to construct, operate, maintain,
14 reconstruct and rebuild a cable system for the purpose of providing cable services within the
15 boundaries of the Town; and

16
17 WHEREAS, Section 13.1 of the Breckenridge Town Charter provides that all powers
18 concerning the granting of franchises shall be exercised by the Town Council without any
19 requirement of voter approval; and

20
21 WHEREAS, Section 4-12-7 of the Breckenridge Town Code provides that a franchise
22 may only be granted by the Town by an ordinance approved by the Town Council in the manner
23 set forth in Section 5.10 of the Breckenridge Town Charter; and

24
25 WHEREAS, a proposed Franchise Agreement between the Town and ALLO
26 Communications, LLC, a Nebraska limited liability company authorized to do business in
27 Colorado, has been negotiated, a copy of which is marked **Exhibit “A”**, attached hereto and
28 incorporated herein by reference; and

29
30 WHEREAS, the Town Council has reviewed the proposed new Franchise Agreement,
31 and finds and determines that its approval would be in the best interest of the Town and its
32 citizens; and

33
34 WHEREAS, the Town Council finds and determines that the procedural requirements
35 contained in Chapter 12 of Title 4 of the Breckenridge Town Code have been satisfied in
36 connection with the adoption of this ordinance.

37
38 NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
39 BRECKENRIDGE, COLORADO:

40
41 Section 1. The Franchise Agreement Between the Town Of Breckenridge and ALLO
42 Communications, LLC, a Nebraska limited liability company authorized to do business in
43 Colorado” (**Exhibit “A”** hereto), is approved; and the Mayor is authorized, empowered, and
44 directed to execute such agreement for and on behalf of the Town of Breckenridge.

**ALLO COMMUNICATIONS, LLC AND
THE TOWN OF BRECKENRIDGE, COLORADO**

CABLE FRANCHISE AGREEMENT

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EXHIBIT A: Customer Standards

EXHIBIT B: Report Form

**ALLO COMMUNICATIONS, LLC AND
TOWN OF BRECKENRIDGE, COLORADO**

CABLE FRANCHISE AGREEMENT

WHEREAS, the Town of Breckenridge owns the Breckenridge Fiber Network (“BFN”) which is capable of providing a variety of broadband services, including Cable Services, throughout the Town; and

WHEREAS, on October 31, 2018, the Town issued a “Request for Interest: Use of a Town-Owned, Fiber Optic Backbone Network to Provide Advanced Telecommunications Services”; and

WHEREAS, ALLO Communications, LLC was one of a number of respondents to the Town’s Request for Interest; and

WHEREAS, after evaluating responses, the Town chose to enter into negotiations with ALLO Communications, LLC for a Lease and Network Operation Agreement, governing the leasing and operations of the BFN; and

WHEREAS, the parties have entered into a Lease and Network Operation Agreement and this Franchise is subject to terms of the Lease and Network Operation Agreement; and

WHEREAS, to the extent that ALLO desires to provide Cable Services over the BFN, it is considered a Cable Operator and requires a Franchise authorizing such use, as required by the federal Cable Act, 47 U.S.C. Sec. 521, *et seq.*, as amended; and

WHEREAS, ALLO has requested a Franchise from the Town to authorize the provision of Cable Services, and the Town, after considering its future cable-related needs and interests, and the provisions of Applicable Law, has determined that it is in the best interests of the Town, and the Town is willing to enter into a Franchise to authorize and govern the provision of Cable Services within the Town.

NOW, THEREFORE, the parties have agreed to terms of this Franchise as set forth below.

SECTION 1. DEFINITIONS AND EXHIBITS

(A) DEFINITIONS

For the purposes of this Franchise, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning. The word "shall" is always mandatory and not merely directory.

1.1 “Access” means the availability for noncommercial use by various agencies, institutions, organizations, groups and individuals in the community, including the Town and its designees, of the Cable System to acquire, create, receive, and distribute video Cable Services and other services and signals as permitted under Applicable Law including, but not limited to:

a. “Public Access” means Access where community-based, noncommercial organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary users.

b. “Educational Access” means Access where schools are the primary users having editorial control over programming and services. For purposes of this definition, “school” means any State-accredited or licensed educational institution, public or private, including, for example, pre-schools, primary and secondary schools, colleges and universities.

c. “Government Access” means Access where governmental institutions or their designees are the primary users having editorial control over programming and services.

1.2 “Access Channel” means any Channel, or portion thereof, designated for Access purposes or otherwise made available to facilitate or transmit Access programming or services.

1.3 “Activated” means the status of any capacity or part of the Cable System in which any Cable Service requiring the use of that capacity or part is available without further installation of system equipment, whether hardware or software.

1.4 “Affiliate,” when used in connection with Grantee, means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with, Grantee.

1.5 “Applicable Law” means any statute, ordinance, judicial decision, executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.

1.6 “Bad Debt” means amounts lawfully billed to a Subscriber and owed by the Subscriber for Cable Service and accrued as revenues on the books of Grantee, but not collected after reasonable efforts have been made by Grantee to collect the charges.

1.7 “Basic Service” is the level of programming service which includes, at a minimum, all Broadcast Channels, all PEG SD Access Channels required in this Franchise, and any additional Programming added by the Grantee, and is made available to all Cable Services Subscribers in the Franchise Area.

1.8 “Broadcast Channel” means local commercial television stations, qualified low power stations and qualified local noncommercial educational television stations, as referenced under 47 USC § 534 and 535.

1.9 “Broadcast Signal” means a television or radio signal transmitted over the air to a wide geographic audience, and received by a Cable System by antenna, microwave, satellite dishes or any other means.

1.10 “Cable Act” means the Title VI of the Communications Act of 1934, as amended.

1.11 “Cable Operator” means any Person or groups of Persons, including Grantee, who provide(s) Cable Service over a Cable System and directly or through one or more affiliates owns a significant interest in such Cable System or who otherwise control(s) or is (are) responsible for, through any arrangement, the management and operation of such a Cable System.

1.12 “Cable Service” means the one-way transmission to Subscribers of video programming or other programming service, and Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

1.13 “Cable System” means any facility, including Grantee’s, consisting of a set of closed transmissions paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves Subscribers without using any Right-of-Way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the federal Communications Act (47 U.S.C. 201 et seq.), except that such facility shall be considered a Cable System (other than for purposes of Section 621(c) (47 U.S.C. 541(c)) to the extent such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with federal statutes; or (E) any facilities of any electric utility used solely for operating its electric utility systems.

1.14 “Channel” means a portion of the electromagnetic frequency spectrum which is used in the Cable System and which is capable of delivering a television channel (as television channel is defined by the FCC by regulation).

1.15 “Commercial Subscribers” means any Subscribers other than Residential Subscribers.

1.16 “Designated Access Provider” means the entity or entities designated now or in the future by the Town to manage or co-manage Access Channels and facilities. The Town may be a Designated Access Provider.

1.17 “Digital Starter Service” means the Tier of optional video programming services, which is the level of Cable Service received by most Subscribers above Basic Service, and does not include Premium Services.

1.18 “Downstream” means carrying a transmission from the Headend to remote points on the Cable System or to Interconnection points on the Cable System.

1.19 “Dwelling Unit” means any building, or portion thereof, that has independent living facilities, including provisions for cooking, sanitation and sleeping, and that is designed for residential occupancy. Buildings with more than one set of facilities for cooking shall be considered Multiple Dwelling Units unless the additional facilities are clearly accessory.

1.20 “FCC” means the Federal Communications Commission.

1.21 “Fiber Optic” means a transmission medium of optical fiber cable, along with all associated electronics and equipment, capable of carrying Cable Service by means of electric lightwave impulses.

1.22 “Franchise” means the document in which this definition appears, *i.e.*, the contractual agreement, executed between the Town and Grantee, containing the specific provisions of the authorization granted, including references, specifications, requirements and other related matters.

1.23 “Franchise Area” means the area within the jurisdictional boundaries of the Town, including any areas annexed by the Town during the term of this Franchise.

1.24 “Franchise Fee” means that fee payable to the Town described in subsection 3.1 (A).

1.25 “Grantee” means ALLO Communications LLC or its lawful successor, transferee or assignee.

1.26 “Gross Revenues” means, and shall be construed broadly to include all revenues derived directly or indirectly by Grantee and/or an Affiliated Entity that is the cable operator of the Cable System, from the operation of Grantee’s Cable System to provide Cable Services within the Town. Gross revenues include, by way of illustration and not limitation:

- monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- installation, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- fees paid to Grantee for channels designated for commercial/leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the Town;
- converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- Advertising Revenues as defined herein;

- late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;

- revenues from program guides;

- Franchise Fees;

- FCC Regulatory Fees; and,

- commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the Town.

(A) “Advertising Revenues” shall mean revenues derived from sales of advertising that are made available to Grantee’s Cable System subscribers within the Town and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Grantee agrees that Gross Revenues subject to franchise fees shall include all commissions, rep fees, Affiliated Entity fees, or rebates paid to National Cable Communications (“NCC”) or their successors associated with sales of advertising on the Cable System within the Town allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

(B) “Gross Revenues” shall not include:

- actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a *pro rata* basis using Cable Services revenue as a percentage of total subscriber revenues within the Town;

- any taxes and/or fees on services furnished by Grantee imposed by any municipality, state or other governmental unit, provided that Franchise Fees and the FCC regulatory fee shall not be regarded as such a tax or fee;

- fees imposed by any municipality, state or other governmental unit on Grantee including but not limited to Public, Educational and Governmental (PEG) Fees;

- launch fees and marketing co-op fees; and,

- unaffiliated third party advertising sales agency fees which are reflected as a deduction from revenues.

(C) To the extent revenues are received by Grantee for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Grantee shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a *pro rata* basis when comparing the bundled service price and its components to the sum of

the published rate card, except as required by specific federal, state or local law, it is expressly understood that equipment may be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Grantee derives revenues in the Town. The Town reserves its right to review and to challenge Grantee's calculations.

(D) Grantee reserves the right to change the allocation methodologies set forth in this Section 1.26 in order to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Grantee will explain and document the required changes to the Town within three (3) months of making such changes, and as part of any audit or review of franchise fee payments, and any such changes shall be subject to 1.26(E) below.

(E) Resolution of any disputes over the classification of revenue should first be attempted by agreement of the Parties, but should no resolution be reached, the Parties agree that reference shall be made to generally accepted accounting principles ("GAAP") as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC"). Notwithstanding the forgoing, the Town reserves its right to challenge Grantee's calculation of Gross Revenues, including the interpretation of GAAP as promulgated and defined by the FASB, EITF and/or the SEC.

1.27 "Headend" means any facility for signal reception and dissemination on a Cable System, including cables, antennas, wires, satellite dishes, monitors, switchers, modulators, processors for Broadcast Signals, equipment for the Interconnection of the Cable System with adjacent Cable Systems and Interconnection of any networks which are part of the Cable System, and all other related equipment and facilities.

1.28 "Leased Access Channel" means any Channel or portion of a Channel commercially available for video programming by Persons other than Grantee, for a fee or charge.

1.29 "Manager" means the Town Manager of the Town or designee.

1.30 "Person" means any individual, sole proprietorship, partnership, association, or corporation, or any other form of entity or organization.

1.31 "Premium Service" means programming choices (such as movie Channels, pay-per-view programs, or video on demand) offered to Subscribers on a per-Channel, per-program or per-event basis.

1.32 "Residential Subscriber" means any Person who receives Cable Service delivered to Dwelling Units or Multiple Dwelling Units, excluding such Multiple Dwelling Units billed on a bulk-billing basis.

1.33 “Right-of-Way” means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the Town: streets, roadways, highways, avenues, lanes, alleys, bridges, sidewalks, easements, rights-of-way and similar public property and areas.

1.34 “State” means the State of Colorado.

1.35 “Subscriber” means any Person who or which elects to subscribe to, for any purpose, Cable Service provided by Grantee by means of or in connection with the Cable System and whose premises are physically wired and lawfully Activated to receive Cable Service from Grantee's Cable System, and who is in compliance with Grantee's regular and nondiscriminatory terms and conditions for receipt of service.

1.36 “Subscriber Network” means that portion of the Cable System used primarily by Grantee in the transmission of Cable Services to Residential Subscribers.

1.37 “Summit County Telecommunication Consortium” or “SCTC” means the non-profit entity formed by the franchising authorities and/or local governments from the Towns of Breckenridge, Silverthorne, Frisco, and Dillon, and Summit County, Colorado or the SCTC's successor entity, whose purpose is, among other things, to communicate with regard to franchising matters collectively and cooperatively.

1.38 “Telecommunications” means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received (as provided in 47 U.S.C. Section 153(43)).

1.39 “Telecommunications Service” means the offering of Telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used (as provided in 47 U.S.C. Section 153(46)).

1.40 “Tier” means a group of Channels for which a single periodic subscription fee is charged.

1.41 “Town” is the Town of Breckenridge, Colorado, a body politic and corporate under the laws of the State of Colorado.

1.42 “Town Council” means the Breckenridge Town Council, or its successor, the governing body of the Town of Breckenridge, Colorado.

1.43 “Two-Way” means that the Cable System is capable of providing both Upstream and Downstream transmissions.

1.44 “Upstream” means carrying a transmission to the Headend from remote points on the Cable System or from Interconnection points on the Cable System.

(B) EXHIBITS

The following documents, which are occasionally referred to in this Franchise, are formally incorporated and made a part of this Franchise by this reference:

- 1) *Exhibit A*, entitled Customer Service Standards.
- 2) *Exhibit B*, entitled Report Form.

SECTION 2. GRANT OF FRANCHISE

2.1 Grant

(A) The Town hereby grants to Grantee a nonexclusive authorization to make reasonable and lawful use of the Rights-of-Way within the Town to construct, operate, maintain, reconstruct and rebuild a Cable System for the purpose of providing Cable Service subject to the terms and conditions set forth in this Franchise and in any prior utility or use agreements entered into by Grantee with regard to any individual property. This Franchise shall constitute both a right and an obligation to provide the Cable Services required by, and to fulfill the obligations set forth in, the provisions of this Franchise.

(B) Nothing in this Franchise shall be deemed to waive the lawful requirements of any generally applicable Town ordinance existing as of the Effective Date, as defined in subsection 2.3.

(C) Each and every term, provision or condition herein is subject to the provisions of State law, federal law, the Charter of the Town, and the ordinances and regulations enacted pursuant thereto. The Charter and Municipal Code of the Town, as the same may be amended from time to time, are hereby expressly incorporated into this Franchise as if fully set out herein by this reference. Notwithstanding the foregoing, the Town may not unilaterally alter the material rights and obligations of Grantee under this Franchise.

(D) This Franchise shall not be interpreted to prevent the Town from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Grantee provide service other than Cable Service.

(E) Grantee promises and guarantees, as a condition of exercising the privileges granted by this Franchise, that any Affiliate of the Grantee directly involved in the offering of Cable Service in the Franchise Area, or directly involved in the management or operation of the Cable System in the Franchise Area, will also comply with the obligations of this Franchise.

(F) No rights shall pass to Grantee by implication. Without limiting the foregoing, by way of example and not limitation, this Franchise shall not include or be a substitute for:

(1) Any other permit or authorization required for the privilege of transacting and carrying on a business within the Town that may be required by the ordinances and laws of the Town;

(2) Any permit, agreement, or authorization required by the Town for Right-of-Way users in connection with operations on or in Rights-of-Way or public property including, by way of example and not limitation, street cut permits; or

(3) Any permits or agreements for occupying any other property of the Town or private entities to which access is not specifically granted by this Franchise including, without limitation, permits and agreements for placing devices on poles, in conduits or in or on other structures.

(G) This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the Town has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Grantee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

(H) This Franchise does not authorize Grantee to provide Telecommunications Service, or to construct, operate or maintain Telecommunications facilities. This Franchise is not a bar to the provision of non-Cable Services, or to the imposition of any lawful conditions on Grantee with respect to Telecommunications, whether similar, different or the same as the conditions specified herein. This Franchise does not relieve Grantee of any obligation it may have to obtain from the Town an authorization to provide Telecommunications Services, or to construct, operate or maintain Telecommunications facilities, or relieve Grantee of its obligation to comply with any such authorizations that may be lawfully required.

2.2 Use of Rights-of-Way

(A) Subject to the Town's supervision and control, Grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the Rights-of-Way within the Town such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, pedestals, attachments and other property and equipment as are necessary and appurtenant to the operation of a Cable System within the Town. Grantee, through this Franchise, is granted extensive and valuable rights to operate its Cable System for profit using the Town's Rights-of-Way in compliance with all applicable Town construction codes and procedures. As trustee for the public, the Town is entitled to fair compensation as provided for in Section 3 of this Franchise to be paid for these valuable rights throughout the term of the Franchise.

(B) Grantee must follow Town established nondiscriminatory requirements for placement of Cable System facilities in Rights-of-Way, including the specific location of facilities in the Rights-of-Way, and must in any event install Cable System facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing communications facilities. Within limits reasonably related to the Town's role

in protecting public health, safety and welfare, the Town may require that Cable System facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with Town's requirements; and may remove, or require removal of, any facility that is not installed by Grantee in compliance with the requirements established by the Town, or which is installed without prior Town approval of the time, place or manner of installation, and charge Grantee for all the costs associated with removal; and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.3 Effective Date and Term of Franchise

This Franchise and the rights, privileges and authority granted hereunder shall take effect on _____, 2019 (the "Effective Date"), and shall terminate on _____, 2029 unless terminated sooner as hereinafter provided. Notwithstanding anything to the contrary reference herein, the parties acknowledge their Fiber Lease and Network Operation Agreement dated _____, 2019, and agree that should that agreement terminate for any reason, this Franchise, and any renewal or extension hereof, shall also terminate at the same time.

2.4 Franchise Nonexclusive

This Franchise shall be nonexclusive, and subject to all prior rights, interests, easements or licenses granted by the Town to any Person to use any property, Right-of-Way, right, interest or license for any purpose whatsoever, including the right of the Town to use same for any purpose it deems fit, including the same or similar purposes allowed Grantee hereunder. The Town may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with Grantee's authority under this Franchise and for such additional franchises for Cable Systems as the Town deems appropriate.

2.5 Police Powers

Grantee's rights hereunder are subject to the police powers of the Town to adopt and enforce ordinances necessary to the safety, health, and welfare of the public, and Grantee agrees to comply with all laws and ordinances of general applicability enacted, or hereafter enacted, by the Town or any other legally constituted governmental unit having lawful jurisdiction over the subject matter hereof. The Town shall have the right to adopt, from time to time, such ordinances as may be deemed necessary in the exercise of its police power; provided that such hereinafter enacted ordinances shall be reasonable and not materially modify the terms of this Franchise. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the Town's police powers shall be resolved in favor of the latter.

2.6 Competitive Equity

(A) The Grantee acknowledges and agrees that the Town reserves the right to grant one (1) or more additional franchises or other similar lawful authorization to provide Cable Services within the Town. If the Town grants such an additional franchise or other similar lawful authorization containing material terms and conditions that differ from Grantee's material

obligations under this Franchise, then the Town agrees that the obligations in this Franchise will, pursuant to the process set forth in this Section, be amended to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. "Material terms and conditions" include, but are not limited to: Franchise Fees and Gross Revenues; insurance; System build-out requirements; security instruments; Public, Education and Government Access Channels and support; customer service standards; required reports and related record keeping; competitive equity (or its equivalent); audits; dispute resolution; remedies; and notice and opportunity to cure breaches. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent. Video programming services (as defined in the Cable Act) delivered over wireless broadband networks are specifically exempted from the requirements of this Section.

(B) The modification process of this Franchise as provided for in Section 2.6 (A) shall only be initiated by written notice by the Grantee to the Town regarding specified franchise obligations. Grantee's notice shall address the following: (1) identifying the specific terms or conditions in the competitive cable services franchise which are materially different from Grantee's obligations under this Franchise; (2) identifying the Franchise terms and conditions for which Grantee is seeking amendments; (3) providing text for any proposed Franchise amendments to the Town, with a written explanation of why the proposed amendments are necessary and consistent.

(C) Upon receipt of Grantee's written notice as provided in Section 2.6 (B), the Town and Grantee agree that they will use best efforts in good faith to negotiate Grantee's proposed Franchise modifications, and that such negotiation will proceed and conclude within a ninety (90) day time period, unless that time period is reduced or extended by mutual agreement of the parties. If the Town and Grantee reach agreement on the Franchise modifications pursuant to such negotiations, then the Town shall amend this Franchise to include the modifications.

(D) In the alternative to Franchise modification negotiations as provided for in Section 2.6 (C), or if the Town and Grantee fail to reach agreement in such negotiations, Grantee may, at its option, elect to replace this Franchise by opting into the franchise or other similar lawful authorization that the Town grants to another provider of Cable Services, so as to insure that the regulatory and financial burdens on each entity are equivalent. If Grantee so elects, the Town shall immediately commence proceedings to replace this Franchise with the franchise issued to the other Cable Services provider.

