TOWN OF
BRECKENRIDGE

Town Council Regular Meeting
Tuesday, February 25, 2020, 7:00 PM
Council Chambers
150 Ski Hill Road
Breckenridge, Colorado

I. CALL TO ORDER, ROLL CALL

II. APPROVAL OF MINUTES

A. TOWN COUNCIL MINUTES - FEBRUARY 11, 2020

III. APPROVAL OF AGENDA

IV. COMMUNICATIONS TO COUNCIL

A. CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

B. BRECKENRIDGE SKI RESORT UPDATE

V. CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILLS, SERIES 2020 - PUBLIC HEARINGS

1. *COUNCIL BILL NO. 2, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH SAINT JOHN THE BAPTIST EPISCOPAL CHURCH OF BRECKENRIDGE, A COLORADO NONPROFIT CORPORATION (100 South French Street)*
2. *COUNCIL BILL NO. 6, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH 203 BRIAR ROSE LLC, A COLORADO LIMITED LIABILITY COMPANY (203 Briar Rose Lane)*

VI. NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2020

1. *COUNCIL BILL NO. 7, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE BY AMENDING THE INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION, AND THE INTERNATIONAL ENERGY CONSERVATION CODE, 2018 EDITION*
2. *COUNCIL BILL NO. 8, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," CONCERNING ACCESSORY DWELLING UNITS*
3. *COUNCIL BILL NO. 9, SERIES 2020 - AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS*

B. RESOLUTIONS, SERIES 2020

1. *RESOLUTION NO. 5, SERIES 2020 - A RESOLUTION APPROVING A COMMUNITY SOLAR SUBSCRIPTION AGREEMENT WITH MOUNTAIN COMMUNITY SOLAR 1, LLC*
2. *RESOLUTION NO. 6, SERIES 2020 - A RESOLUTION APPROVING A PRE-DISASTER MITIGATION GRANT CONTRACT FOR THE TOWN'S GOOSE PASTURE TARN DAM PROJECT*
3. *RESOLUTION NO. 7, SERIES 2020 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND SUMMIT COUNTY GOVERNMENT CONCERNING THE PROJECT THOR MIDDLE MILE BROADBAND NETWORK*

C. OTHER

VII. PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS

B. EAST PEAK 8 HOTEL AND CUCUMBER GULCH PRESERVE PREVENTATIVE MAINTENANCE AREA (PMA) VARIANCE DE NOVO HEARING *(AVAILABLE ON THE TOWN OF BRECKENRIDGE WEBSITE)*

VIII. REPORT OF TOWN MANAGER AND STAFF

IX. REPORT OF MAYOR AND COUNCIL MEMBERS

A. CAST/MMC (MAYOR MAMULA)
B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BERGERON)
C. BRECKENRIDGE TOURISM OFFICE (MS. WOLFE)
D. BRECKENRIDGE HERITAGE ALLIANCE (MS. OWENS)
E. WATER TASK FORCE (MR. GALLAGHER)
F. BRECKENRIDGE CREATIVE ARTS (MR. GALLAGHER)
G. BRECKENRIDGE EVENTS COMMITTEE (MS. GIGLIELLO)
H. MT 2030 (MS. WOLFE)

X. OTHER MATTERS

XI. SCHEDULED MEETINGS

A. SCHEDULED MEETINGS FOR FEBRUARY, MARCH AND APRIL

XII. ADJOURNMENT

I) CALL TO ORDER, ROLL CALL

Mayor Mamula called the meeting of February 11, 2020 to order at 7:00pm. The following members answered roll call: Mr. Bergeron, Ms. Gigliello, Ms. Owens, Mr. Gallagher, Mr. Carleton, Ms. Wolfe and Mayor Mamula.

II) APPROVAL OF MINUTES

A) TOWN COUNCIL MINUTES – JANUARY 28, 2020

With no changes or corrections to the meeting minutes of January 28, 2020, Mayor Mamula declared they would stand approved as presented.

III) APPROVAL OF AGENDA

Ms. Haynes added a verbal vote to approve a letter of intent to purchase Pinewood I to the agenda, under New Business. Mayor Mamula declared the agenda approved as amended.