(E) Notwithstanding anything contained in this Section 2.6(A) through (D) to the contrary, the Town shall not be obligated to amend or replace this Franchise unless the new entrant makes Cable Services available for purchase by Subscribers or customers under its franchise agreement with the Town.

(F) Notwithstanding any provision to the contrary, at any time that non-wireless facilities based entity, legally authorized by state or federal law, makes available for purchase by Subscribers or customers, Cable Services or multiple Channels of video programming within the

Franchise Area without a franchise or other similar lawful authorization granted by the Town, then:

(1) Grantee may negotiate with the Town to seek Franchise modifications as per Section 2.6(C) above; or

(a) the term of Grantee's Franchise shall, upon ninety (90) days written notice from Grantee, be shortened so that the Franchise shall be deemed to expire on a date eighteen (18) months from the first day of the month following the date of Grantee's notice; or,

(b) Grantee may assert, at Grantee's option, that this Franchise is rendered "commercially impracticable," and invoke the modification procedures set forth in Section 625 of the Cable Act.

2.7 Familiarity with Franchise

The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein. The Grantee further acknowledges and states that it has fully studied and considered the requirements and provisions of this Franchise, and finds that the same are commercially practicable at this time, and consistent with all local, State and federal laws and regulations currently in effect, including the Cable Act.

2.8 Effect of Acceptance

By accepting the Franchise, the Grantee: (1) acknowledges and accepts the Town's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise subject to Applicable Law; and (3) agrees that the Franchise was granted pursuant to processes and procedures consistent with Applicable Law, and that it will not raise any claim to the contrary.

SECTION 3. FRANCHISE FEE PAYMENT AND FINANCIAL CONTROLS

3.1 Franchise Fee

As compensation for the benefits and privileges granted under this Franchise and in consideration of permission to use the Town's Rights-of-Way, Grantee shall continue to pay as a Franchise Fee to the Town, throughout the duration of and consistent with this Franchise, an amount equal to five percent (5%) of Grantee's Gross Revenues.

3.2 Payments

Grantee's Franchise Fee payments to the Town shall be computed quarterly for the preceding calendar quarter ending March 31, June 30, September 30, and December 31. Each

quarterly payment shall be due and payable no later than thirty (30) days after said dates.

3.3 Acceptance of Payment and Recomputation

No acceptance of any payment shall be construed as an accord by the Town that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim the Town may have for further or additional sums payable or for the performance of any other obligation of Grantee.

3.4 Quarterly Franchise Fee Reports

Each payment shall be accompanied by a written report to the Town, or concurrently sent under separate cover, verified by an authorized representative of Grantee, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount. Such reports shall detail all Gross Revenues of the Cable System.

3.5 Annual Franchise Fee Reports

Grantee shall, within sixty (60) days after the end of each year, furnish to the Town a statement stating the total amount of Gross Revenues for the year and all payments, deductions and computations for the period.

3.6 Audits

On an annual basis, upon thirty (30) days prior written notice, the Town, including the Town's Auditor or his/her authorized representative, or the SCTC, as assigned by the Town, shall have the right to conduct an independent audit/review of Grantee's records reasonably related to the administration or enforcement of this Franchise. An audit conducted by the SCTC pursuant to this section may be joined with an audit/review of Grantee's records being conducted by another SCTC community related to the administration or enforcement of its cable franchise agreement with Grantee. Pursuant to subsection 1.26, as part of the Franchise Fee audit/review the Town shall specifically have the right to review relevant data related to the allocation of revenue to Cable Services in the event Grantee offers Cable Services bundled with non-Cable Services. For purposes of this section, "relevant data" shall include, at a minimum, Grantee's records, produced and maintained in the ordinary course of business, showing the subscriber counts per package and the revenue allocation per package for each package that was available for Town subscribers during the audit period. To the extent that the Town does not believe that the relevant data supplied is sufficient for the Town to complete its audit/review, the Town may require other relevant data. For purposes of this Section 3.6, the "other relevant data" shall generally mean all: (1) billing reports, (2) financial reports (such as General Ledgers) and (3) sample customer bills used by Grantee to determine Gross Revenues for the Franchise Area that would allow the Town to recompute the Gross Revenue determination. If the audit/review shows that Franchise Fee payments have been underpaid by five percent (5%) or more (or such other contract underpayment threshold as set forth in a generally applicable and enforceable regulation or policy of the Town related to audits), Grantee shall pay the total cost of the audit/review, such

cost not to exceed five thousand dollars (\$5,000) for each year of the audit period for all SCTC communities combined. The Town's right to audit/review and the Grantee's obligation to retain records related to this subsection shall expire three (3) years after each Franchise Fee payment has been made to the Town.

3.7 Late Payments

In the event any payment due quarterly is not received within thirty (30) days from the end of the calendar quarter, Grantee shall pay interest on the amount due (at the prime rate as listed in the Wall Street Journal on the date the payment was due), compounded daily, calculated from the date the payment was originally due until the date the Town receives the payment.

3.8 Underpayments

If a net Franchise Fee underpayment is discovered as the result of an audit, Grantee shall pay interest at the rate of the eight percent (8%) per annum, compounded quarterly, calculated from the date each portion of the underpayment was originally due until the date Grantee remits the underpayment to the Town.

3.9 Alternative Compensation

In the event the obligation of Grantee to compensate the Town through Franchise Fee payments is lawfully suspended or eliminated, in whole or part, then Grantee shall pay to the Town compensation equivalent to the compensation paid to the Town by other similarly situated users of the Town's Rights-of-Way for Grantee's use of the Town's Rights-of-Way, provided that in no event shall such payments exceed the equivalent of five percent (5%) of Grantee's Gross Revenues (subject to the other provisions contained in this Franchise), to the extent consistent with Applicable Law.

3.10 Maximum Legal Compensation

The parties acknowledge that, at present, applicable federal law limits the Town to collection of a maximum permissible Franchise Fee of five percent (5%) of Gross Revenues. In the event that at any time during the duration of this Franchise, the Town is authorized to collect an amount in excess of five percent (5%) of Gross Revenues, then this Franchise may be amended unilaterally by the Town to provide that such excess amount shall be added to the Franchise Fee payments to be paid by Grantee to the Town hereunder, provided that Grantee has received at least ninety (90) days prior written notice from the Town of such amendment, so long as all cable operators in the Town are paying the same Franchise Fee amount.

3.11 Additional Commitments Not Franchise Fee Payments

No term or condition in this Franchise, including the funding required by Section 9, shall in any way modify or affect Grantee's obligation to pay Franchise Fees. Although the total sum of Franchise Fee payments and additional commitments set forth elsewhere in this Franchise may total more than five percent (5%) of Grantee's Gross Revenues in any twelve (12) month

period, Grantee agrees that the additional commitments herein are not Franchise Fees as defined under any federal law, nor are they to be offset or credited against any Franchise Fee payments due to the Town, nor do they represent an increase in Franchise Fees.

3.12 Tax Liability

The Franchise Fees shall be in addition to any and all taxes or other levies or assessments which are now or hereafter required to be paid by businesses in general by any law of the Town, the State or the United States including, without limitation, sales, use and other taxes, business license fees or other payments. Payment of the Franchise Fees under this Franchise shall not exempt Grantee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the Town. Any other license fees, taxes or charges shall be of general applicability in nature and shall not be levied against Grantee solely because of its status as a Cable Operator, or against Subscribers, solely because of their status as such.

3.13 Financial Records

Grantee agrees to meet with a representative of the Town upon request to review Grantee's methodology of record-keeping, financial reporting, the computing of Franchise Fee obligations and other procedures, the understanding of which the Town deems necessary for reviewing reports and records.

3.14 Payment on Termination

If this Franchise terminates for any reason, the Grantee shall file with the Town within ninety (90) calendar days of the date of the termination, a financial statement, certified by an independent certified public accountant, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. The Town reserves the right to satisfy any remaining financial obligations of the Grantee to the Town by utilizing the funds available in the letter of credit or other security provided by the Grantee.

SECTION 4. ADMINISTRATION AND REGULATION

4.1 Authority

(A) The Town shall be vested with the power and right to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest, or to delegate that power and right, or any part thereof, to the extent permitted under Federal, State and local law, to any agent including, but not limited to, the SCTC, in its sole discretion.

(B) Nothing in this Franchise shall limit nor expand the Town's right of eminent domain under State law.

4.2 Rates and Charges

All of Grantee's rates and charges related to or regarding Cable Services shall be subject to regulation by the Town to the full extent authorized by applicable federal, State and local laws.

4.3 Rate Discrimination

All of Grantee's rates and charges shall be published (in the form of a publicly-available rate card) and be non-discriminatory as to all Persons and organizations of similar classes, under similar circumstances and conditions. Grantee shall apply its rates in accordance with Applicable Law, with identical rates and charges for all Subscribers receiving identical Cable Services, without regard to race, color, ethnic or national origin, religion, age, sex, sexual orientation, marital, military or economic status, or physical or mental disability or geographic location within the Town. Grantee shall offer the same Cable Services to all Residential Subscribers at identical rates to the extent required by Applicable Law and to Multiple Dwelling Unit Subscribers to the extent authorized by FCC rules or applicable Federal law. Grantee shall permit Subscribers to make any lawful in-residence connections the Subscriber chooses without additional charge nor penalizing the Subscriber therefor. However, if any in-home connection requires service from Grantee due to signal quality, signal leakage or other factors, caused by improper installation of such in-home wiring or faulty materials of such in-home wiring, the Subscriber may be charged reasonable service charges by Grantee. Nothing herein shall be construed to prohibit:

- (A) The temporary reduction or waiving of rates or charges in conjunction with valid promotional campaigns; or,
- (B) The offering of reasonable discounts to senior citizens or economically disadvantaged citizens; or,
- (C) The offering of rate discounts for Cable Service; or,
- (D) The Grantee from establishing different and nondiscriminatory rates and charges and classes of service for Commercial Subscribers, as allowable by federal law and regulations.

4.4 Filing of Rates and Charges

(A) Throughout the term of this Franchise, Grantee shall maintain on file with the Town a complete schedule of applicable rates and charges for Cable Services provided under this Franchise. Nothing in this subsection shall be construed to require Grantee to file rates and charges under temporary reductions or waivers of rates and charges in conjunction with promotional campaigns.

(B) Upon request of the Town, Grantee shall provide a complete schedule of current rates and charges for any and all Leased Access Channels, or portions of such Channels, provided by Grantee. The schedule shall include a description of the price, terms, and conditions

established by Grantee for Leased Access Channels.

4.5 Cross Subsidization

Grantee shall comply with all Applicable Laws regarding rates for Cable Services and all Applicable Laws covering issues of cross subsidization.

4.6 Reserved Authority

Both Grantee and the Town reserve all rights they may have under the Cable Act and any other relevant provisions of federal, State, or local law.

4.7 Time Limits Strictly Construed

Whenever this Franchise sets forth a time for any act to be performed by Grantee, such time shall be deemed to be of the essence, and any failure of Grantee to perform within the allotted time may be considered a breach of this Franchise, and sufficient grounds for the Town to invoke any relevant remedy in accordance with Section 13.1 of this Franchise.

4.8 Franchise Amendment Procedure

Either party may at any time seek an amendment of this Franchise by so notifying the other party in writing. Within thirty (30) days of receipt of notice, the Town and Grantee shall meet to discuss the proposed amendment(s). If the parties reach a mutual agreement upon the suggested amendment(s), such amendment(s) shall be submitted to the Town Council for its approval. If so approved by the Town Council and the Grantee, then such amendment(s) shall be deemed part of this Franchise. If mutual agreement is not reached, there shall be no amendment.

4.9 Performance Evaluations

(A) The Town may hold performance evaluation sessions upon ninety (90) days written notice, provided that such evaluation sessions shall be held no more frequently than annually. All such evaluation sessions shall be conducted by the Town.

(B) Special evaluation sessions may be held at any time by the Town during the term of this Franchise, upon ninety (90) days written notice to Grantee.

(C) All regular evaluation sessions shall be open to the public and announced at least two (2) weeks in advance in any manner within the discretion of the Town. Grantee shall also include with or on the Subscriber billing statements for the billing period immediately preceding the commencement of the session, written notification of the date, time, and place of the regular performance evaluation session, and any special evaluation session as required by the Town, provided Grantee receives appropriate advance notice.

(D) Topics which may be discussed at any evaluation session may include, but are not limited to, Cable Service rate structures; Franchise Fee payments; liquidated damages; free or discounted Cable Services; application of new technologies; Cable System performance; Cable Services provided; programming offered; Subscriber complaints; privacy; amendments to this Franchise; judicial and FCC rulings; line extension policies; and the Town or Grantee's rules; provided that nothing in this subsection shall be construed as requiring the renegotiation of this Franchise.

(E) During evaluations under this subsection, Grantee shall fully cooperate with the Town and shall provide such information and documents as the Town may reasonably require to perform the evaluation.

4.10 Late Fees

(A) For purposes of this subsection, any assessment, charge, cost, fee or sum, however characterized, that the Grantee imposes upon a Subscriber solely for late payment of a bill is a late fee and shall be applied in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution, or as the same may be superseded by legislation or final court order.

(B) Nothing in this subsection shall be deemed to create, limit or otherwise affect the ability of the Grantee, if any, to impose other assessments, charges, fees or sums other than those permitted by this subsection, for the Grantee's other services or activities it performs in compliance with Applicable Law, including FCC law, rule or regulation.

(C) The Grantee's late fee and disconnection policies and practices shall be nondiscriminatory and such policies and practices, and any fees imposed pursuant to this subsection, shall apply equally in all parts of the Town without regard to the neighborhood or income level of the Subscriber.

4.11 Force Majeure

In the event Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond the control of Grantee, Grantee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the Town. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Grantee's ability to provide Cable Services in the Town and which was not caused and could not have been avoided by the Grantee which used its best efforts in its operations to avoid such results.

If Grantee believes that a reason beyond its control has prevented or delayed its compliance with the terms of this Franchise, Grantee shall provide documentation as reasonably required by the Town to substantiate the Grantee's claim. If Grantee has not yet cured the deficiency, Grantee shall also provide the Town with its proposed plan for remediation,

including the timing for such cure.

SECTION 5. FINANCIAL AND INSURANCE REQUIREMENTS

5.1 Indemnification

(A) General Indemnification. Grantee shall indemnify, defend and hold the Town, its officers, officials, boards, commissions, agents and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses, arising from any casualty or accident to Person or property, including, without limitation, copyright infringement, defamation, and all other damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Grantee, its agents (not to include the Town), or its employees, or by reason of any neglect or omission of Grantee. Grantee shall consult and cooperate with the Town while conducting its defense of the Town.

(B) Indemnification for Relocation. Grantee shall indemnify the Town for any damages, claims, additional costs or reasonable expenses assessed against, or payable by, the Town arising out of, or resulting from, directly or indirectly, Grantee's failure to remove, adjust or relocate any of its facilities in the Rights-of-Way in a timely manner in accordance with any relocation required by the Town required by the Town under this Franchise or Applicable Law.

(C) Additional Circumstances. Grantee shall also indemnify, defend and hold the Town harmless for any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees or reasonable expenses in any way arising out of:

(1) The lawful actions of the Town in granting this Franchise to the extent such actions are consistent with this Franchise and Applicable Law.

(2) Damages arising out of any failure by Grantee to secure consents from the owners, authorized distributors, or licensees/licensors of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed or prohibited by this Franchise.

(D) Procedures and Defense. If a claim or action arises, the Town or any other indemnified party shall promptly tender the defense of the claim to Grantee, which defense shall be at Grantee's expense. The Town may participate in the defense of a claim, but if Grantee provides a defense at Grantee's expense then Grantee shall not be liable for any attorneys' fees, expenses or other costs that Town may incur if it chooses to participate in the defense of a claim, unless and until separate representation as described below in Paragraph 5.1(F) is required. In that event the provisions of Paragraph 5.1(F) shall govern Grantee's responsibility for Town's/ /Town's attorney's fees, expenses or other costs. In any event, Grantee may not agree to any settlement of claims affecting the Town without the Town's approval.

(E) Non-waiver. The fact that Grantee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Grantee's duty of defense and indemnification under this subsection.

(F) Expenses. If separate representation to fully protect the interests of both parties is or becomes necessary, such as a conflict of interest between the Town and the counsel selected by Grantee to represent the Town, Grantee shall pay, from the date such separate representation is required forward, all reasonable expenses incurred by the Town in defending itself with regard to any action, suit or proceeding indemnified by Grantee. Provided, however, that in the event that such separate representation is or becomes necessary, and Town desires to hire counsel or any other outside experts or consultants and desires Grantee to pay those expenses, then Town shall be required to obtain Grantee's consent to the engagement of such counsel, experts or consultants, such consent not to be unreasonably withheld. The Town's expenses shall include all reasonable out-of-pocket expenses, such as consultants' fees, and shall also include the reasonable value of any services rendered by the Town Attorney or his/her assistants or any employees of the Town or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the Town by Grantee.

5.2 Insurance

(A) Grantee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

(1) Commercial General Liability insurance with limits of no less than one million dollars (\$1,000,000.00) per occurrence and one million dollars (\$1,000,000.00) general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the Town, its officers, officials and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the Town, its officers, officials and employees. Coverage shall apply as to claims between insureds on the policy, if applicable.

(2) Commercial Automobile Liability insurance with minimum combined single limits of one million dollars (\$1,000,000.00) each occurrence with respect to each of Grantee's owned, hired and non-owned vehicles assigned to or used in the operation of the Cable System in the Town. The policy shall contain a severability of interests provision.

(B) The insurance shall not be canceled or materially changed so as to be out of compliance with these requirements without thirty (30) days' written notice first provided to the Town, via certified mail, and ten (10) days' notice for nonpayment of premium. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this subsection within the term of this Franchise, Grantee shall provide a replacement policy. Grantee agrees to maintain continuous uninterrupted insurance coverage, in at least the amounts required, for the duration of this Franchise and, in the case of the Commercial General Liability, for at least one (1) year after expiration of this Franchise.

5.3 Deductibles / Certificate of Insurance

Any deductible of the policies shall not in any way limit Grantee's liability to the Town.

(A) Endorsements.

(1) All policies shall contain, or shall be endorsed so that:

(a) The Town, its officers, officials, boards, commissions, employees and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Grantee under this Franchise or Applicable Law, or in the construction, operation or repair, or ownership of the Cable System;

(b) Grantee's insurance coverage shall be primary insurance with respect to the Town, its officers, officials, boards, commissions, employees and agents. Any insurance or self-insurance maintained by the Town, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it; and

(c) Grantee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) Acceptability of Insurers. The insurance obtained by Grantee shall be placed with insurers with a Best's rating of no less than "A VII."

(C) Verification of Coverage. The Grantee shall furnish the Town with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy are to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on standard forms or such forms as are consistent with standard industry practices.

(D) Self-Insurance In the alternative to providing a certificate of insurance to the Town certifying insurance coverage as required above, Grantee may provide self-insurance in the same amount and level of protection for Grantee and Town, its officers, agents and employees as otherwise required under this Section. The adequacy of self-insurance shall be subject to the periodic review and approval of the Town.

5.4 Letter of Credit

(A) If there is a claim by the Town of an uncured breach by Grantee of a material provision of this Franchise or pattern of repeated violations of any provision(s) of this Franchise, then the Town may require and Grantee shall establish and provide within thirty (30) days from receiving notice from the Town, to the Town as security for the faithful performance by Grantee

of all of the provisions of this Franchise, a letter of credit from a financial institution satisfactory to the Town in the amount of ten thousand dollars (\$10,000).

(B) In the event that Grantee establishes a letter of credit pursuant to the procedures of this Section, then the letter of credit shall be maintained ten thousand dollars (\$10,000) until the allegations of the uncured breach have been resolved.

(C) After completion of the procedures set forth in Section 13.1 or other applicable provisions of this Franchise, the letter of credit may be drawn upon by the Town for purposes including, but not limited to, the following:

(1) Failure of Grantee to pay the Town sums due under the terms of this Franchise;

(2) Reimbursement of costs borne by the Town to correct Franchise violations not corrected by Grantee;

(3) Monetary remedies or damages assessed against Grantee due to default or breach of Franchise requirements; and,

(4) Failure to comply with the Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

(E) The Town shall give Grantee written notice of any withdrawal under this subsection upon such withdrawal. Within seven (7) days following receipt of such notice, Grantee shall restore the letter of credit to the amount required under this Franchise.

(F) Grantee shall have the right to appeal to the Town Council for reimbursement in the event Grantee believes that the letter of credit was drawn upon improperly. Grantee shall also have the right of judicial appeal if Grantee believes the letter of credit has not been properly drawn upon in accordance with this Franchise. Any funds the Town erroneously or wrongfully withdraws from the letter of credit shall be returned to Grantee with interest, from the date of withdrawal at a rate equal to the prime rate of interest as quoted in the Wall Street Journal.

SECTION 6. CUSTOMER SERVICE

6.1 Customer Service Standards

Grantee shall comply with Customer Service Standards of the Town, as the same may be amended from time to time by the Town Council in its sole discretion, acting by ordinance. Any requirement in Customer Service Standards for a “local” telephone number may be met by the provision of a toll-free number. The Customer Services Standards in effect as of the Effective Date of this Franchise are attached as Exhibit A. Grantee reserves the right to challenge any customer service ordinance which it believes is inconsistent with its contractual rights under this Franchise.

6.2 Subscriber Privacy

Grantee shall fully comply with any provisions regarding the privacy rights of Subscribers contained in federal, State, or local law.

6.3 Subscriber Contracts

Grantee shall not enter into a contract with any Subscriber which is in any way inconsistent with the terms of this Franchise, or any Exhibit hereto, or the requirements of any applicable Customer Service Standard. Upon request, Grantee will provide to the Town a sample of the Subscriber contract or service agreement then in use.

6.4 Advance Notice to Town

The Grantee shall use reasonable efforts to furnish information provided to Subscribers or the media in the normal course of business to the Town in advance.

6.5 Identification of Local Franchise Authority on Subscriber Bills

Within sixty (60) days after written request from the Town, Grantee shall place the Town's phone number on its Subscriber bills, to identify where a Subscriber may call to address escalated complaints.

SECTION 7. REPORTS AND RECORDS

7.1 Open Records

Grantee shall manage all of its operations in accordance with a policy of keeping its documents and records open and accessible to the Town. The Town, including the Town's Auditor or his/her authorized representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and Affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. Grantee shall not deny the Town access to any of Grantee's records on the basis that Grantee's records are under the control of any parent corporation, Affiliate or a third party. The Town may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the Town, at the sole expense of Grantee. If the requested books and records are too voluminous, or for security reasons cannot be copied or removed, then Grantee may request, in writing within ten (10) days, that the Town inspect them at Grantee's local offices. If any books or records of Grantee are not kept in a local office and not made available in copies to the Town upon written request as set forth above, and if the Town determines that an examination of such records is necessary or appropriate for the performance of any of the Town's duties, administration or enforcement of this Franchise, then all reasonable travel and related expenses incurred in making such examination shall be paid by Grantee.

7.2 Confidentiality

The Town agrees to treat as confidential any books or records that constitute proprietary or confidential information under federal or State law, to the extent Grantee makes the Town aware of such confidentiality. Grantee shall be responsible for clearly and conspicuously stamping the word "Confidential" on each page that contains confidential or proprietary information, and shall provide a brief written explanation as to why such information is confidential under State or federal law. If the Town believes it must release any such confidential books and records in the course of enforcing this Franchise, or for any other reason, it shall advise Grantee in advance so that Grantee may take appropriate steps to protect its interests. If the Town receives a demand from any Person for disclosure of any information designated by Grantee as confidential, the Town shall, so far as consistent with Applicable Law, advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such information within a reasonable time. Until otherwise ordered by a court or agency of competent jurisdiction, the Town agrees that, to the extent permitted by State and federal law, it shall deny access to any of Grantee's books and records marked confidential as set forth above to any Person. Grantee shall reimburse the Town for all reasonable costs and attorneys fees incurred in any legal proceedings pursued under this Section.

7.3 Records Required

(A) Grantee shall at all times maintain, and shall furnish to the Town upon 30 days written request and subject to Applicable Law:

(1) A complete set of maps showing the exact location of all Cable System equipment and facilities in the Right-of-Way owned or used by the Grantee, but excluding detail on proprietary electronics contained therein and Subscriber drops. As-built maps including proprietary electronics shall be available at Grantee's offices for inspection by the Town's authorized representative(s) or agent(s) and made available to such during the course of technical inspections as reasonably conducted by the Town. These maps shall be certified as accurate by an appropriate representative of the Grantee;

(2) A copy of all FCC filings on behalf of Grantee, its parent corporations or Affiliates which relate to the operation of the Cable System in the Town;

(3) Current Subscriber Records and information;

(4) A log of Cable Services added or dropped, Channel changes, number of Subscribers added or terminated, all construction activity, and total homes passed for the previous twelve (12) months; and

(5) A list of Cable Services, rates and Channel line-ups.

(B) Subject to subsection 7.2, all information furnished to the Town is public information, and shall be treated as such, except for information involving the privacy rights of individual Subscribers.

7.4 Annual Reports

Within sixty (60) days of the Town's written request, Grantee shall submit to the Town a written report, in a form acceptable to the Town, which shall include, but not necessarily be limited to, the following information for the Town:

- (A) A Gross Revenue statement, as required by subsection 3.5 of this Franchise;
- (B) A summary of the previous year's activities in the development of the Cable System, including, but not limited to, Cable Services begun or discontinued during the reporting year, and the number of Subscribers for each class of Cable Service (*i.e.*, Basic, Digital Starter, and Premium);
- (C) The number of homes passed, beginning and ending plant miles, any services added or dropped, and any technological changes occurring in the Cable System;
- (D) A statement of planned construction by Grantee, if any, for the next year; and,
- (E) A copy of the most recent annual report Grantee filed with the SEC or other governing body.

The parties agree that the Town's request for these annual reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports annually, until further written notice from the Town to the contrary.

7.5 Copies of Federal and State Reports

Within thirty (30) days of a written request, Grantee shall submit to the Town copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Grantee or its parent corporation(s), to any federal, State or local courts, regulatory agencies and other government bodies if such documents directly relate to the operations of Grantee's Cable System within the Town. Grantee shall not claim confidential, privileged or proprietary rights to such documents unless under federal, State, or local law such documents have been determined to be confidential by a court of competent jurisdiction, or a federal or State agency.

7.6 Complaint File and Reports

(A) Grantee shall keep an accurate and comprehensive file of any complaints regarding the Cable System, in a manner consistent with the privacy rights of Subscribers, and Grantee's actions in response to those complaints. These files shall remain available for viewing to the Town during normal business hours at Grantee's local business office.

(B) Within thirty (30) days of a written request, Grantee shall provide the Town a quarterly executive summary in the form attached hereto as Exhibit B, which shall include the following information from the preceding quarter:

- (1) A summary of service calls, identifying the number and nature of the requests and their disposition;
- (2) A log of all service interruptions;
- (3) A summary of customer complaints referred by the Town to Grantee; and,
- (4) Such other information as reasonably requested by the Town.

The parties agree that the Town's request for these summary reports shall remain effective, and need only be made once. Such a request shall require the Grantee to continue to provide the reports quarterly, until further written notice from the Town to the contrary.

7.7 Failure to Report

The failure or neglect of Grantee to file any of the reports or filings required under this Franchise or such other reports as the Town may reasonably request (not including clerical errors or errors made in good faith), may, at the Town's option, be deemed a breach of this Franchise.

7.8 False Statements

Any false or misleading statement or representation in any report required by this Franchise (not including clerical errors or errors made in good faith) may be deemed a material breach of this Franchise and may subject Grantee to all remedies, legal or equitable, which are available to the Town under this Franchise or otherwise.

SECTION 8. PROGRAMMING

8.1 Broad Programming Categories

Grantee shall provide or enable the provision of at least the following initial broad categories of programming to the extent such categories are reasonably available:

- (A) Educational programming;
- (B) Colorado news, weather & information;
- (C) Sports;
- (D) General entertainment (including movies);
- (E) Children/family-oriented;
- (F) Arts, culture and performing arts;
- (G) Foreign language;

- (H) Science/documentary;
- (I) National news, weather and information; and,
- (J) Public, Educational and Government Access, to the extent required by this Franchise.

8.2 Deletion or Reduction of Broad Programming Categories

(A) Grantee shall not delete or so limit as to effectively delete any broad category of programming within its control without the prior written consent of the Town.

(B) In the event of a modification proceeding under federal law, the mix and quality of Cable Services provided by Grantee on the Effective Date of this Franchise shall be deemed the mix and quality of Cable Services required under this Franchise throughout its term.

8.3 Obscenity

Grantee shall not transmit, or permit to be transmitted over any Channel subject to its editorial control, any programming which is obscene under, or violates any provision of, Applicable Law relating to obscenity, and is not protected by the Constitution of the United States. Grantee shall be deemed to have transmitted or permitted a transmission of obscene programming only if a court of competent jurisdiction has found that any of Grantee's officers or employees or agents have permitted programming which is obscene under, or violative of, any provision of Applicable Law relating to obscenity, and is otherwise not protected by the Constitution of the United States, to be transmitted over any Channel subject to Grantee's editorial control. Grantee shall comply with all relevant provisions of federal law relating to obscenity.

8.4 Parental Control Device

Upon request by any Subscriber, Grantee shall make available a parental control or lockout device, traps or filters to enable a Subscriber to control access to both the audio and video portions of any or all Channels. Grantee shall inform its Subscribers of the availability of the lockout device at the time of their initial subscription and periodically thereafter. Any device offered shall be at a rate, if any, in compliance with Applicable Law.

8.5 Continuity of Service Mandatory

(A) It shall be the right of all Subscribers to continue to receive Cable Service from Grantee insofar as their financial and other obligations to Grantee are honored. The Grantee shall act so as to ensure that all Subscribers receive continuous, uninterrupted Cable Service regardless of the circumstances. For the purposes of this subsection, "uninterrupted" does not include short-term outages of the Cable System for maintenance or testing.

(B) In the event of a change of grantee, or in the event a new Cable Operator acquires the Cable System in accordance with this Franchise, Grantee shall cooperate with the Town, new franchisee or Cable Operator in maintaining continuity of Cable Service to all Subscribers. During any transition period, Grantee shall be entitled to the revenues for any period during which it operates the Cable System, and shall be entitled to reasonable costs for its services when it no longer operates the Cable System.

(C) In the event Grantee fails to operate the Cable System for four (4) consecutive days without prior approval of the Manager, or without just cause, the Town may, at its option, operate the Cable System itself or designate another Cable Operator until such time as Grantee restores service under conditions acceptable to the Town or a permanent Cable Operator is selected. If the Town is required to fulfill this obligation for Grantee, Grantee shall reimburse the Town for all reasonable costs or damages that are the result of Grantee's failure to perform.

8.6 Services for the Disabled

Grantee shall comply with the Americans with Disabilities Act and any amendments thereto.

8.7 Ascertainment of Programming and Customer Satisfaction

Upon written request of the Town, the Grantee shall provide to the Town written questions that it intends to use in formal upcoming customer ascertainments, if any, to survey community-wide views of cable operations, customer-service issues and programming issues within the Franchise Area. The Town may suggest new or modified questions to such formal community-wide ascertainment, which the Grantee, in the reasonable exercise of its discretion, may add to the next formal community-wide ascertainment it conducts. Upon completion of the next formal community-wide ascertainment of Subscribers in the Town, Grantee shall provide the results from any portion of such survey that addresses customer satisfaction and/or programming issues. Nothing herein shall be construed to limit the right of the Town to conduct its own surveys at its own expense.

SECTION 9. ACCESS

9.1 Designated Access Providers

(A) The Town shall have the sole and exclusive responsibility for identifying the Designated Access Providers, including itself for Access purposes, to control and manage the use of any or all Access Facilities provided by Grantee under this Franchise. As used in this Section, such "Access Facilities" includes the Channels, services, facilities, equipment, technical components and/or financial support provided under this Franchise, which is used or useable by and for Public Access, Educational Access, and Government Access ("PEG" or "PEG Access"). At the commencement of the Term of this Franchise, the Town is authorizing the SCTC as its Designated Access Provider for all Access purposes as permitted in this Franchise and Applicable Law.

(B) Grantee shall cooperate with Town in Town's efforts to provide Access programming, but will not be responsible or liable for any damages resulting from a claim in connection with the programming placed on the Access Channels by the Designated Access Provider.

9.2 Channel Capacity and Use

(A) Grantee shall make available to the SCTC four (4) Downstream Channels for PEG use as provided for in this Section. It is intended that these four (4) Downstream Channels will be used for the provision of programming to subscribers of PEG programming by the Town, which programming may be developed in conjunction with and/or shared with the individual jurisdictions and educational institutions within the SCTC, at the sole discretion of the Town.

(B) Grantee shall have the right to temporarily use any Channel, or portion thereof, which is allocated under this Section for Public, Educational, or Governmental Access use, within sixty (60) days after a written request for such use is submitted to Town, if such Channel is not "fully utilized" as defined herein. A Channel shall be considered fully utilized if substantially unduplicated programming is delivered over it more than an average of 38 hours per week over a six (6) month period. Programming that is repeated on an Access Channel up to two times per day shall be considered "unduplicated programming." Character-generated programming shall be included for purposes of this subsection, but may be counted towards the total average hours only with respect to two (2) Channels provided to Town. If a Channel allocated for Public, Educational, or Governmental Access use will be used by Grantee in accordance with the terms of this subsection, the institution to which the Channel has been allocated shall have the right to require the return of the Channel or portion thereof. Town shall request return of such Channel space by delivering written notice to Grantee stating that the institution is prepared to fully utilize the Channel, or portion thereof, in accordance with this subsection. In such event, the Channel or portion thereof shall be returned to such institution within sixty (60) days after receipt by Grantee of such written notice.

(C) High Definition ("HD") Digital Access Channels.

(1) Each of the four (4) Downstream Channels for PEG Access use shall be in a High Definition ("HD") digital format ("HD Access Channel or Channels"), and provided as part of Grantee's Basic tier of service.

(2) The Town shall be responsible for providing the HD Access Channel signal in an HD digital format to the demarcation point at the designated point of origination for the HD Access Channel. For purposes of this Franchise, an HD signal refers to a television signal delivering picture resolution of at least 1080p, or such other resolution in this same range that Grantee utilizes for commercial programming channels on the Cable System, whichever is greater.

(3) Grantee shall transport and distribute the HD Access Channel signal on its Cable System and shall not unreasonably discriminate against HD Access Channels with respect to accessibility, functionality and to the application of any applicable Federal Communications

Commission Rules & Regulations, including without limitation Subpart K Channel signal standards. With respect to signal quality, Grantee shall not be required to carry a HD Access Channel in a higher quality format than that of the HD Access Channel signal delivered to Grantee, but Grantee shall distribute the HD Access Channel signal without degradation. Grantee shall carry all components of the HD Access Channel signals provided by the Designated Access Provider including, but not limited to, closed captioning, stereo audio and other elements associated with the Programming. Upon reasonable written request by the Town, Grantee shall verify signal delivery to Subscribers with the Town, consistent with the requirements of this Section 9.2(C).

(4) HD Access Channels may require Subscribers to buy or lease special equipment, available to all Subscribers. Grantee is not required to provide free HD equipment to Subscribers, nor modify its equipment or pricing policies in any manner.

(5) The Town or any Designated Access Provider is responsible for acquiring all equipment necessary to produce programming in HD.

(6) Grantee shall cooperate with the Town to procure and provide, at Town's cost, all necessary transmission equipment from the Designated Access Provider channel origination point, at Grantee's headend and through Grantee's distribution system, in order to deliver the HD Access Channels. The Town shall be responsible for the costs of all transmission equipment, including HD modulator and demodulator, and encoder or decoder equipment, and multiplex equipment, required in order for Grantee to receive and distribute the HD Access Channel signal, or for the cost of any resulting upgrades to the video return line. The Town and Grantee agree that such expense of acquiring and installing the transmission equipment or upgrades to the video return line qualifies as a capital cost for PEG Facilities within the meaning of the Cable Act 47 U.S.C.A. Section 542(g)(20)(C), and therefore is an appropriate use of revenues derived from those PEG Capital fees provided for in this Franchise.

(D) There shall be no restriction on Grantee's technology used to deploy and deliver HD signals so long as the requirements of the Franchise are otherwise met. Grantee may implement HD carriage of the PEG channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal quality for the consumer that is reasonably comparable and functionally equivalent to similar commercial HD channels carried on the Cable System. In the event the Town believes that Grantee fails to meet this standard, Town will notify Grantee of such concern, and Grantee will respond to any complaints in a timely manner.

9.3 Access Channel Assignments

Grantee will use reasonable efforts to minimize the movement of Access Channel assignments. If Grantee expands its Cable System to serve other SCTC communities, Grantee shall also use reasonable efforts to institute common Access Channel assignments among the SCTC members served by the same Headend as Town for compatible Access programming, for example, assigning all Educational Access Channels programmed by higher education organizations to the same Channel number. In addition, Grantee will make reasonable efforts to

locate Access Channels provided pursuant to Subsection 9.2(C) in a location on its Channel lineup that is easily accessible to Subscribers.

9.4 Relocation of Access Channels

Grantee shall provide Town a minimum of sixty (60) days' notice, and use its best efforts to provide one hundred and twenty (120) days notice, prior to the time Public, Educational, and Governmental Access Channel designations are changed.

9.5 Web-Based Video on Demand and Streaming

(A) Within one hundred and twenty (120) days of written request, Grantee shall provide at no cost to the Town, at 110 Ski Hill Road, Breckenridge, Colorado, a business class broadband connection, broadband service and all necessary hardware, to enable the Town's delivery of web-based PEG content. If, during the term of this Franchise, the Town desires an upgrade to the business class broadband connection provided into 110 Ski Hill Road and such upgrade results in any construction costs, or if the Town moves its location and such new location does not have the capacity to connect and receive the broadband service described in this Section 9.5(A), the cost of upgrading the network to enable such service and/or the cost for any increased level of service shall be incurred by the Town. The broadband connection provided herein shall be used exclusively for web-based on demand Access programming and/or web-based video streaming of Access content.

(B) For all of the Town's and its Designated Access Provider's web-based on demand Access programming facilitated through the broadband connection and service described in this Section 9.5, Grantee shall be permitted to provide its logo which shall be displayed on the main web page for the web-based Access programming. Notwithstanding the foregoing, the size of the Town's or Designated Access Provider's logos may be as large as or larger than Grantee's logo, in the Town's or Designated Access Provider's sole reasonable discretion.

(C) Any costs incurred by Grantee in facilitating the web-based on demand Access programming described in this Section 9.5 may be recovered from Subscribers by Grantee in accordance with Applicable Law.

9.6 Video on Demand

(A) Grantee shall provide the Town (or its Designated Access Provider) fifty (50) hours of Video On Demand ("VOD") capacity on Grantee's Cable System VOD platform for PEG Access programming, in accordance with the provisions of this Section 9.5. For purposes of this Franchise, the PEG Access programming that Town or its Designated Access Provider submits to Grantee's VOD platform shall be referred to as "PEG VOD Programming."

(B) The Town shall be responsible for acquiring, at its cost, all equipment necessary to produce and deliver the PEG VOD Programming in the format required for Grantee's VOD servers, including the cost of any necessary return line upgrades, and the transmission equipment needed to transmit it to Grantee in the format required; provided however that such requirements

shall be no different that imposed upon other providers of video on demand programming content available on Grantee's Cable System.

(C) The Town and/or a Designated Access Provider shall be responsible for uploading PEG VOD Programming to the VOD server pursuant to the procedures required by Grantee's VOD system, this Section 9.5, and any the terms imposed upon all other video on demand content providers on the Cable System. Upon request, Grantee shall provide monthly reports to the Town showing the number of views of VOD programming provided by the Town.

(D) The Town and/or a Designated Access Provider shall be additionally responsible for entering all necessary information for populating the VOD menu system. While Grantee shall determine, in its sole discretion, the specific placement of PEG VOD Programming within the VOD menu system, Grantee will use reasonable efforts to locate such programming near similar government or educational programming, or Colorado based programming in the VOD menu listings, so that such PEG VOD Programming is as comparably accessible as other similar government or education or Colorado based programming offered through the Cable System's VOD menu.

(E) The Town acknowledges that VOD programming may require special viewer equipment and subscription to advanced service tiers and that, by agreeing to make PEG VOD Programming available on VOD, Grantee shall not be required to provide free VOD-capable equipment to Subscribers, nor to modify its equipment or pricing policies in any manner. Not all television equipment may be able to access VOD programming, and additional Subscribers costs may be incurred in the reception of VOD programming.