IV) COMMUNICATIONS TO COUNCIL

A) CITIZEN'S COMMENT (NON-AGENDA ITEMS ONLY; 3-MINUTE TIME LIMIT PLEASE)

Mayor Mamula opened Citizen's Comment.
Mr. Mark Waldman, owner of Summit Mountain Rentals, spoke about Senator Gardner's proposed bill to increase taxes on short term rentals, and a meeting he attended with Senator Gardner on Jan 30th, where the various counties present informed Senator Gardner about the potential impacts this bill would have on their local markets.

There were no additional comments and Citizen's Comment was closed.

B) BRECKENRIDGE TOURISM OFFICE UPDATE

Tessa Freed, Manager of the Welcome Center for the Breckenridge Tourism Office, stated the occupancy rate for winter season to date is 46.1%, which is down year over year, but the ADR has increased 4.5% year over year. Thank you to all who helped with the International Snow Sculpture event, particularly Transit, Streets, Breckenridge Police Department, Red, White and Blue Fire Department and the Breckenridge Ski Resort. The BTO's next event is Mardi Gras, with a bit of a different format from years past. She noted that this year they will doing a jazz band accompanied by a procession from Beaver Run down to the Riverwalk Center, instead of closing Main Street for a parade. They will also have a concert and New Orleans-style cuisine at the Riverwalk Center as part of the event. Ms. Freed stated they have received 904 responses to the Expectations Survey, and findings will be announced when tabulated. In addition, the BTO has launched a new website, with a better user experience, at www.gobreck.com.

V) CONTINUED BUSINESS

A) SECOND READING OF COUNCIL BILLS, SERIES 2020 - PUBLIC HEARINGS

1) COUNCIL BILL NO. 2, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH SAINT JOHN THE BAPTIST EPISCOPAL CHURCH OF BRECKENRIDGE, A COLORADO NONPROFIT CORPORATION (100 South French Street)

Mayor Mamula read the title into the minutes. Mr. Berry requested a continuance for the second reading until February 25, 2020, as a result of the conversation at the afternoon work session.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to continue COUNCIL BILL NO. 2, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH SAINT JOHN THE BAPTIST EPISCOPAL CHURCH OF BRECKENRIDGE, A COLORADO NONPROFIT CORPORATION to Feb 25, 2020. (100 South French Street). Ms. Gigliello seconded the motion.

The motion passed 7-0.

VI) NEW BUSINESS

A) FIRST READING OF COUNCIL BILLS, SERIES 2020

1) COUNCIL BILL NO. 6, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH 203 BRIAR ROSE LLC, A COLORADO LIMITED LIABILITY COMPANY (203 Briar Rose Lane)

Mayor Mamula read the title into the minutes. Mr. Truckey stated this ordinance would allow Mr. Kuhn to subdivide his lot, removing the restriction that doesn't allow the lot to be subdivided. He further stated it would allow vested rights to do the subdivision within the next six years, it would exempt him from receiving negative points for going over density on one of the two lots because of an accessory unit, and he would receive fee waivers for the permit and public improvement fees, in regards to the accessory apartment. In exchange, Mr. Kuhn would allow a deed restriction for workforce housing to be put on a unit he owns at Gold Camp Condominiums, he would construct an accessory apartment to be used for workforce housing, and he would dedicate a trail easement that would be along the Klack-Placer trail behind the property. The accessory apartment size is being changed to 500-700 square feet.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve COUNCIL BILL NO. 6, SERIES 2020 - AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH 203 BRIAR ROSE LLC, A COLORADO LIMITED LIABILITY COMPANY (203 Briar Rose Lane). Mr. Gallagher seconded the motion. Mr. Carleton stated he had an issue with the fees being waived, and wants to avoid double dipping. He further stated he likes the idea of the project, but not of waiving the fees. Mayor Mamula also stated that he doesn't like the idea of waiving the development fees. Ms. Gigliello stated she did not recall seeing the request for fee waivers in the memo, and asked that they be specified. Ms. Wolfe wanted to make sure they are being consistent with past decisions. Mayor Mamula stated that he thinks development agreements should be adhered to, and anything extra should be paid for by the applicant. Mr. Truckey stated he will come back with what he thinks the fees will be and will present two options, with and without fees, but both without waiving water fees.

The motion passed 6-1. Mr. Carleton voted no.

B) RESOLUTIONS, SERIES 2020

1) RESOLUTION NO. 2, SERIES 2020 - A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2019 TOWN BUDGET

Mayor Mamula read the title into the minutes. Mr. Waldes stated there are two changes to the 2019 budget plan. A few of the larger items of note, is the purchase of the Breckenridge Professional Building, the grant revenue and the expenses for the purchase of two electric buses, and the continued funding of the fiber project, Fiber9600.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 2, SERIES 2020 - A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2019 TOWN BUDGET. Mr. Carleton seconded the motion.