9.7 Support for Access Costs

During the term of this Franchise Agreement, Grantee shall provide fifty cents (\$.50) per month per Residential Subscriber (the "PEG Contribution") to be used solely for capital costs related to Public, Educational and Governmental Access and the web based on demand Access programming described in Section 9.5, or as may be permitted by Applicable Law. To address inflationary impacts on capital equipment or to evaluate whether the Town's PEG Access capital costs have reduced with time, the Town and Grantee may meet no more than three times after the Effective Date to discuss whether to increase or to decrease the PEG Contribution. The primary purpose of such meetings will be for the parties to review prior expenditures and future capital plans to determine if the current PEG Contribution is reasonably appropriate to meet future needs. The Town and Grantee may suggest to each other, based upon their own assessments of reasonable past practices and future anticipated needs, whether the current level of PEG Contribution is appropriate. If either party believes that the PEG Contribution should be modified in a reasonable amount to address such future needs the parties shall share all relevant information supporting their positions and negotiate in good faith to determine if the PEG Contribution should be increased or decreased, and if so, in what amount. Such discussions regarding potential adjustment to the PEG Contribution will be conducted pursuant to the Franchise amendment procedures in Section 4.8 of this Franchise. Grantee shall make PEG Contribution payments quarterly, following the effective date of this Franchise Agreement for the preceding quarter ending March 31, June 30, September 30, and December 31. Each payment

shall be due and payable no later than thirty (30) days following the end of the quarter. Town shall have sole discretion to allocate the expenditure of such payments for any capital costs related to PEG Access. The parties agree that this Franchise shall provide Town discretion to utilize Access payments for new internal network connections and enhancements to the Town's existing network.

9.8 Access Channels and Support Not Franchise Fees

Grantee agrees that provision of Access Channels, capital support for Access Costs arising from or relating to the obligations set forth in this Section and other requirements of this Section 9 shall in no way modify or otherwise affect Grantee's obligations to pay Franchise Fees to Town. Grantee agrees that although the sum of Franchise Fees plus the payments set forth in this Section may total more than five percent (5%) of Grantee's Gross Revenues in any 12-month period, the additional commitments shall not be offset or otherwise credited in any way against any Franchise Fee payments under this Franchise Agreement so long as such support is used for capital Access purposes consistent with this Franchise and federal law.

9.9 Access Channels on Basic Service or Lowest Priced HD Service Tier

All Access Channels under this Franchise Agreement shall be included by Grantee, without limitation, as part of Basic Service.

9.10 Change in Technology

In the event Grantee makes any change in the Cable System and related equipment and Facilities or in Grantee's signal delivery technology, which directly or indirectly affects the signal quality or transmission of Access services or programming, Grantee shall at its own expense take necessary technical steps or provide necessary technical assistance, including the acquisition of all necessary equipment, and full training of Town's Access personnel to ensure that the capabilities of Access services are not diminished or adversely affected by such change. If the Town implements a new video delivery technology that is currently offered and can be accommodated on the Grantee's local Cable System then the same provisions above shall apply. If the Town implements a new video delivery technology that is not currently offered on and/or that cannot be accommodated by the Grantee's local Cable System, then the Town shall be responsible for acquiring all necessary equipment, facilities, technical assistance, and training to deliver the signal to the Grantee's headend for distribution to subscribers.

9.11 Technical Quality

Grantee shall maintain all upstream and downstream Access services and Channels on its side of the demarcation point at the same level of technical quality and reliability required by this Franchise Agreement and all other applicable laws, rules and regulations for Residential Subscriber Channels. Grantee shall provide routine maintenance for all transmission equipment on its side of the demarcation point, including modulators, decoders, multiplex equipment, and associated cable and equipment necessary to carry a quality signal to and from Town's facilities for the Access Channels provided under this Franchise Agreement, including the business class

broadband equipment and services necessary for the video on demand and streaming service described in Sections 9.5 and 9.6. Grantee shall also provide, if requested in advance by the Town, advice and technical expertise regarding the proper operation and maintenance of transmission equipment on the Town's side of the demarcation point. The Town shall be responsible for all initial and replacement costs of all HD modulator and demodulator equipment, web-based video on demand servers and web-based video streaming servers. The Town shall also be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Town staff. The Grantee shall be responsible, at its own expense, to replace any of the Grantee's equipment that is damaged by the gross negligence or intentional acts of Grantee's staff. The Town will be responsible for the cost of repairing and/or replacing any PEG Access transmission equipment that Grantee maintains that is used exclusively for transmission of the Town's and/or its Designated Access Providers' Access programming.

9.12 Access Cooperation

Town may designate any other jurisdiction which has entered into an agreement with Grantee or an Affiliate of Grantee based upon this Franchise Agreement, any SCTC member, the SCTC, or any combination thereof to receive any Access benefit due Town hereunder, or to share in the use of Access Facilities hereunder. The purpose of this subsection shall be to allow cooperation in the use of Access and the application of any provision under this Section as Town in its sole discretion deems appropriate, and Grantee shall cooperate fully with, and in, any such arrangements by Town.

9.13 Return Lines/Access Origination

(A) Grantee shall continuously maintain the return lines owned by Grantee to the SCTC's facility at 110 Ski Hill Road, Breckenridge, Colorado, throughout the Term of the Franchise, in order to enable the distribution of Access programming to Residential Subscribers on the Access Channels; provided however that Grantee's maintenance obligations with respect to this location shall cease if a location is no longer used in the future by the Town to originate Access programming.

(B) Grantee shall construct and maintain new Fiber Optic return lines to the Headend from production facilities of new or relocated Designated Access Providers delivering Access programming to Residential Subscribers as requested in writing by the Town. All actual construction costs incurred by Grantee from the nearest interconnection point to the Designated Access Provider shall be paid by the Town or the Designated Access Provider. New return lines shall be completed within one (1) year from the request of the Town or its Designated Access Provider, or as otherwise agreed to by the parties. If an emergency situation necessitates movement of production facilities to a new location, the parties shall work together to complete the new return line as soon as reasonably possible.

SECTION 10. GENERAL RIGHT-OF-WAY USE AND CONSTRUCTION

10.1 Right to Construct

Subject to Applicable Law, regulations, rules, resolutions and ordinances of the Town and the provisions of this Franchise, Grantee may perform all construction in the Rights-of-Way for any facility needed for the maintenance or extension of Grantee's Cable System.

10.2 Right-of-Way Meetings

Grantee will regularly attend and participate in meetings of the Town, of which the Grantee is made aware, regarding Right-of-Way issues that may impact the Cable System.

10.3 Joint Trenching/Boring Meetings

Grantee will regularly attend and participate in planning meetings of the Town, of which the Grantee is made aware, to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Grantee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of Right-of-Way cuts within the Town.

10.4 General Standard

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

10.5 Permits Required for Construction

Prior to doing any work in the Right-of Way or other public property, Grantee shall apply for, and obtain, appropriate permits from the Town. As part of the permitting process, the Town may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such Rights-of-Way, proper restoration of such Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Grantee shall pay all applicable fees for the requisite Town permits received by Grantee.

10.6 Emergency Permits

In the event that emergency repairs are necessary, Grantee shall immediately notify the Town of the need for such repairs. Grantee may initiate such emergency repairs, and shall apply for appropriate permits within forty-eight (48) hours after discovery of the emergency.

10.7 Compliance with Applicable Codes

(A) Town Construction Codes. Grantee shall comply with all applicable Town construction codes, including, without limitation, the Uniform Building Code and other building codes, the Uniform Fire Code, the Uniform Mechanical Code, the Electronic Industries Association Standard for Physical Location and Protection of Below-Ground Fiber Optic Cable Plant, and zoning codes and regulations.

(B) Tower Specifications. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations.

(C) Safety Codes. Grantee shall comply with all federal, State and Town safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by Applicable Law during construction, operation and repair of its Cable System. By way of illustration and not limitation, Grantee shall comply with the National Electric Code, National Electrical Safety Code and Occupational Safety and Health Administration (OSHA) Standards.

10.8 GIS Mapping

Grantee shall comply with any generally applicable ordinances, rules and regulations of the Town regarding geographic information mapping systems for users of the Rights-of-Way.

10.9 Minimal Interference

Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Cable System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the Town, or with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the Town's authority. The Grantee's Cable System shall be located, erected and maintained so as not to endanger or interfere with the lives of Persons, or to interfere with new improvements the Town may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not interfere with the travel and use of public places by the public during the construction, repair, operation or removal thereof, and shall not obstruct or impede traffic. In the event of such interference, the Town may require the removal or relocation of Grantee's lines, cables, equipment and other appurtenances from the property in question at Grantee's expense.

10.10 Prevent Injury/Safety

Grantee shall provide and use any equipment and facilities necessary to control and carry Grantee's signals so as to prevent injury to the Town's property or property belonging to any Person. Grantee, at its own expense, shall repair, renew, change and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by Grantee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents by the placement of adequate barriers, fences or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly designated by warning lights.

10.11 Hazardous Substances

(A) Grantee shall comply with any and all Applicable Laws, statutes, regulations and orders concerning hazardous substances relating to Grantee's Cable System in the Rights-of-Way.

(B) Upon reasonable notice to Grantee, the Town may inspect Grantee's facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to Grantee's Cable System. In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of hazardous substances related thereto.

(C) Grantee agrees to indemnify the Town against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the Town arising out of a release of hazardous substances caused by Grantee.

10.12 Locates

Prior to doing any work in the Right-of-Way, Grantee shall give appropriate notices to the Town and to the notification association established in C.R.S. Section 9-1.5-105, as such may be amended from time to time.

Within forty-eight (48) hours after any Town representative or franchisee, licensee or permittee notifies Grantee of a proposed Right-of-Way excavation, Grantee shall, at Grantee's expense:

(A) Mark on the surface all located underground facilities within the area of the proposed excavation owned by Grantee;

(B) Notify the excavator of any unlocated underground facilities in the area of the proposed excavation owned by Grantee; or

(C) Notify the excavator that Grantee does not have any underground facilities in the vicinity of the proposed excavation.

10.13 Notice to Private Property Owners

Grantee shall give notice to private property owners of work on or adjacent to private property in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by Ordinance or resolution.

10.14 Underground Construction

(A) When required by general ordinances, resolutions, regulations or rules of the Town or applicable State or federal law, Grantee's Cable System shall be placed underground at Grantee's expense unless funding is generally available for such relocation to all users of the Rights-of-Way. Placing facilities underground does not preclude the use of ground-mounted appurtenances.

(B) Where electric, telephone, and other above-ground utilities are installed underground at the time of Cable System construction, or when all such wiring is subsequently placed underground, all Cable System lines shall also be placed underground with other wireline service at no expense to the Town or Subscribers unless funding is generally available for such relocation to all users of the Rights-of-Way. Related Cable System equipment, such as pedestals, must be placed in accordance with the Town's applicable code requirements and rules.

(E) This Franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on equipment of the Town or any other Person. Copies of agreements for the use utility facilities must be provided upon request by the Town.

(F) The Grantee and the Town recognize that situations may occur in the future where the Town may desire to place its own cable or conduit for Fiber Optic cable in trenches or bores opened by the Grantee. The Grantee agrees to cooperate with the Town in any construction by the Grantee that involves trenching or boring, provided that the Town has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the Town to lay its cable, conduit and Fiber Optic cable in the Grantee's trenches and bores, provided the Town shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The Town shall be responsible for maintaining its respective cable, conduit and Fiber Optic cable buried in the Grantee's trenches and bores under this paragraph.

10.15 Undergrounding of Multiple Dwelling Unit Drops

In cases of single site Multiple Dwelling Units, Grantee shall minimize the number of individual aerial drop cables by installing multiple drop cables underground between the pole and Multiple Dwelling Unit where determined to be technologically feasible in agreement with the owners and/or owner's association of the Multiple Dwelling Units.

10.16 Burial Standards

(A) Depths. Unless otherwise required by law or the written instructions of the Town, Grantee, and its contractors, shall comply with the following burial depth standards. In no event shall Grantee be required to bury its cable deeper than electric or gas facilities, or existing telephone facilities in the same portion of the Right-of-Way, so long as those facilities have been buried in accordance with Applicable Law:

Underground cable drops from the curb shall be buried at a minimum depth of eight (8) inches, unless a sprinkler system or other construction concerns preclude it, in which case, underground cable drops shall be buried at a depth of at least six (6) inches.

Feeder lines shall be buried at a minimum depth of twenty-four inches.

Trunk lines shall be buried at a minimum depth of twenty-four (24) inches.

Fiber Optic cable shall be buried at a minimum depth of thirty-six (36) inches.

In the event of a conflict between this subsection and the provisions of any customer service standard, this subsection shall control.

(B) Timeliness. Cable drops installed by Grantee to residences shall be buried according to these standards within one calendar week of initial installation, or at a time mutually-agreed upon between the Grantee and the Subscriber. When freezing surface conditions prevent Grantee from achieving such timetable, Grantee shall apprise the Subscriber of the circumstances and the revised schedule for burial, and shall provide the Subscriber with Grantee's telephone number and instructions as to how and when to call Grantee to request burial of the line if the revised schedule is not met.

10.17 Cable Drop Bonding

Grantee shall ensure that all cable drops are properly bonded at the home, consistent with applicable code requirements.

10.18 Prewiring

Any ordinance or resolution of the Town which requires prewiring of subdivisions or other developments for electrical and telephone service shall be construed to include wiring for Cable Systems. The Town shall give the same notification to Grantee that is gives to any electrical or telephone service companies as set forth in its ordinance.

10.19 Repair and Restoration of Property

(A) The Grantee shall protect public and private property from damage. If damage occurs, the Grantee shall promptly notify the property owner within twenty-four (24) hours in writing.

(B) Whenever Grantee disturbs or damages any Right-of-Way, other public property or any private property, Grantee shall promptly restore the Right-of-Way or property to at least its prior condition, normal wear and tear excepted, at its own expense.

(C) Rights-of-Way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the Right-of-Way or on other public property in accordance with Applicable Law. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the Town may, after prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the Town.

(D) Private Property. Upon completion of the work which caused any disturbance or damage, Grantee shall promptly commence restoration of private property, and will use best efforts to complete the restoration within seventy-two (72) hours, considering the nature of the work that must be performed. Grantee shall also perform such restoration in accordance with the Town's Customer Service Standards, as the same may be amended from time to time by the Town Council acting by ordinance or resolution.

10.20 Use of Conduits by the Town

The Town may install or affix and maintain wires and equipment owned by the Town for Town purposes in or upon any and all of Grantee's ducts, conduits or equipment in the Rights-of-Way and other public places if such placement does not interfere with Grantee's use of its facilities, without charge to the Town, to the extent space therein or thereon is reasonably available, and pursuant to all applicable ordinances and codes. For the purposes of this subsection, "Town purposes" includes, but is not limited to, the use of the structures and installations for Town fire, police, traffic, water, telephone, and/or signal systems, and for use by the Town's broadband network, but not for Cable Service or transmission to third parties of telecommunications or information services in competition with Grantee. Grantee shall not deduct the value of such use of its facilities from its Franchise Fee payments or from other fees payable to the Town.

10.21 Common Users

(A) For the purposes of this subsection:

(1) "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video or data

transmission.

(2) "Conduit" or "Conduit Facility" means any structure, or section thereof, containing one or more Ducts, conduits, manholes, handhole or other such facilities in Grantee's Cable System.

(3) "Duct" means a single enclosed raceway for cables, Fiber Optics or other wires.

(4) "Licensee" means any Person licensed or otherwise permitted by the Town to use the Rights-of-Way.

(5) "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by Grantee or any prior Licensee, or unoccupied Ducts held by Grantee as emergency use spares, or other unoccupied Ducts that Grantee reasonably expects to use within two (2) years from the date of a request for use.

(B) Grantee acknowledges that the Rights-of-Way have a finite capacity for containing Conduits. Therefore, Grantee agrees that whenever the Town determines it is impracticable to permit construction of an underground Conduit system by any other Person which may at the time have authority to construct or maintain Conduits or Ducts in the Rights-of-Way, but excluding Persons providing Cable Services in competition with Grantee, the Town may require Grantee to afford to such Person the right to use Grantee's Surplus Ducts or Conduits in common with Grantee, pursuant to the terms and conditions of an agreement for use of Surplus Ducts or Conduits entered into by Grantee and the Licensee. Nothing herein shall require Grantee to enter into an agreement with such Person if, in Grantee's reasonable determination, such an agreement could compromise the integrity of the Cable System.

(C) A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

(D) Grantee shall give a Licensee a minimum of one hundred twenty (120) days notice of its need to occupy a licensed Conduit and shall propose that the Licensee take the first feasible action as follows:

(1) Pay revised Conduit rent designed to recover the cost of retrofitting the Conduit with multiplexing, Fiber Optics or other space-saving technology sufficient to meet Grantee's space needs;

(2) Pay revised Conduit rent based on the cost of new Conduit constructed to meet Grantee's space needs;

(3) Vacate the needed Ducts or Conduit; or

(4) Construct and maintain sufficient new Conduit to meet Grantee's space needs.

(E) When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new Conduit. When Conduit rent is revised because of retrofitting, space-saving technology or construction of new Conduit, all Licensees shall bear the increased cost.

(F) All Attachments shall meet local, State, and federal clearance and other safety requirements, be adequately grounded and anchored, and meet the provisions of contracts executed between Grantee and the Licensee. Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Grantee for any fines, fees, damages or other costs the Licensee's attachments cause Grantee to incur.

(G) In order to enforce the provisions of this subsection with respect to Grantee, the Town must demonstrate that it has required that all similarly situated users of the Rights-of-Way to comply with the provisions of this subsection.

10.22 Acquisition of Facilities

Upon Grantee's acquisition of Cable System-related facilities in any Town Right-of-Way, or upon the addition to the Town of any area in which Grantee owns or operates any such facility, Grantee shall, at the Town's request, submit to the Town a statement describing all such facilities involved, whether authorized by franchise, permit, license or other prior right, and specifying the location of all such facilities to the extent Grantee has possession of such information. Such Cable System-related facilities shall immediately be subject to the terms of this Franchise.

10.23 Discontinuing Use/Abandonment of Cable System Facilities

Whenever Grantee intends to discontinue using any facility it owns within the Rights-of-Way, Grantee shall submit for the Town's approval a complete description of the facility and the date on which Grantee intends to discontinue using the facility. Grantee may remove the facility or request that the Town permit it to remain in place. Notwithstanding Grantee's request that any such facility remain in place, the Town may require Grantee to remove the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety, and convenience, or otherwise serve the public interest. The Town may require Grantee to perform a combination of modification and removal of the facility. Grantee shall complete such removal or modification in accordance with a schedule set by the Town. Until such time as Grantee removes or modifies the facility as directed by the Town, or until the rights to and responsibility for the facility are accepted by another Person having authority to construct and maintain such facility, Grantee shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and Grantee shall retain all liability for such facility. If Grantee abandons its facilities, the Town may choose to use such facilities for any purpose whatsoever including, but not limited to, Access purposes.

10.24 Movement of Cable System Facilities for Town Purposes

The Town shall have the right to require Grantee to relocate, remove, replace, modify or disconnect Grantee's facilities and equipment located in the Rights-of-Way or on any other property of the Town for public purposes, in the event of an emergency, or when the public health, safety or welfare requires such change (for example, without limitation, by reason of traffic conditions, public safety, Right-of-Way vacation, Right-of-Way construction, change or establishment of Right-of-Way grade, installation of sewers, drains, gas or water pipes, or any other types of structures or improvements by the Town for public purposes). Such work shall be performed at the Grantee's expense. Except during an emergency, the Town shall provide reasonable notice to Grantee, not to be less than five (5) business days, and allow Grantee with the opportunity to perform such action. In the event of any capital improvement project exceeding \$500,000 in expenditures by the Town which requires the removal, replacement, modification or disconnection of Grantee's facilities or equipment, the Town shall provide at least sixty (60) days' written notice to Grantee. Following notice by the Town, Grantee shall relocate, remove, replace, modify or disconnect any of its facilities or equipment within any Right-of-Way, or on any other property of the Town. If the Town requires Grantee to relocate its facilities located within the Rights-of-Way, the Town shall make a reasonable effort to provide Grantee with an alternate location within the Rights-of-Way. If funds are generally made available to users of the Rights-of-Way for such relocation, Grantee shall be entitled to its pro rata share of such funds.

If the Grantee fails to complete this work within the time prescribed and to the Town's satisfaction, the Town may cause such work to be done and bill the cost of the work to the Grantee, including all costs and expenses incurred by the Town due to Grantee's delay. In such event, the Town shall not be liable for any damage to any portion of Grantee's Cable System. Within thirty (30) days of receipt of an itemized list of those costs, the Grantee shall pay the Town.

10.25 Movement of Cable System Facilities for Other Franchise Holders

If any removal, replacement, modification or disconnection of the Cable System is required to accommodate the construction, operation or repair of the facilities or equipment of another Town franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

10.26 Temporary Changes for Other Permittees

At the request of any Person holding a valid permit and upon reasonable advance notice, Grantee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder, and Grantee may require a reasonable deposit of the estimated payment in advance.

10.27 Reservation of Town Use of Right-of-Way

Nothing in this Franchise shall prevent the Town or public utilities owned, maintained or operated by public entities other than the Town from constructing sewers; grading, paving, repairing or altering any Right-of-Way; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of Grantee's Cable System.

10.28 Tree Trimming

Grantee may prune or cause to be pruned, using proper pruning practices, any tree in the Town's Rights-of-Way which interferes with Grantee's Cable System. Grantee shall comply with any general ordinance or regulations of the Town regarding tree trimming. Except in emergencies, Grantee may not prune trees at a point below thirty (30) feet above sidewalk grade until one (1) week written notice has been given to the owner or occupant of the premises abutting the Right-of-Way in or over which the tree is growing. The owner or occupant of the abutting premises may prune such tree at his or her own expense during this one (1) week period. If the owner or occupant fails to do so, Grantee may prune such tree at its own expense. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or Grantee's facilities from imminent danger only.

10.29 Inspection of Construction and Facilities

The Town may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The Town shall have the right to charge generally applicable inspection fees therefore. If an unsafe condition is found to exist, the Town, in addition to taking any other action permitted under Applicable Law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the Town establishes. The Town has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefore.

10.30 Stop Work

(A) On notice from the Town that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town.

(B) The stop work order shall:

- (1) Be in writing;
- (2) Be given to the Person doing the work, or posted on the work site;

- (3) Be sent to Grantee by overnight delivery at the address given herein;
- (4) Indicate the nature of the alleged violation or unsafe condition; and
- (5) Establish conditions under which work may be resumed.

10.31 Work of Contractors and Subcontractors

Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the Town's ordinances, regulations and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other Applicable Law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other Applicable Law governing the work performed by them.

SECTION 11. CABLE SYSTEM, TECHNICAL STANDARDS AND TESTING

11.1 Subscriber Network

(A) Grantee's Cable System shall be equivalent to or exceed technical characteristics of a traditional HFC 860 MHz Cable System and provide Activated Two-Way capability. The Cable System shall be capable of supporting video and audio. The Cable System shall deliver no less than two hundred (200) Channels of digital video programming services to Subscribers, provided that the Grantee reserves the right to use the bandwidth in the future for other uses based on market factors.

(B) Equipment must be installed so that all closed captioning programming received by the Cable System shall include the closed caption signal so long as the closed caption signal is provided consistent with FCC standards. Equipment must be installed so that all local signals received in stereo or with secondary audio tracks (broadcast and Access) are retransmitted in those same formats.

(C) All construction shall be subject to the Town's permitting process.

(D) Grantee and Town shall meet, at the Town's request, to discuss the progress of the design plan and construction.

(E) Grantee will take prompt corrective action if it finds that any facilities or equipment on the Cable System are not operating as expected, or if it finds that facilities and equipment do not comply with the requirements of this Franchise or Applicable Law.

(F) Grantee's construction decisions shall be based solely upon legitimate engineering decisions and shall not take into consideration the income level of any particular community within the Franchise Area.

11.2 Technology Assessment

(A) The Town may notify Grantee on or after five (5) years after the Effective Date, that the Town will conduct a technology assessment of Grantee's Cable System. The technology assessment may include, but is not be limited to, determining whether Grantee's Cable System technology and performance are consistent with current technical practices and range and level of services existing in the fifteen (15) largest U.S. cable systems owned and operated by Grantee's Parent Corporation and/or Affiliates pursuant to franchises that have been renewed or extended since the Effective Date.

(B) Grantee shall cooperate with the Town to provide necessary non-confidential and proprietary information upon the Town's reasonable request as part of the technology assessment.

(C) At the discretion of the Town, findings from the technology assessment may be included in any proceeding commenced for the purpose of identifying future cable-related community needs and interests undertaken by the Town pursuant to 47 U.S.C. §546.

11.3 Standby Power

Grantee's Cable System Headend shall be capable of providing at least twenty-four (24) hours of emergency operation. In addition, throughout the term of this Franchise, Grantee shall have a plan in place, along with all resources necessary for implementing such plan, for dealing with outages of more than four (4) hours. This outage plan and evidence of requisite implementation resources shall be presented to the Town no later than thirty (30) days following receipt of a request.

11.4 Emergency Alert Capability

(A) Grantee shall provide an operating Emergency Alert System ("EAS") throughout the term of this Franchise in compliance with FCC standards. Grantee shall test the EAS as required by the FCC. Upon request, the Town shall be permitted to participate in and/or witness the EAS testing up to twice a year on a schedule formed in consultation with Grantee. If the test indicates that the EAS is not performing properly, Grantee shall make any necessary adjustment to the EAS, and the EAS shall be retested.

11.5 Technical Performance

The technical performance of the Cable System shall meet or exceed all applicable federal (including, but not limited to, the FCC), State and local technical standards, as they may be amended from time to time, regardless of the transmission technology utilized. The Town shall have the full authority permitted by Applicable Law to enforce compliance with these

technical standards.

11.6 Cable System Performance Testing

(A) Grantee shall, at Grantee's expense, perform the following tests on its Cable System:

- (1) All tests required by the FCC;
- (2) All other tests reasonably necessary to determine compliance with technical standards adopted by the FCC at any time during the term of this Franchise; and
- (3) All other tests as otherwise specified in this Franchise.

(B) At a minimum, Grantee's tests shall include:

- (1) Cumulative leakage index testing of any new construction;
- (2) Semi-annual compliance and proof of performance tests in conformance with generally accepted industry guidelines;
- (3) Tests in response to Subscriber complaints;
- (4) Periodic monitoring tests, at intervals not to exceed six (6) months, of Subscriber (field) test points, the Headend, and the condition of standby power supplies; and
- (5) Cumulative leakage index tests, at least annually, designed to ensure that one hundred percent (100%) of Grantee's Cable System has been ground or air tested for signal leakage in accordance with FCC standards.

(C) Grantee shall maintain written records of all results of its Cable System tests, performed by or for Grantee. Copies of such test results will be provided to the Town upon reasonable request.

(D) If the FCC no longer requires proof of performance tests for Grantee's Cable System during the term of this Franchise, Grantee agrees that it shall continue to conduct proof of performance tests on the Cable System in accordance with the standards that were in place on the Effective Date, or any generally applicable standards later adopted, at least once a year, and provide written results of such tests to the Town upon request.

(E) The FCC semi-annual testing is conducted in January/February and July/August of each year. If the Town contacts Grantee prior to the next test period (*i.e.*, before December 15 and June 15 respectively of each year), Grantee shall provide Town with no less than seven (7) days prior written notice of the actual date(s) for FCC compliance testing. If Town notifies Grantee by the December 15th and June 15th dates that it wishes to have a representative present

during the next test(s), Grantee shall cooperate in scheduling its testing so that the representative can be present. Notwithstanding the above, all technical performance tests may be witnessed by representatives of the Town.

(F) Grantee shall be required to promptly take such corrective measures as are necessary to correct any performance deficiencies fully and to prevent their recurrence as far as possible. Grantee's failure to correct deficiencies identified through this testing process shall be a material violation of this Franchise. Sites shall be re-tested following correction.

11.7 Additional Tests

Where there exists other evidence which in the judgment of the Town casts doubt upon the reliability or technical quality of Cable Service, the Town shall have the right and authority to require Grantee to test, analyze and report on the performance of the Cable System. Grantee shall fully cooperate with the Town in performing such testing and shall prepare the results and a report, if requested, within thirty (30) days after testing. Such report shall include the following information:

- (A) the nature of the complaint or problem which precipitated the special tests;
- (B) the Cable System component tested;
- (C) the equipment used and procedures employed in testing;
- (D) the method, if any, in which such complaint or problem was resolved; and
- (E) any other information pertinent to said tests and analysis which may be required.

SECTION 12. SERVICE AVAILABILITY, INTERCONNECTION AND SERVICE TO SCHOOLS AND PUBLIC BUILDINGS

12.1 Service Availability

(A) In General. Except as otherwise provided in herein, Grantee shall provide Cable Service within seven (7) days of a request by any Person within the Town at a location that is passed by the BFN. For purposes of this Section, a request shall be deemed made on the date of signing a service agreement, receipt of funds by Grantee, receipt of a written request by Grantee or receipt by Grantee of a verified verbal request. Except as otherwise provided herein, Grantee shall provide such service:

(1) With no line extension charge except as specifically authorized elsewhere in this Franchise Agreement.

(2) At a non-discriminatory installation charge for a standard installation, consisting of a ___ foot drop connecting to an inside wall for Residential or Commercial

Subscribers, with additional charges for non standard installations computed according to a non discriminatory methodology for such installations, adopted by Grantee and provided in writing to the Town;

- (3) At non discriminatory monthly rates for Residential Subscribers.

(B) Service to Multiple Dwelling Units. Consistent with this Section 12.1, the Grantee shall offer the individual units of a Multiple Dwelling Unit all Cable Services offered to other Dwelling Units in the Town and shall individually wire units upon request of the property owner or renter who has been given written authorization by the owner; provided, however, that any such offering is conditioned upon the Grantee having legal access to said unit. The Town acknowledges that the Grantee cannot control the dissemination of particular Cable Services beyond the point of demarcation at a Multiple Dwelling Unit.

12.2 Connection of Public Facilities

Grantee shall, at no cost to the Town, provide one outlet of Basic Service to all Town owned and occupied buildings, schools and public libraries located in areas where Grantee provides Cable Service, so long as these facilities are located within 150 feet of its Cable System. For purposes of this subsection, “school” means all State Licensed Pre-Schools and State-accredited K-12 public and private schools. Such obligation to provide free Cable Service shall not extend to areas of Town buildings where the Grantee would normally enter into a commercial contract to provide such Cable Service (*e.g.*, golf courses, airport restaurants and concourses, and recreation center work out facilities). Outlets of Basic Service provided in accordance with this subsection may be used to distribute Cable Services throughout such buildings, provided such distribution can be accomplished without causing Cable System disruption and general technical standards are maintained. Such outlets may only be used for lawful purposes. The Cable Service provided shall not be distributed beyond the originally installed outlets without authorization from Grantee, which shall not be unreasonably withheld.

SECTION 13. FRANCHISE VIOLATIONS

13.1 Procedure for Remedying Franchise Violations

(A) If the Town reasonably believes that Grantee has failed to perform any obligation under this Franchise or has failed to perform in a timely manner, the Town shall notify Grantee in writing, stating with reasonable specificity the nature of the alleged default. Grantee shall have thirty (30) days from the receipt of such notice to:

- (1) respond to the Town, contesting the Town’s assertion that a default has occurred, and requesting a meeting in accordance with subsection (B), below;
- (2) cure the default; or,
- (3) notify the Town that Grantee cannot cure the default within the thirty (30) days, because of the nature of the default. In the event the default cannot be cured within

thirty (30) days, Grantee shall promptly take all reasonable steps to cure the default and notify the Town in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the Town may set a meeting in accordance with subsection (B) below to determine whether additional time beyond the thirty (30) days specified above is indeed needed, and whether Grantee's proposed completion schedule and steps are reasonable.

(B) If Grantee does not cure the alleged default within the cure period stated above, or by the projected completion date under subsection (A)(3), or denies the default and requests a meeting in accordance with (A)(1), or the Town orders a meeting in accordance with subsection (A)(3), the Town shall set a meeting to investigate said issues or the existence of the alleged default. The Town shall notify Grantee of the meeting in writing and such meeting shall take place no less than thirty (30) days after Grantee's receipt of notice of the meeting. At the meeting, Grantee shall be provided an opportunity to be heard and to present evidence in its defense.

(C) If, after the meeting, the Town determines that a default exists, the Town shall order Grantee to correct or remedy the default or breach within fifteen (15) days or within such other reasonable time frame as the Town shall determine. In the event Grantee does not cure within such time to the Town's reasonable satisfaction, the Town may:

- (1) Withdraw an amount from the letter of credit as monetary damages;
- (2) Recommend the revocation of this Franchise pursuant to the procedures in subsection 13.2; or,
- (3) Recommend any other legal or equitable remedy available under this Franchise or any Applicable Law.

(D) The determination as to whether a violation of this Franchise has occurred shall be within the discretion of the Town, provided that any such final determination may be subject to appeal to a court of competent jurisdiction under Applicable Law.

13.2 Revocation

(A) In addition to revocation in accordance with other provisions of this Franchise, the Town may revoke this Franchise and rescind all rights and privileges associated with this Franchise in the following circumstances, each of which represents a material breach of this Franchise:

- (1) If Grantee fails to perform any material obligation under this Franchise or under any other agreement, ordinance or document regarding the Town and Grantee;
- (2) If Grantee willfully fails for more than forty-eight (48) hours to provide continuous and uninterrupted Cable Service;

(3) If Grantee attempts to evade any material provision of this Franchise or to practice any fraud or deceit upon the Town or Subscribers; or

(4) If Grantee becomes insolvent, or if there is an assignment for the benefit of Grantee's creditors;

(5) If Grantee makes a material misrepresentation of fact in the application for or negotiation of this Franchise.

(B) Following the procedures set forth in subsection 13.1 and prior to forfeiture or termination of the Franchise, the Town shall give written notice to the Grantee of its intent to revoke the Franchise and set a date for a revocation proceeding. The notice shall set forth the exact nature of the noncompliance.

(C) Any proceeding under the paragraph above shall be conducted by the Town Council and open to the public. Grantee shall be afforded at least forty-five (45) days prior written notice of such proceeding.

(1) At such proceeding, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce evidence, and to question witnesses. A complete verbatim record and transcript shall be made of such proceeding and the cost shall be shared equally between the parties. The Town Council shall hear any Persons interested in the revocation, and shall allow Grantee, in particular, an opportunity to state its position on the matter.

(2) Within ninety (90) days after the hearing, the Town Council shall determine whether to revoke the Franchise and declare that the Franchise is revoked and the letter of credit forfeited; or if the breach at issue is capable of being cured by Grantee, direct Grantee to take appropriate remedial action within the time and in the manner and on the terms and conditions that the Town Council determines are reasonable under the circumstances. If the Town determines that the Franchise is to be revoked, the Town shall set forth the reasons for such a decision and shall transmit a copy of the decision to the Grantee. Grantee shall be bound by the Town's decision to revoke the Franchise unless it appeals the decision to a court of competent jurisdiction within fifteen (15) days of the date of the decision.

(3) Grantee shall be entitled to such relief as the Court may deem appropriate.

(4) The Town Council may at its sole discretion take any lawful action which it deems appropriate to enforce the Town's rights under the Franchise in lieu of revocation of the Franchise.

13.3 Procedures in the Event of Termination or Revocation

(A) If this Franchise expires without renewal after completion of all processes available under this Franchise and federal law or is otherwise lawfully terminated or revoked, the

Town may, subject to Applicable Law:

(1) Allow Grantee to maintain and operate its Cable System on a month-to-month basis or short-term extension of this Franchise for not less than six (6) months, unless a sale of the Cable System can be closed sooner or Grantee demonstrates to the Town's satisfaction that it needs additional time to complete the sale; or

(2) Purchase Grantee's Cable System in accordance with the procedures set forth in subsection 13.4, below.

(B) In the event that a sale has not been completed in accordance with subsections (A)(1) and/or (A)(2) above, the Town may order the removal of the above-ground Cable System facilities and such underground facilities owned by the Grantee from the Town at Grantee's sole expense within a reasonable period of time as determined by the Town. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefore.

(C) If Grantee fails to complete any removal required by subsection 13.3 (B) to the Town's satisfaction, after written notice to Grantee, the Town may cause the work to be done and Grantee shall reimburse the Town for the costs incurred within thirty (30) days after receipt of an itemized list of the costs, or the Town may recover the costs through the letter of credit provided by Grantee.

(D) The Town may seek legal and equitable relief to enforce the provisions of this Franchise.

13.4 Purchase of Cable System

(A) If at any time this Franchise is revoked, terminated, or not renewed upon expiration in accordance with the provisions of federal law, the Town shall have the option to purchase the Cable System.

(B) The Town may, at any time thereafter, offer in writing to purchase Grantee's Cable System. Grantee shall have thirty (30) days from receipt of a written offer from the Town within which to accept or reject the offer.

(C) In any case where the Town elects to purchase the Cable System, the purchase shall be closed within one hundred twenty (120) days of the date of the Town's audit of a current profit and loss statement of Grantee. The Town shall pay for the Cable System in cash or certified funds, and Grantee shall deliver appropriate bills of sale and other instruments of conveyance.

(D) For the purposes of this subsection, the price for the Cable System shall be determined as follows:

(1) In the case of the expiration of the Franchise without renewal, at fair market value determined on the basis of Grantee's Cable System valued as a going concern, but with no value allocated to the Franchise itself. In order to obtain the fair market value, this valuation shall be reduced by the amount of any lien, encumbrance, or other obligation of Grantee which the Town would assume.

(2) In the case of revocation for cause, the equitable price of Grantee's Cable System.

13.5 Receivership and Foreclosure

(A) At the option of the Town, subject to Applicable Law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

(1) The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

(2) The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise, and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

(B) If there is a foreclosure or other involuntary sale of the whole or any part of the plant, property and equipment of Grantee, the Town may serve notice of revocation on Grantee and to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The Town has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the Town to assume and be bound by all of the terms and conditions of this Franchise.

13.6 No Monetary Recourse Against the Town

Grantee shall not have any monetary recourse against the Town or its officers, officials, boards, commissions, agents or employees for any loss, costs, expenses or damages arising out of any provision or requirement of this Franchise or the enforcement thereof, in accordance with the provisions of applicable federal, State and local law. The rights of the Town under this

Franchise are in addition to, and shall not be read to limit, any immunities the Town may enjoy under federal, State or local law.

13.7 Alternative Remedies

No provision of this Franchise shall be deemed to bar the right of the Town to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the Town to recover monetary damages for such violations by Grantee, or to seek and obtain judicial enforcement of Grantee's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

13.8 Assessment of Monetary Damages

(A) The Town may assess against Grantee monetary damages (i) up to five hundred dollars (\$500.00) per day for general construction delays, violations of PEG obligations or payment obligations, (ii) up to two hundred fifty dollars (\$250.00) per day for any other material breaches, or (iii) up to one hundred dollars (\$100.00) per day for defaults, and withdraw the assessment from the letter of credit or collect the assessment as specified in this Franchise. Damages pursuant to this Section shall accrue for a period not to exceed one hundred twenty (120) days per violation proceeding. To assess any amount from the letter of credit, Town shall follow the procedures for withdrawals from the letter of credit set forth in the letter of credit and in this Franchise. Such damages shall accrue beginning thirty (30) days following Grantee's receipt of the notice required by subsection 13.1(A), or such later date if approved by the Town in its sole discretion, but may not be assessed until after the procedures in subsection 13.1 have been completed.

(B) The assessment does not constitute a waiver by Town of any other right or remedy it may have under the Franchise or Applicable Law, including its right to recover from Grantee any additional damages, losses, costs and expenses that are incurred by Town by reason of the breach of this Franchise.

13.9 Effect of Abandonment

If the Grantee abandons its Cable System during the Franchise term, or fails to operate its Cable System in accordance with its duty to provide continuous service, the Town, at its option, may operate the Cable System; designate another entity to operate the Cable System temporarily until the Grantee restores service under conditions acceptable to the Town, or until the Franchise is revoked and a new franchisee is selected by the Town; or obtain an injunction requiring the Grantee to continue operations. If the Town is required to operate or designate another entity to operate the Cable System, the Grantee shall reimburse the Town or its designee for all reasonable costs, expenses and damages incurred.

13.10 What Constitutes Abandonment

The Town shall be entitled to exercise its options in subsection 13.9 if:

(A) The Grantee fails to provide Cable Service in accordance with this Franchise over a substantial portion of the Franchise Area for four (4) consecutive days, unless the Town authorizes a longer interruption of service; or

(B) The Grantee, for any period, willfully and without cause refuses to provide Cable Service in accordance with this Franchise.

SECTION 14. FRANCHISE RENEWAL AND TRANSFER

14.1 Renewal

(A) Subject to the provisions of Section 2.3, the Town and Grantee agree that any proceedings undertaken by the Town that relate to the renewal of the Franchise shall be governed by and comply with the provisions of Section 626 of the Cable Act, unless the procedures and substantive protections set forth therein shall be deemed to be preempted and superseded by the provisions of any subsequent provision of federal or State law.

(B) In addition to the procedures set forth in said Section 626(a), the Town agrees to notify Grantee of the completion of its assessments regarding the identification of future cable-related community needs and interests, as well as the past performance of Grantee under the then current Franchise term. Notwithstanding anything to the contrary set forth herein, Grantee and Town agree that at any time during the term of the then current Franchise, while affording the public adequate notice and opportunity for comment, the Town and Grantee may agree to undertake and finalize negotiations regarding renewal of the then current Franchise and the Town may grant a renewal thereof. Grantee and Town consider the terms set forth in this subsection to be consistent with the express provisions of Section 626 of the Cable Act.

14.2 Transfer of Ownership or Control

(A) The Cable System and this Franchise shall not be sold, assigned, transferred, leased or disposed of, either in whole or in part, either by involuntary sale or by voluntary sale, merger or consolidation; nor shall title thereto, either legal or equitable, or any right, interest or property therein pass to or vest in any Person or entity without the prior written consent of the Town, which consent shall be by the Town Council/Commission, acting by ordinance/resolution.

(B) The Grantee shall promptly notify the Town of any actual or proposed change in, or transfer of, or acquisition by any other party of control of the Grantee. The word "control" as used herein is not limited to majority stockholders but includes actual working control in whatever manner exercised. Every change, transfer or acquisition of control of the Grantee shall make this Franchise subject to cancellation unless and until the Town shall have consented in writing thereto.

(C) The parties to the sale or transfer shall make a written request to the Town for its approval of a sale or transfer and furnish all information required by law and the Town.

(D) In seeking the Town's consent to any change in ownership or control, the proposed transferee shall indicate whether it:

(1) Has ever been convicted or held liable for acts involving deceit including any violation of federal, State or local law or regulations, or is currently under an indictment, investigation or complaint charging such acts;

(2) Has ever had a judgment in an action for fraud, deceit, or misrepresentation entered against the proposed transferee by any court of competent jurisdiction;

(3) Has pending any material legal claim, lawsuit, or administrative proceeding arising out of or involving a cable system or a broadband system;

(4) Is financially solvent, by submitting financial data including financial statements that are audited by a certified public accountant who may also be an officer of the transferee, along with any other data that the Town may reasonably require; and

(5) Has the financial, legal and technical capability to enable it to maintain and operate the Cable System for the remaining term of the Franchise.

(E) The Town shall act by ordinance on the request within one hundred twenty (120) days of the request, provided it has received all information required by this Franchise and/or by Applicable Law. The Town and the Grantee may by mutual agreement, at any time, extend the 120 day period. Subject to the foregoing, if the Town fails to render a final decision on the request within one hundred twenty (120) days, such request shall be deemed granted unless the requesting party and the Town agree to an extension of time.

(F) Within thirty (30) days of any transfer or sale, if approved or deemed granted by the Town, Grantee shall file with the Town a copy of the deed, agreement, lease or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by Grantee and the transferee, and the transferee shall file its written acceptance agreeing to be bound by all of the provisions of this Franchise, subject to Applicable Law. In the event of a change in control, in which the Grantee is not replaced by another entity, the Grantee will continue to be bound by all of the provisions of the Franchise, subject to Applicable Law, and will not be required to file an additional written acceptance.

(G) In reviewing a request for sale or transfer, the Town may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and Grantee shall assist the Town in so inquiring. The Town may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate, in accordance with Applicable Law.

(H) Notwithstanding anything to the contrary in this subsection, the prior approval of the Town shall not be required for any sale, assignment or transfer of the Franchise or Cable System to an entity controlling, controlled by or under the same common control as Grantee, provided that the proposed assignee or transferee must show financial responsibility as may be determined necessary by the Town and must agree in writing to comply with all of the provisions of the Franchise. Further, Grantee may pledge the assets of the Cable System for the purpose of financing without the consent of the Town; provided that such pledge of assets shall not impair or mitigate Grantee's responsibilities and capabilities to meet all of its obligations under the provisions of this Franchise.

SECTION 15. SEVERABILITY

If any Section, subsection, paragraph, term or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph, term or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

SECTION 16. MISCELLANEOUS PROVISIONS

16.1 Preferential or Discriminatory Practices Prohibited

NO DISCRIMINATION IN EMPLOYMENT. In connection with the performance of work under this Franchise, the Grantee agrees not to refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any Person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Grantee further agrees to insert the foregoing provision in all subcontracts hereunder. Throughout the term of this Franchise, Grantee shall fully comply with all equal employment or non-discrimination provisions and requirements of federal, State and local laws, and in particular, FCC rules and regulations relating thereto.

16.2 Notices

Throughout the term of the Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent overnight delivery postage prepaid to such respective address and such notices shall be effective upon the date of mailing. These addresses may be changed by the Town or the Grantee by written notice at any time. At the Effective Date of this Franchise:

Grantee's address shall be:
ALLO Communications LLC
330 S. 21st Street
Lincoln, Nebraska 68510
Attn: Brad Moline

The Town's address shall be:
Town of Breckenridge
Attn: Town Manager
150 Ski Hill Road; P.O. Box 168
Breckenridge, CO 80424

16.3 Descriptive Headings

The headings and titles of the Sections and subsections of this Franchise are for reference purposes only, and shall not affect the meaning or interpretation of the text herein.

16.4 Publication Costs to be Borne by Grantee

Grantee shall reimburse the Town for all costs incurred in publishing this Franchise, if such publication is required.

16.5 Binding Effect

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns.

16.6 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

16.7 Waiver

The failure of the Town at any time to require performance by the Grantee of any provision hereof shall in no way affect the right of the Town hereafter to enforce the same. Nor shall the waiver by the Town of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

16.8 Reasonableness of Consent or Approval

Whenever under this Franchise "reasonableness" is the standard for the granting or denial of the consent or approval of either party hereto, such party shall be entitled to consider public and governmental policy, moral and ethical standards as well as business and economic considerations.

16.9 Entire Agreement

This Franchise and all Exhibits represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral negotiations between the parties.

16.10 Jurisdiction

Venue for any judicial dispute between the Town and Grantee arising under or out of this Franchise shall be in Summit County District Court, Colorado, or in the United States District Court in Denver.

IN WITNESS WHEREOF, this Franchise is signed in the name of the Town of Breckenridge, Colorado this ____ day of _____, 2019.

ATTEST: TOWN OF BRECKENRIDGE, COLORADO:

Town Clerk

Mayor

APPROVED AS TO FORM:

RECOMMENDED AND APPROVED:

Town Attorney

Town Manager

Accepted and approved this ____ day of _____, 2015.

ATTEST: ALLO Communications, LLC

Public Notary

Name/Title: _____

**EXHIBIT A:
CUSTOMER SERVICE STANDARDS**

**EXHIBIT B
Report Form**

ALLO
 Quarterly Executive Summary - Escalated Complaints
 Section 7.6 (B) of our Franchise Agreement
 Quarter Ending _____, Year
 BRECKENRIDGE, COLORADO

<u>Type of Complaint</u>	<u>Number of Calls</u>
Accessibility	0
Billing, Credit and Refunds	0
Courtesy	0
Drop Bury	0
Installation	0
Notices/Easement Issues (Non-Rebuild)	0
Pedestal	0
Problem Resolution	0
Programming	0
Property Damage (Non-Rebuild)	0
Rates	0
Rebuild/Upgrade Damage	0
Rebuild/Upgrade Notices/Easement Issues	0
Reception/Signal Quality	0
Safety	0
Service and Install Appointments	0
Service Interruptions	0
Serviceability	0
	0
TOTAL	0

Compliments



Memo

To: Breckenridge Town Council Members
From: Julia Puester, AICP, Planning Manager
Date: 6/5/19 for meeting of 6/11/19
Subject: Second Reading: LH Mountain Ventures, LLC Development Agreement Modification (aka Lionheart, East Peak 8 Hotel)

The Town Council passed the Development Agreement Modification for the East Peak 8 Hotel at first reading on May 28th. (The original Development Agreement was approved July 10, 2018 with Ordinance 15, Series 2018.)

The Council gave direction at the first reading for staff to clarify how Average Median Income (AMI) is calculated. Staff has added two footnotes, one to page 5 and one to page 6 of the attached Development Agreement which clarify that:

- The average AMI shall be calculated based on the AMI of all 24 bedrooms; and
- The Summit Combined Housing Authority pricing formula will be used to calculate the maximum affordable rent.

The remainder of the Development Agreement is unchanged from the first reading. Staff and the applicant will be available at the meeting for any questions.

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APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
STATUTES, AS AMENDED

AMENDED AND RESTATED DEVELOPMENT AGREEMENT

This Amended and Restated Development Agreement (“**Agreement**”) is made as of July 11, 2019 (the “**Effective Date**,” which shall be the date when the ordinance approving this Agreement becomes effective) and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”), and LH MOUNTAIN VENTURES, LLC, a Colorado limited liability company (“**Developer**”). This Agreement amends and restates that Development Agreement dated as of August 15, 2018 and recorded September 28, 2018 at Reception No. 1181305 of the records of the Clerk and Recorder of Summit County, Colorado (“**Original Development Agreement**”). In this Agreement Town and Developer are referred to individually as a “**Party**” and collectively as the “**Parties**.”

Recitals

A. Developer is the owner of the following real property located in the Town of Breckenridge, Summit County, Colorado:

LOT 4, PEAK 8 SUBDIVISION FILING NO. 1, ACCORDING TO THE PLAT OF THE FOURTH RESUBDIVISION, THE REMAINDER OF TRACT C, PEAK 8 SUBDIVISION FILING NO. 1 RECORDED ON DECEMBER 20, 2018 AT RECEPTION NO. 1187721, SUMMIT COUNTY, COLORADO

(“**Property**”).

B. Developer acquired the Property from Vail Summit Resorts, Inc., a Colorado corporation (“**VSRI**”), by that deed recorded April 12, 2019 at Reception No. 1195438 of the records of the Clerk and Recorder of Summit County, Colorado.

C. VSRI was not a party to the Original Development Agreement, but was an intended third party beneficiary of such agreement. VSRI is an intended beneficiary of this Agreement.

D. The Property is subject to the Amendment to Amended Peaks 7 & 8 Master Plan approved by Development Permit PL-2015-0444 on January 12, 2016, the Notice of Approval of Master Plan for which Amendment was recorded August 30, 2016 at Reception No. 1120265 of the Summit County, Colorado records (“**Master Plan**”). The Master Plan was further amended to contemplate Developer’s proposed development (as hereafter defined) in Development Permit No. PL-2018-0546, dated January 18, 2019 (“**2019 Master Plan Amendment**”).

1 E. Developer proposes to develop on the Property a hotel, condominiums, commercial
2 facilities, and amenities (“**Proposed Development**”).

3 F. In connection with its Proposed Development Developer has requested Town to
4 approve: (i) a density transfer to the Property by VRSI; (ii) development of the Property that
5 exceeds the gross density for the Property recommended by the Town’s Land Use Guidelines
6 (“**Guidelines**”) as provided for in Subsection 9-1-19-39AI2 of the Breckenridge Town Code¹;
7 (iii) agreements concerning such density in excess of that recommended by the Guidelines; and
8 (iv) such other agreements as the Town and the Developer may agree are appropriate.

9 G. Pursuant to Chapter 9 of Title 9 of the Breckenridge Town Code the Town Council
10 has the authority to enter into a development agreement. Further, in connection with a master
11 plan amendment, there is no process in the Town’s Development Code for approval of density in
12 excess of that recommended by the Guidelines and a transfer of density to support such excess
13 density, and, therefore, a development agreement provides a means for such an approval and
14 transfer.

15 H. In order for Developer to develop the Property in a manner that will include a four
16 star, flagged, luxury hotel containing approximately 150 rooms and approximately 110,000
17 square feet of condominiums, with the amenities and commercial services required for such a
18 project, up to the total of an additional 58 single family equivalents of density (each an “**SFE**” as
19 defined in the Town’s Development Code), which may include up to 2.0 SFEs of commercial
20 density, will be required and authorization to acquire and transfer such additional SFEs will be
21 required.

22 I. Because there is no provision in the Breckenridge Town Code allowing site work to
23 begin prior to issuance of a building permit, in order to facilitate the beginning of vertical
24 construction of Developer’s Proposed Development in the spring of 2020, the Town is prepared
25 to authorize its Department of Community Development (“**Department**”) to grant permission
26 for the commencement of infrastructure improvements, including, but not limited to, demolition
27 of VSRI’s administration office building and ski patrol locker building located on the Property
28 (“**Administration Facilities**”), construction of storm water management facilities, relocation of
29 utilities, and site excavation prior to issuance of a building permit, but subject to receipt of
30 assurances of completion deemed satisfactory by the Department.

31 J. In order to accommodate VSRI’s administration functions necessary or appropriate
32 for the operation of the Breckenridge Ski Resort, which currently occur in the Administration
33 Facilities, the Town acknowledges and understands that one or more temporary structures will
34 need to be placed on the Property in locations acceptable to VSRI, Developer, and the Town as
35 determined by VSRI, Developer, and the Town, and maintained in such locations until the
36 proposed Guest Services (as defined in the Master Plan) spaces to be included in Developer’s
37 Proposed Development on the Property (the “**Guest Services Spaces**”) are completed and ready

¹ Chapter 1 of Title 9 of the Breckenridge Town Code is known and is referred to in this Agreement as the “Town’s Development Code.”

1 for occupancy by VSRI and a temporary permit will need to be issued. The permit referenced in
2 this paragraph must be reviewed and approved by the Town’s Planning Commission and Town
3 Council as provided for in subparagraph 1C, below, and nothing in this Agreement requires the
4 Planning Commission or Town Council to approve such a permit if the permit application does
5 not meet the applicable requirements of the Town’s Development Code.

6 K. The commitments encouraged to be made by Developer in connection with an
7 application for a development agreement in accordance with Section 9-9-4 of the Breckenridge
8 Town Code are as hereafter set forth in this Agreement.

9 L. The Town Council has received a completed application and all required submittals
10 for a development agreement, had a preliminary discussion of the application and this
11 Agreement, determined that it should commence proceedings for the approval of this Agreement
12 and, in accordance with the procedures set forth in Subsection 9-9-10C of the Breckenridge
13 Town Code, has approved this Agreement by non-emergency ordinance.

14 Agreement

15
16 1. The Developer’s obligations under Paragraph 3 of this Agreement are subject to the
17 final approval of all of the following by the Town²:

18 A. Such permits or approvals necessary for the transfer of density consisting of up to a
19 total of 58 SFEs, including up to two (2) commercial SFEs, to the Property by VSRI
20 from the density that was included under the expired Gondola Lots Master Plan³;

21 B. A Class A development permit acceptable to Developer consistent with the 2019
22 Master Plan Amendment and allowing for the development of the Property to
23 accommodate: a four star, flagged, luxury hotel containing approximately 150 rooms;
24 approximately 110,000 square feet of residential condominiums; approximately
25 11,000 square feet of commercial; and approximately 10,300 square feet of Guest
26 Services and Support Facilities (as defined in the Master Plan) space for acquisition
27 and use by VSRI (the “**Permit**”); and

28 C. Such permit as may be required by the Town to allow one or more temporary
29 structures accommodating VSRI’s administration functions necessary or appropriate
30 for the operation of the Breckenridge Ski Resort to be placed on the Property in
31 locations acceptable to VSRI, Developer, and Town as determined by VSRI,
32 Developer, and Town and maintained in such locations until the proposed Guest
33 Services Spaces are completed and ready for occupancy by VSRI; provided, however,

² “Final approval” includes and the passage of any time periods within which any referendums, appeals, or other challenges to the enumerated approvals must be brought, without any such referendums, appeals or other challenges having been filed, commenced or asserted, or, if filed, commenced or asserted, after any such appeal, referendum or challenge is resolved with affirmation that this Agreement is effective.

³The Gondola Lots Master Plan was described in that Notice of Approval of Master Plan dated July 12, 2010 and recorded at Reception No. 942513 of the records of the Clerk of Recorder of Summit County, Colorado.

1 that all approved temporary structures shall be removed not later than the first to
2 occur of: (i) the end of 60 days after the issuance of any final certificate of occupancy
3 for the Proposed Development, or (ii) 7 years after the date of demolition of VSRI's
4 administration building. The deadline shall not be extended.

5 2. Notwithstanding anything in the Town's Development Code to the contrary, the
6 Permit shall provide that the building height of the Developer's Proposed Development shall be
7 measured as follows:

- 8 A. The maximum height of the buildings within the Proposed Development shall not
9 exceed the elevation of the existing east cross gable of One Ski Hill Place, as shown
10 on the Building Elevations exhibit attached hereto. This maximum height will serve
11 as an "Absolute" policy under the Town's Development Code.
- 12 B. Policy 6 (Relative) "Building Height" of the Town's Development Code shall apply
13 to the Town's review of the Permit application. Pursuant to the Master Plan, for the
14 purpose of assessing or awarding points under Policy 6 (Relative) the heights of the
15 buildings to be constructed within the Proposed Development shall be evaluated
16 against the height requirements of the Town's Development Code and the
17 recommended heights for Land Use District 39 as they were in effect at the time the
18 amendment to the Master Plan that was approved on February 26, 2013;
- 19 C. Pursuant to the Master Plan, the height of buildings at the Peak 8 Base area only
20 (including the site of the Proposed Development) are to be measured "to the proposed
21 finished grade elevation at the exterior wall below," and not to natural grade, which
22 generally does not exist in the area, provided that such proposed finished grades shall
23 not include artificial appearing berming or fill. Artificial appearing berming or fill is
24 characterized by excessive rise and steep grades in the vicinity of building
25 foundations. (emphasis added). The height of the buildings within the Proposed
26 Development shall be established in accordance with the Town's Development Code
27 and District 39 of the Guidelines, as they are in effect at the time of the execution of
28 this Agreement; provided, however, that the Town and Developer shall establish a
29 method for determining the finished grades above which heights shall be measured in
30 order to account for the lack of natural grades and the anticipated filling of the
31 lowered and generally flat grades currently existing at the Peak 8 base area.

32 3. When all of the approvals set forth in Paragraph 1 have been satisfied then Developer
33 shall do the following:

34 Prior to Issuance of a Building Permit for the Proposed Development

- 35
- 36 A. Cause VSRI to enter into a density transfer covenant with the Town, in a form
37 substantially similar to the previous density transfer covenant between VSRI and the
38 Town executed and recorded in connection with the expired Gondola Lots Master
39 Plan, to transfer from the property that was the subject of the expired Gondola Lots

1 Master Plan the density required to support the total residential and commercial
2 density authorized by the Permit minus the residential density of 71.6 SFEs and the
3 commercial density of 9.0 SFEs remaining available for the Property under the
4 Master Plan.

5 Prior to Issuance of a Certificate of Occupancy for the Proposed Development
6

- 7 A. Pay \$125,000 to the Town to be applied to the improvement and maintenance of the
8 Town’s Cucumber Gulch property or as otherwise directed by the Town Council.
- 9 B. Execute standard form Town employee housing covenants restricting previously
10 unrestricted residential housing units as employee housing in an amount equal to the
11 difference between 20,000 square feet (the total square footage of employee housing
12 Developer has committed to restrict) and that square footage of employee housing
13 applied by Developer to obtain an allocation of up to 10 positive points under
14 Subsection 9-1-19-24R of the Town’s Development Code. The difference between
15 20,000 square feet of employee housing and that square footage of employee housing
16 applied by Developer to obtain an allocation of up to 10 positive points under
17 Subsection 9-1-19-24R of the Town’s Development Code shall be treated as a
18 commitment to the Town under Section 9-9-4 of the Breckenridge Town Code.
- 19 C. Provide “newly constructed” rental housing units that contain not less than twenty
20 four (24) bedrooms, all of which are located in the Upper Blue River Basin. A unit is
21 not “**Newly Constructed**” for purposes of this Agreement if, prior to July 19, 2019,
22 the Town has either: (a) issued a certificate of occupancy allowing occupancy of such
23 bedroom; or (b) issued a development permit for the construction of such bedroom.
24 “**Upper Blue River Basin**” means the geographic area bounded by Farmers Korner
25 to the north; Hoosier Pass to the south; the Continental Divide to the East; and the top
26 of the Ten Mile Range to the west. The average size of each newly constructed
27 bedroom shall be a minimum of one hundred fifty (150) square feet. The units shall
28 be a mixture of one (1), two (2), and (3) bedroom units as determined by Developer.
- 29 (i) Execute, acknowledge, and deliver to the Town, in a form acceptable to the
30 Town Attorney:
- 31 (a) a restrictive housing covenant encumbering the required twenty four (24)
32 bedrooms described above in favor of the Town. The term of the covenant
33 shall be perpetual, and the covenant shall provide that the encumbered
34 bedrooms shall only be rented to qualified tenants at a monthly rental rate
35 not greater than an average⁴ of eighty percent (80%) of the Area Median
36 Income (AMI) for Breckenridge, Colorado (or if not available, for the
37 Area Median Income for Summit County, Colorado) most recently

4 The average shall be calculated based on the AMI of all 24 bedrooms.

1 available immediately prior to such bedroom being rented⁵. A “**qualified**
2 **tenant**” is a person not less than eighteen (18) years of age who is actually
3 employed in Summit County, Colorado at least thirty (30) hours per week
4 on an annual basis during the entirety of the period of his or her occupancy
5 of the apartment; and

6 (b) a second restrictive covenant prohibiting any of the required twenty four
7 (24) bedrooms from being rented, leased, or otherwise occupied for a term
8 of less than three (3) consecutive months (i.e., there shall be no “short
9 term rental” of any of the required bedrooms). The term of this covenant
10 shall also be perpetual.

11 (c) At the time of their signing both of the required restrictive covenants shall
12 not be subordinate to any prior lien or encumbrance of any kind, except
13 the lien of the general property taxes for the year in which the covenants
14 are executed.

15 D. Enter into a lease with the Breckenridge Outdoor Education Center, a Colorado
16 nonprofit corporation (“**BOEC**”) for approximately 1,500 square feet of space in the
17 Proposed Development. The term of such lease shall be at least fifty (50) years, and
18 the rent for such space shall be \$1.00 per year. The lease shall otherwise contain
19 terms that are mutually acceptable to Developer and the BOEC.

20 E. Establish with the Town an environmental improvement fund dedicated to drainage
21 and similar improvements to protect the Town’s Cucumber Gulch property funded by
22 a fee of \$2.00 per paid room night to be added to the amount paid for rentals of the
23 hotel rooms in the Proposed Development, and only those hotel rooms, for a period of
24 twenty (20) years from the date a certificate of occupancy is issued for the hotel
25 component of the Proposed Development. Such funds shall be transferred to Town in
26 accordance with a schedule to be established by the Finance Director of the Town,
27 and may be spent by the Town in its sole discretion;

28 F. Provide such document as is reasonably acceptable to the Town to provide for the
29 abandonment of any right of access to the Property from Saw Mill Run Road. The
30 Parties understand and acknowledge that to completely eliminate any potential public
31 right of access to the Property from Saw Mill Run Road (and the extension thereof
32 across what has been denominated as “County Road 709”) it will be necessary for the
33 Town to vacate County Road 709 in the manner provided by law. The Town agrees to
34 consider a request to vacate County Road 709 pursuant to Chapter 4 of Title 11 of the
35 Breckenridge Town Code.

36 G. Enter into such agreement as the Town reasonably may require to provide for the
37 following: At the end of the first year after issuance of a final certificate of

5 The Summit Combined Housing Authority pricing formula will be used to calculate the maximum affordable rent.

1 occupancy for the Proposed Development and every year thereafter for the first 5
2 years after issuance of such final certificate of occupancy, the Developer will provide
3 a trip report to the Town. Trips will be defined as the number of trips into the garage
4 plus the number of trip out of the garage on a daily basis. If during any single
5 calendar month of each of such 5 years the number of trips exceeds an average of
6 1,600 trips per day, for every 100 trips in excess of 1,600 the Developer will acquire
7 and transfer 1 additional shuttle van to the Breckenridge Mountain Master
8 Association (“**BMMA**”). Until such time as the threshold described in the preceding
9 sentence has been reached the residents and guests of the Proposed Development
10 shall have access to the transportation (van) system operated by the BMMA in the
11 same manner as is provided to other properties located within the boundaries of the
12 BMMA. Prior to the issuance of a certificate of occupancy for the Proposed
13 Development a letter from the BMMA confirming the same shall be provided to the
14 Town.

15 4. In addition to those restrictive covenants required in Paragraph 3 all of the
16 Developer’s obligations set forth in this Agreement that will extend beyond completion of the
17 Proposed Development shall be set forth in one or more restrictive covenants to be executed by
18 the Developer and the Town and recorded in the real property records of the Clerk and Recorder
19 of Summit County, Colorado. The form of the restrictive covenants shall be acceptable to the
20 Developer’s counsel and the Town Attorney, and the covenants shall not be subordinate to any
21 prior lien or encumbrance of any kind, except the lien of the general property taxes for the year
22 in which the covenants are executed.

23 5. Pursuant to Subsection 9-1-19-3912 of the Town’s Development Code, the Town’s
24 Planning Commission is hereby authorized to review and approve, by February 15, 2020 and
25 subject to compliance with all other applicable development policies of the Town, an application
26 for the Permit allowing for the additional density and other terms and conditions provided for in
27 this Agreement. If such approval is not obtained by February 15, 2020 this Agreement shall be
28 null and void.

29 6. Subject to the Department’s receipt of adequate assurances of or security for
30 completion of the authorized infrastructure improvements or return of the Property generally to
31 the condition it was in before the commencement of any work, the Department, after final
32 approval of the Permit, is hereby authorized to permit the demolition of Administration Facilities
33 and the excavation for and construction of infrastructure improvements, including, but not
34 limited to, construction of storm water management facilities, relocation of utilities, and site
35 excavation, after issuance of the Permit but before issuance of a building permit.

36 7. Except as provided in Section 24-68-105, C.R.S., and except as specifically provided
37 for herein, the execution of this Agreement shall not preclude the current or future application of
38 municipal, state or federal ordinances, laws, rules or regulations to the Property (collectively,
39 “**laws**”), including, but not limited to, building, fire, plumbing, engineering, electrical and
40 mechanical codes, and the Town’s Development Code, Subdivision Standards and other land use
41 laws, as the same may be in effect from time to time throughout the term of this Agreement.

1 Except to the extent the Town otherwise specifically agrees, any development of the Property
2 shall be done in compliance with the then-current laws of the Town.

3 8. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of
4 the Town to adopt or amend any Town law, including, but not limited to the Town's: (i)
5 Development Code, (ii) Master Plan, (iii) Land Use Guidelines and (iv) Subdivision Standards.

6 9. Prior to any action against the Town for breach of this Agreement, Developer shall
7 give the Town a sixty (60) day written notice of any claim by the Developer of a breach or
8 default by the Town, and the Town shall have the opportunity to cure such alleged default within
9 such time period.

10 10. The Town shall not be responsible for and the Developer shall have no remedy
11 against the Town if the development of the Property is prevented or delayed for reasons beyond
12 the control of the Town.

13 11. Actual development of the Property shall require the issuance of such other and
14 further permits and approvals by the Town as may be required from time to time by applicable
15 Town ordinances.

16 12. No official or employee of the Town shall be personally responsible for any actual or
17 alleged breach of this Agreement by the Town.

18 13. Developer agrees to indemnify and hold the Town, its officers, employees, insurers,
19 and self-insurance pool, harmless from and against all liability, claims, and demands, on account
20 of injury, loss, or damage, including without limitation claims arising from bodily injury,
21 personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind
22 whatsoever, which arise out of or are in any manner connected with such benefits under this
23 Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be
24 caused in whole or in part by, the negligence or wrongful intentional act or omission of
25 Developer; any subcontractor of Developer, or any officer, employee, representative, or agent of
26 Developer or of any subcontractor of Developer, or which arise out of any worker's
27 compensation claim of any employee of Developer, or of any employee of any subcontractor of
28 Developer; except to the extent such liability, claim or demand arises through the negligence or
29 intentional act or omission of Town, its officers, employees, or agents. Developer agrees to
30 investigate, handle, respond to, and to provide defense for and defend against, any such liability,
31 claims, or demands at the sole expense of the Developer. Developer also agrees to bear all other
32 costs and expenses related thereto, including court costs and attorney's fees.

33 14. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall
34 not affect or impair the validity, legality or enforceability of the remaining provisions of the
35 Agreement.

36 15. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,
37 Colorado Revised Statutes, as amended.

1 16. No waiver of any provision of this Agreement shall be deemed or constitute a waiver
2 of any other provision, nor shall it be deemed to constitute a continuing waiver unless expressly
3 provided for by a written amendment to this Agreement signed by both Town and Developer;
4 nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent
5 default or defaults of the same type. The Town’s failure to exercise any right under this
6 Agreement shall not constitute the approval of any wrongful act by the Developer or the
7 acceptance of any improvements.

8 17. This Agreement shall be binding upon and inure to the benefit of Town and
9 Developer, and their successors and assigns.

10 18. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit
11 County, Colorado and shall run with title to the Property.

12 19. Nothing contained in this Agreement shall constitute a waiver of the Town’s
13 sovereign immunity under any applicable state or federal law.

14 20. Personal jurisdiction and venue for any civil action commenced by either Party to this
15 Agreement shall be deemed to be proper only if such action is commenced in District Court of
16 Summit County, Colorado. Developer and Town expressly waive their right to bring such action
17 in or to remove such action to any other court, whether state or federal. **BOTH PARTIES FURTHER**
18 **WAIVE THE RIGHT TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET OR CONSTRUE THIS**
19 **AGREEMENT.**

20 21. Any notice required or permitted hereunder shall be in writing and shall be sufficient
21 if personally delivered or mailed by certified mail, return receipt requested, addressed as follows:

22 If to the Town:

23
24 Rick G. Holman, Town Manager
25 Town of Breckenridge
26 P.O. Box 168
27 Breckenridge, CO 80424

28
29 With a copy (which
30 shall not constitute
31 notice to the Town) to:

32
33 Timothy H. Berry, Esq.
34 Town Attorney
35 P.O. Box 2
36 Leadville, CO 80461

37
38 If to the Developer:
39

1 Ricardo Dunin
2 LH Mountain Ventures, LLC
3 4218 NE 2nd Avenue, 2nd Floor
4 Miami, FL 33137
5

6 With a copy (which
7 shall not constitute
8 notice) to:
9

10 Jessica Wasserstrom
11 Lionheart Capital, LLC
12 4218 NE 2nd Avenue, 2nd Floor
13 Miami, FL 33137
14

15 John L. Palmquist, Esq.
16 GC Legal Strategies
17 2520 S. St. Paul Street
18 Denver, CO 80210
19

20 Thomas J. Ragonetti, Esq.
21 Otten Johnson Robinson Neff + Ragonetti PC
22 Suite 1600
23 950 17th Street
24 Denver, CO 80202
25

26 Notices mailed in accordance with the provisions of this paragraph shall be deemed to have been
27 given upon delivery. Notices personally delivered shall be deemed to have been given upon
28 delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the
29 Colorado Rules of Civil Procedure for service of civil process.
30

31 22. This Agreement constitutes the entire agreement and understanding between the
32 Parties relating to the subject matter of this Agreement and supersedes any prior agreement or
33 understanding relating to such subject matter.

34 23. This Agreement shall be interpreted in accordance with the laws of the State of
35 Colorado without regard to principles of conflicts of laws.

36 IN WITNESS WHEREOF, the Town and the Developer have executed this Agreement
37 as of the date first above set forth.
38

39 [SIGNATURE AND ACKNOWLEDGEMENT PAGES FOLLOW]
40

TOWN OF BRECKENRIDGE

By: _____
Rick G. Holman, Town Manager

ATTEST:

Helen Cospolich, CMC,
Town Clerk

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STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2019
by Rick G. Holman as Town Manager and Helen Cospolich, CMC, as Town Clerk of the Town
of Breckenridge.

Witness my hand and official seal.
My commission expires: _____

Notary Public

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LH MOUNTAIN VENTURES, LLC
a Colorado limited liability company

By: LIONHEART MANAGEMENT, LLC,
a Florida limited liability company,
its Managing Member

By: OZ HOLDINGS OF MIAMI, LLC,
a Florida limited liability company,
its Managing Member

By: _____

Name: Ophir Sternberg
Title: Managing Member

STATE OF FLORIDA)
) ss.
COUNTY OF DADE)

The foregoing was acknowledged before me this _____ day of _____, 2019
by Ophir Sternberg as the Managing Member of Oz Holdings of Miami, LLC, a Florida limited
liability company, as the Managing Member of Lionheart Management, LLC, a Florida limited
liability company, as the Managing Member of LH MOUNTAIN Ventures, LLC, a Colorado
limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public



Memo

To: Breckenridge Town Council Members
From: Town Staff
Date: 6/5/2019
Subject: Public Projects Update

Fiber9600

Schedule: The contractor, Peak Communications, has been progressing with trenching on the Rec Path and downtown core over the past two weeks. It is anticipated that all work in the core and Rec Path will be completed on schedule and re-opened prior to July 1st. In the coming weeks, work will begin on French Street and Reiling Road. Traffic impacts will be limited, with one-lane road configurations with flagging, as well as short detours when necessary to facilitate the work.

Ice Arena Locker Room Addition

Schedule: Construction has been progressing on the locker room additions and new offices at the Ice Arena. Recently, the contractor completed excavation of existing fill (material was unsuitable for the new structure), backfill, and connection to existing utilities for the new locker rooms. At the office additions, demolition work has been completed and steel columns, beams, and joists have been installed above the main entrance and pro shop. In the next couple weeks, the contractor will place the concrete foundations for the locker rooms and also install steel decking and concrete slabs for the office additions.

The precipitation received the last few weeks made for difficult working conditions on the building excavation and backfill, but the contractor was able to work through the weather and remain on schedule for a final completion date by November 2019. The main entrance to the Ice Arena will remain closed to accommodate the construction of the office addition, but is anticipated to be reopened in July. The remainder of the facility will remain open throughout construction.

Budget:

There have been several minor change orders to the project, due to unforeseen conditions found after demolition. These change orders include: undermining beneath existing foundations which will require concrete to be pumped beneath the footer, replacement of a damaged water valve, replacement of damaged floor drains, and existing roof leaks. The costs of these changes will be covered from the project contingency and are not anticipated to affect the project budget.

Project Funding	
CIP Budget	\$2,000,000
2019 Supplemental Appropriation	\$300,000
Total Budget	\$2,300,000



The excavation and backfill beneath the new foundations and slab has been completed at the northwest corner of the Ice Arena.



Steel columns, beams, and bar joists have been installed above the pro shop for one of the new offices. The existing ceiling at the top of the picture will be removed to create the office space.

Rec Center Outdoor Hot Tub Replacement

Schedule: The outdoor hot tub at the Breckenridge Recreation Center will be closed beginning July 1st to allow for demolition of the existing 28-year old tub and the surrounding concrete slab. The existing tub has reached the end of its useful life and the surrounding hardscape will also need to be replaced to make way for new hot tub feeder lines and radiant in-ground heat. As designed, the new outdoor hot tub will be larger (designed to hold 16 instead of 8 bathers), and will be constructed of stainless steel, which has a longer lifespan and is easier to clean and maintain. Construction for the outdoor tub is expected to last six weeks and during that time, the outdoor hot tub area will remain closed to the public. The indoor hot tub will remain open.

Budget: The cost for the hot tub replacement is \$268,000. In 2018, \$100,000 was allocated for the project in the CIP. The remaining \$168,000 will be drawn from the funds allocated for the Recreation Center renovation, which will exhaust the remaining renovation budget spending authority.

Pool Area Lights and Window Replacement

Schedule: The south-facing exterior pool windows, frames, doors, and sills are scheduled to be replaced later in July. This project was part of the 2018 CIP for window and light replacement in the pool, but staff was unable to secure a contractor to complete the window work until this summer. Staff does not anticipate service interruptions from this work.

Budget: The cost for this work is \$240,000. Funding for the project will be split between the original capital funds for light and window replacement and the facility fund.

2019 Concrete Replacement & Additions

As part of the concrete project, the French Street Bridge parapet wall is being repaired this week. The sidewalk and driveway adjacent to the turf field have been finished and landscaping has also been replaced. This will provide access to Parks vehicles, as well as pedestrians. Work at other locations throughout town will continue into June.



The new pedestrian path along the Turf field.



Work on the French Street Bridge.

2019 Asphalt Overlay

Asphalt overlay has been completed in all of the contract locations. Shouldering will be the last phase of work and should be wrapped up by the second week in June. Currently, temporary striping is in place on North Main Street, Ski Hill Road, and French Gulch Road. The Wellington Lot, the Courthouse Lot, and Ridge Street have all been striped.



Ski Hill Road improvements.

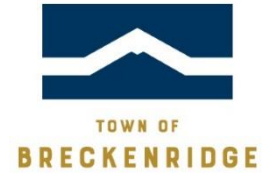


French Gulch Road resurfaced.

CIP projects with no updates:

- Skate Park Pool Coping Repair (updated 5-28-19)
- McCain Property Improvements – School Parcel
- Coyne Valley Pedestrian Underpass
- Coyne Valley River Crossing
- Sand Storage Structure
- Infrastructure Improvements – Culverts
- SH9 Property Improvements – Landscape Berm
- Softball Field LED Lights

Memo



To: Breckenridge Town Council Members
From: Shannon Haynes, Assistant Town Manager
Date: 6/5/2019
Subject: Breck Forward Update

Below is an update on the South Gondola Lot parking structure, as well as May transit ridership numbers.

S. Gondola Parking Structure Design Update (6-11-19)

The design team, led by Walker Consultants, and the TOB working group have been working on a proposed site layout, circulation, and establishing an architectural character for the parking structure project.

The current site plan for the project includes 255 surface parking spaces and a 708 space parking structure for a total of 963 spaces (413 net gain). This space count is preliminary and may vary as the design is further developed. The parking structure is two stories on the east near the river and has an additional partial level on the west to stand at three stories toward Park Avenue. The site plan also includes a schematic roundabout, which will be constructed as a subsequent phase of the project, as required for CDOT approval. The changes to the transit circulation are also schematic in nature and are not included in the parking structure project.

Pedestrian circulation is intended to be north/south along the east side of the parcel, connecting to Watson Ave, Ski Hill Road, and across the pedestrian bridge to the Main Street Alley. The plaza renderings illustrate the ability to connect pedestrians from the parking structure and plaza to the pathway between Town Hall and the Professional Building. An enhanced river connection, improved Rec Path, and new pedestrian bridge toward Main Street are anticipated to be included in future projects.

The design team has worked to advance the architectural design of the parking structure to a programmatic level. The alternative selected by the team leans toward historic interpretation and celebrates the mining history of the site. The historic photos show that this site had larger industrial structures and a train depot.

On the east elevation of the structure, which faces the downtown, the historic Brown Hotel's outbuilding was the inspiration for the character of restroom building. On the north side facing the gondola, we are showing an enhanced façade, featuring adaptations of the A frame found in the historic photos at each of the columns. These elements give depth to the façade and tie into the trim boards on the elevators. The cross bracing idea came imagery of mining shafts and the concept continues on the west façade, using this as a device to create a truss expression at the ramp.

Staff looks forward to Council's input on the preliminary design concepts at the work session.

OPTION B: "MOVEMENT"

CONNECTION TO MAIN STREET: PEDESTRIAN & BIKE PATH CONNECTION TO SKI HILL



WATSON AVENUE

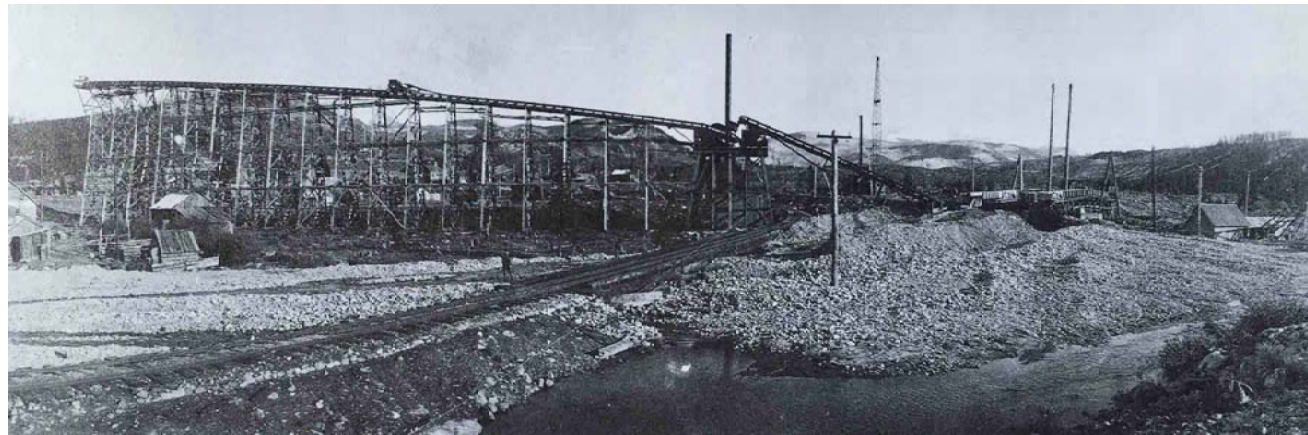
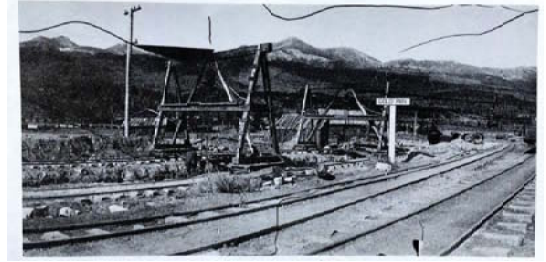
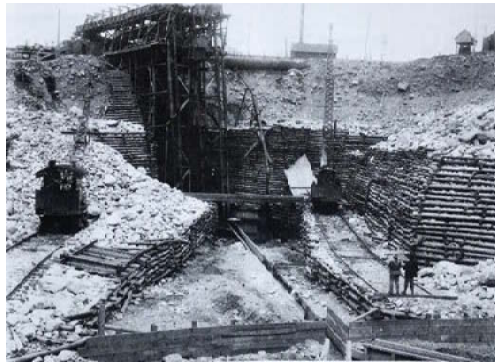
Character Imagery:



Legend:

- ① Pedestrian walkway
- ② Pedestrian and Bike path
- ③ Proposed Bridge ~150'
- ④ Plaza
- ⑤ Enhanced paving
- ⑥ Existing Bridge to Remain
- ⑦ Overhead Lighting
- ⑧ Stairs
- ⑨ Bathrooms
- ⑩ Overlook
- ⑪ Wayfinding/Trail Signage

HISTORIC AND PRECEDENT PHOTOS



5-27-19

SK-5

KOCHI|COVOTOS ARCHITECTS, PC

3457 RINGSBY COURT UNIT 223
DENVER CO 80216
303-733-9350



TOWN OF BRECKENRIDGE
PARKING STRUCTURE



PLAZA VIEW



5-27-19

SK-10

KOCHI|COVATOS ARCHITECTS, PC

3457 RINGSBY COURT UNIT 223
DENVER CO 80216
303.733.9350



TOWN OF BRECKENRIDGE
PARKING STRUCTURE

409 Main Street, Suite 207
P.O. Box 2320
Frisco, CO 80443
P 970.485.4478
www.norris-design.com


NORRIS DESIGN
Planning | Landscape Architecture | Branding



PLAZA VIEW



5-27-19

SK-11

KOCHI|COVATOS ARCHITECTS, PC

3457 RINGSBY COURT, UNIT 223
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303.750.9550



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VIEW FROM PARK AVENUE



5-27-19

SK-12

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303-733-9350



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WALKER
CONSULTANTS

VIEW FROM GONDOLA



5-27-19

SK-9

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303.733.9556



TOWN OF BRECKENRIDGE
PARKING STRUCTURE



VIEW FROM MAINSTREET



5-27-19

SK-8

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TOWN OF BRECKENRIDGE
PARKING STRUCTURE



OVERLOOK VIEW



5-27-19

SK-13

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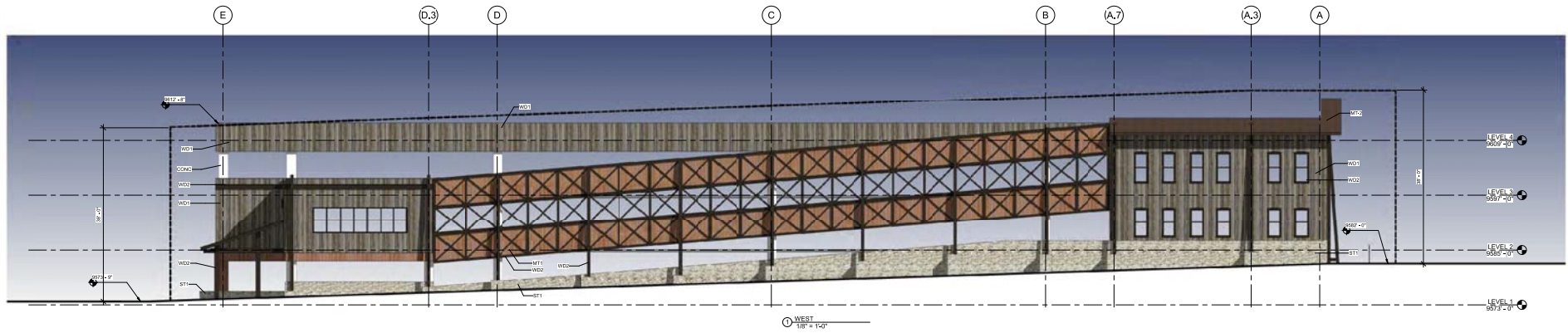
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DENVER CO 80216
303.733.9550



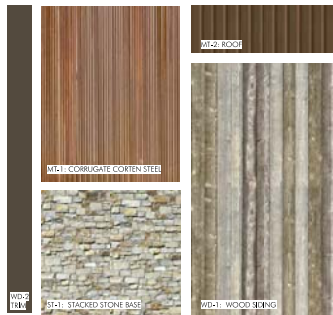
TOWN OF BRECKENRIDGE
PARKING STRUCTURE



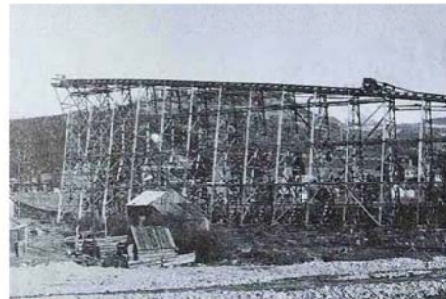
WEST ELEVATION



MATERIALS



PRECEDENTS



5-27-19

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DENVER CO 80216
303.760.9556



TOWN OF BRECKENRIDGE
PARKING STRUCTURE

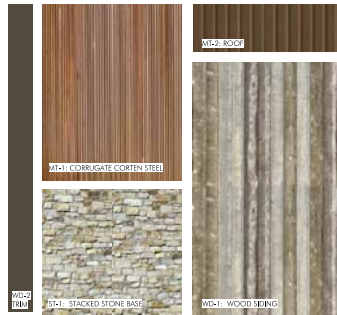


SK-3

EAST ELEVATION



MATERIALS



PRECEDENTS



5-27-19

SK-1

KOCH|COVATOS ARCHITECTS, PC

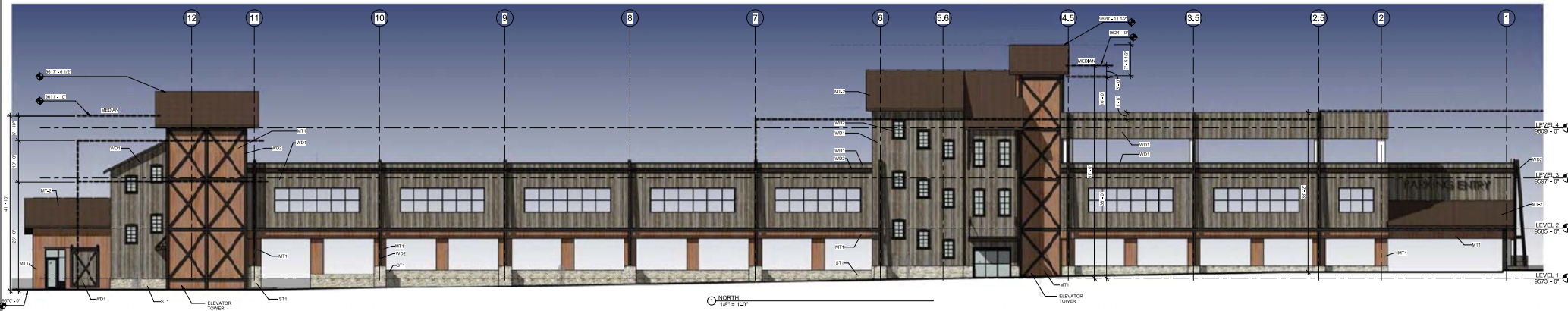
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DENVER, CO 80216
303.733.9556



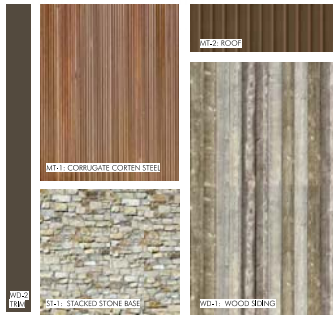
TOWN OF BRECKENRIDGE PARKING STRUCTURE



NORTH ELEVATION



MATERIALS



PRECEDENTS



5-27-19

SK-2

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DENVER CO 80216
303-730-7856



TOWN OF BRECKENRIDGE
PARKING STRUCTURE



NE STAIR CORE



5-27-19

SK-6

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DENVER CO 80216
303.733.9356



TOWN OF BRECKENRIDGE
PARKING STRUCTURE



NORTH VIEW



5-27-19

SK-7

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3457 RINGSBY COURT UNIT 223
DENVER CO 80216
303.730.9550



TOWN OF BRECKENRIDGE
PARKING STRUCTURE





DATE: June 3, 2019

TO: Breckenridge Town Council

CC: Rick Holman, Shannon Haynes, James Phelps, Mark Johnston, Jennifer Pullen

FROM: Free Ride

RE: Free Ride Ridership Numbers – May 2019

May ridership is up 39.5% over last May with 47,921 passengers! Year to date is up 17.7% compared to 2018. This is the 12th consecutive month of double digit growth for the Free Ride. Black route ridership is up 167% due to extended ski area operations. Due to a shortage in staff only one Trolley has been out since May 7th, which is the reason for ridership decrease. (YTD Totals include all routes for the year).

	2018		2019		Month		YTD	
	May Mthly	May YTD	May Mthly	May YTD	#'s	%	#'s	%
Black	5,329	21,561	14,229	35,948	8,900	167.0%	14,387	66.7%
Trolley	5,678	30,989	4,855	56,377	-823	-14.5%	25,388	81.9%
Purple	7,870	69,982	9,423	88,803	1,553	19.7%	18,821	26.9%
Special Event	0	6,322	0	9,820	0		3,498	55.3%
Gray	15,477	20,171	19,414	27,644	3,937	25.4%	7,473	37.0%
TOTAL	34,354	582,111	47,921	685,105	13,567	39.5%	102,994	17.7%

Memo



To: Breckenridge Town Council Members
From: Haley Littleton, Communications
Date: 6/6/2019
Subject: June Communications Report

Social Media:

- Instagram: 1,467 followers
- Twitter: 6,207, 63.6k tweet impressions, profile visits up 33%.
- Facebook: 9,717 followers (+202), post reach: 15k, video views up significantly, sponsored posts continue to gain good reach on events/campaigns.

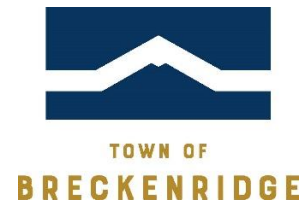
Campaigns:

- **Troll:** The committee continues to work on the messaging for Isak Heartstone before opening. The members are working on a signage package, talking points for all businesses, a potential postcard for visitors containing Leave No Trace information, and coordination for crowd management. All messaging focuses on the ease of alternative transportation to Isak Heartstone and encourages visitors to stay on the trail, pack out all trash, and keep their distance from wildlife.
- **Sustainability:** Staff created a new PSA for Comcast/BreckTV channels focused specifically on the new recycling signage and the coffee cup initiative. Staff is working with Jessie Burley and local coffee shops to promote the new Coffee Cup campaign and decrease recycling contamination.
- **Fiber9600:**
 - **ALLO Coordination:** Staff continues to work with ALLO to coordinate PR placement and outreach/marketing strategy. The Town will focus on general awareness of the project, education, and promoting ALLO as the service provider.
 - **Construction Messaging:** Staff has had face to face engagement regarding construction with Main and Ridge Street businesses, local bike shops, and French Street Residents. The Town will coordinate a meeting with the Wellington Neighborhood on construction impacts. A construction complaint form has been created that is facilitated by both ALLO and TOB. The Town is working with the Red, White & Blue PIO to solidify communication channels in the event of any future gas leaks.
 - **Press Announcement:** Staff hosted a press announcement. Video from the presentation will be sent to local, state, and national press contacts to highlight the Town's role as the first resort community to pursue a fiber network.
 - **General Awareness:** ALLO staff conducting Main Street sales/engagement reported that many business owners and employees had a general awareness of the project and are most interested in service options and pricing. Staff will work with ALLO on best ways to announce these options and prices when the time comes.
- **"CNN Wandermust":** A reporter from CNN will come to Town at the end of June to include Breckenridge in their "Wandermust" series. The feature will be focused on the gondola, dining options in Town, high alpine terrain, and electric bike tours through Craniologie/Pedegogo.

- **Transit Manager Recruitment** – We are doing research for this position to be sure we are competitive with salary.
- **Transit Summer Staffing** – We are short staffed and so the second Trolley has been removed until June. Recruitment has been rough due to housing and lifestyle issues concerning CDL Restrictions. TEI has been asked for assessment regarding staffing.
- **Parking Updates** – There will be an annual report for the June Council meeting. The I-70 coalition is working with an app designer on the “Gondola App” which is a carpooling app they would like to roll out next ski season. Part of this app requires they have designated spaces for them to park in at the resort. Looking at starting the SnowStang that will be ski area specific on Saturday and Sunday. Cost is estimated to be around \$42,000 per season. The ground lease for the parking structure has been signed. Fiber construction has started along the Recreation Path, Watson to Recreation Center.
- **Ridership** –So far, May ridership has increased 20% from last year mainly due to the Black Route since the Gondola is not running. Currently at 45,000 for May 2019 with the YTD close to 690,000.
- **New Grant Opportunities** – Applied for another NOLA Grant in May for more electric buses. We should hear in August and September on the award decision. A separate grant for Buses and Bus Facilities due at the end of June. The local match we have helps us get grants.
- **CASTA Conference Info** – Kenneth Symank, Diane Casciano, and Jennifer Pullen attended the CASTA Conference. Discussions over emergency preparedness and how would we use our assets in an emergency situation and who would be prepared to drive the busses in an emergency. Also, there are more manufacturers and more options in electric bus development. There is no new legislation coming up for Transit funding. There was an automated bus demo by Easy Mile. Discussions over using it on the Recreation Path in the winter while doing parking structure construction to help transport skier traffic.
- **Transit Master Plan Update** – The survey had over 400 responses! One big gap is that Summit Stage is not on Google Maps. The next meeting with TEI is on June 14, 2019.
- **Recommendations from TPAC** – It was recommended that glass recycling bins be added to select bus stop shelters. There is potential for maintenance/operational issues with this request. Currently we are researching funding for more money to support adding more glass recycling bins around town.

Committees*	Representative	Report Status
CAST	Mayor Mamula/ Erin Gigliello	No Meeting/Report
CDOT	Rick Holman	No Meeting/Report
CML	Rick Holman	No Meeting/Report
I-70 Coalition	Rick Holman	No Meeting/Report
Mayors, Managers & Commissioners	Mayor Mamula/ Rick Holman	No Meeting/Report
Liquor and Marijuana Licensing Authority	Helen Cospolich	No Meeting/Report
Summit Stage Advisory Board	Jennifer Pullen	Included
Police Advisory Committee	Chief Jim Baird	No Meeting/Report
CMC Advisory Committee	Rick Holman	No Meeting/Report
Recreation Advisory Committee	Scott Reid	No Meeting/Report
Workforce Housing Committee	Laurie Best	No Meeting/Report
Child Care Advisory Committee	Jennifer McAtamney	<i>Included as a separate agenda item</i>
Breckenridge Events Committee	Shannon Haynes	No Meeting/Report
Transit Advisory Committee	Jennifer Pullen	Included
Water Task Force	Gary Gallagher	No Meeting/Report
Communications	Haley Littleton	<i>Included as a separate attachment</i>

***Note:** Reports provided by the Mayor and Council Members are listed in the Council agenda.



Memo

To: Breckenridge Town Council Members
From: Shannon Haynes, Assistant Town Manager
Date: 6/5/2019
Subject: Breckenridge Events Committee

The Breckenridge Events Committee met on Wednesday, June 5th, 2019. Below you will find the minutes from that meeting, as well as a brief description of events currently under consideration or being processed by the SEPA committee.

Items of note:

- Breck Epic – Mike McCormack will attend the work session on June 11th to provide Council with a brief update on a possible Expo sponsorship opportunity.
- July 4th – At Council's recommendation BTO continues to look at possible music options between the BCA concert from 2pm to 4pm and the NRO concert from 8pm to 10pm. BTO staff contacted Breckenridge Music for possible options, but were unsuccessful. They will continue to look into the possibility of booking a local band.

Minutes
Breckenridge Events Committee
Wednesday, June 5th, 2019
Right event, right time, right result

Attending: Todd Rankin, Erin Gigliello, Sandy Metzger, Shannon Haynes, Janice Miller, Ken Miller, Chase Banachowski, Katie L'Estrange, Sarah Wetmore

Guests: Carrie Benefiel, Steve Costas, Suzanne Lifgren, Chelsea Roth, Lea Dreux, Rob Prescott. Mike Messeroff.

- I. Todd Rankin called the meeting to order at 9am.**
 - a No comments on the May 1st, 2019 meeting minutes.
 - b Todd opened the meeting by recognizing Sandy for her outstanding contribution to the community with her commitment to producing iconic Breckenridge events. Sandy has announced that she will be leaving the BTO to pursue new opportunities. Her last day will be Friday June 7th.

- II. Events Upcoming**
 - a Gold Panning Championship, June 14-16 – *Sandy*
 - Event preparations are complete. Sandy will be returning to assist with production.
 - b Bike to Work Day, June 26 – *Sandy*
 - Event preparations are complete. Hosting a free Pancake Breakfast 7am – 10 am in Blue River Plaza along with some onsite vendor activations. That evening BTO collaborates with BCA to host the Bike in Movie which doubles as a BTO Volunteer Appreciation Event.
 - c 4th of July – *Sandy*
 - Breck Music does not think they have enough time to produce a concert to fill the 5-6 period. Committee discussed whether there was a need to pursue the concert further. Some discussion from Town Council around rebranding the 4th of July around live music going forward.
 - Committee agreed that Sandy should pursue booking a local band if possible though not to consider it imperative.
 - Les Voyageurs & Les Oiseaux by Cedric Le Borgne – WAVE installation was held up in customs and did not make the event. BCA presenting new proposal to TC to fly the illuminated pieces in the already approved locations for a month. Period would encompass July 4th.

- III. General Updates and Discussions**
 - a Summer Events & Planned Fiber Construction – *Shannon*
 - Construction already underway in core of town. Five crews currently working in town and as of now running slightly ahead of schedule. Goal to be out of core of town by June 20th. Asphalt repair should start next week.
 - b Destination Management Plan
 - Community roll out of the DMP will happen during the BTO Annual Meeting, June 12th at the Speakeasy Theatre.
 - c Diminishing Events Sentiment – *New Standing Item*
 - Expecting business owners to feel the loss of Spartan in August. Committee will continue to monitor community sentiment around events.
 - With the impact of above average snowmelt and construction on activity availability, suggestion made to also look at visitor feedback around events. Welcome Center feedback - WAVE was good for filling the void created by inaccessible trails and activities for visitors.
 - d Event Sustainability/Responsible Tourism – *New Standing Item*
 - No update – will remain as standing agenda item.

- e Public Events Calendar
 - No update.
- IV. **Task Force Updates**
 - a Task Force updates removed as standing agenda items. Jessie Burley will provide quarterly sustainability updates.
- V. **Breck Epic – Shannon**
 - a Mike McCormack to address TC next Tuesday regarding potential sponsorship opportunity over expo piece of his event. Sponsor could be met with consternation from some in community – looking to present what that partnership could look like and vet TC’s thoughts/concerns.
 - Important to note that this interaction with TC is by design. Mike is very sensitive of not skipping over the BEC – doing so in this instance at TOB’s recommendation.
- VI. **SEPA Review – Sandy**
 - a SEPA agenda included in packet. Sandy noted that the new 90 Day out application deadline was working.
- VII. **Review Events**
 - a WAVE – BCA
 - Significant programming challenges – Les Voyageurs & Les Oiseaux held up in customs and thrown a curveball with weather during construction/set up.
 - Overall BCA very happy with impact from crowds. Attendance higher than anticipated Thursday and Sunday.
 - No issues with pedestrian crossing from Blue River Plaza to Washington.
 - Great feedback from committee around ‘Through the Blue 4.0 with cellist Russick Smith.
 - Discussion around event timing – gets dark late. Light installations more vibrant after dark. BCA’s goal to lean further into sound dimension of event for future programming.
- VIII. Review Agenda Items for next BEC Meeting July 3rd, 2019
 - a Breck EPIC Sponsorship
 - b Blue River Plaza – discussion what type of events are allowed, and direction going forward.
- IX. Meeting adjourned and 10am.

SEPA Approval & Review Meeting

June 4, 2019

11am-12pm @ Town Hall Lower Conference Room

- I.** Past Events Review
 - a. 4.27-5.27 Bud Light Beach Music Series
 - b. 5.18.19 Town Clean Up
 - c. 5.27.19 Memorial Day Commemoration
 - d. 5.30-6.02 Wave

- II.** Permits Awaiting Approval
 - a. 6.15.19 Car Show
 - b. 8.8.19 Theobald Award
 - c. 8.11-8.16.19 Breck Epic
 - d. 8.23-8.25 Hog Fest

- III.** Miscellaneous
 - a. Yoga on the Lawn
 - b. Breckenridge Marathon