The motion passed 7-0.

2) RESOLUTION NO. 3, SERIES 2020 - A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2020 TOWN BUDGET

Mayor Mamula read the title into the minutes. Mr. Waldes stated this resolution involves the rolling over of some money from the 2019 budget to the 2020 budget, for some projects that were not completed in 2019, and those include the town-wide key system, Solarize the Summit, and some acquisitions for the Open Space fund.

Mayor Mamula opened the public hearing.

There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 3, SERIES 2020 - A RESOLUTION MAKING SUPPLEMENTAL APPROPRIATIONS TO THE 2020 TOWN BUDGET. Mr. Gallagher seconded the motion.

The motion passed 7-0.

3) RESOLUTION NO. 4, SERIES 2020 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR INTERCOUNTY COMMUTER TRANSIT SERVICES FOR PARK COUNTY

Mayor Mamula read the title into the minutes. Mr. Berry stated this resolution would approve the Intergovernmental Agreement between the Town and the County, with respect to Park County commuter transit.

Mayor Mamula opened the public hearing.
There were no comments and the public hearing was closed.

Mr. Bergeron moved to approve RESOLUTION NO. 4, SERIES 2020 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR INTERCOUNTY COMMUTER TRANSIT SERVICES FOR PARK COUNTY. Ms. Wolfe seconded the motion.

The motion passed 7-0.

C) OTHER

1) LETTER OF INTENT TO PURCHASE PINEWOOD I

Ms. Rex stated the other owner of Pinewood Village I would like to sell his share, and the Town's Deed restriction would then be at risk, so staff would like a motion to give Town Manager Holman permission to sign a letter of intent with Corum,Real Estate Group to insure that we keep the affordability deed restrictions in place, in perpetuity.

Mr. Bergeron moved to approve a MOTION FOR A LETTER OF INTENT WITH CORUM REAL ESTATE GROUP, TO BE SIGNED BY TOWN MANAGER HOLMAN, TO PURCHASE PINEWOOD I. Mr. Carleton seconded the motion.

The motion passed 7-0.

VII) PLANNING MATTERS

A) PLANNING COMMISSION DECISIONS

Planning Commission Decisions were approved as presented.

VIII) REPORT OF TOWN MANAGER AND STAFF

Mr. Holman stated they had nothing to report.

IX) REPORT OF MAYOR AND COUNCIL MEMBERS

A. Cast/MMC

Mayor Mamula stated he went to the Outdoor Retailers Show. He stated the group talked about sustainability in small communities and what different municipalities are doing for that initiative.

B. Breckenridge Open Space Advisory Committee
Mr. Bergeron stated there was no meeting.

C. Breckenridge Tourism Office
Ms. Wolfe stated there was no additional update.

D. Breckenridge Heritage Alliance
Ms. Owens stated the meeting is tomorrow.

E. Breckenridge Creative Arts
Mr. Gallagher stated there was no update. Mayor Mamula mentioned that it is nice to see the new BCA Director, Matt, in attendance.

F. Breckenridge Events Committee
Ms. Gigliello stated there was no further update, other than tonight's update by the Breckenridge Tourism Office.

G. MT 2030
Ms. Wolfe stated that we will be soon be sending out "Save the Dates" for Mountain Town 2030.

X) OTHER MATTERS

Ms. Gigliello brought up a couple of items:
1) It was mentioned in the work session that participation in the County slash program seems to be from full-time residents. Ms. Gigliello asked what second homeowners do with their slash, and how can we encourage them to take care of their slash?
2) In regard to development agreements, Ms. Gigliello asked if Council could receive a table showing what is being requested, what the Town is getting in exchange, and detailing what has changed from the last time so they can easily see how it has changed, or evolved. Another column would be ideal, with the precedent set/followed, for consistency.

Mr. Carleton stated he was approached regarding AA meetings, as Father Dyer Church is discontinuing them and St. John's Church will be closed for construction. He asked if the Town could help find a space for them to use? Mr. Holman said he's sure we could help, and waive the fees. He said staff will help set it up.

Ms. Owens asked about allowing dogs on Town buses to encourage ridership. Ms. Wolfe asked if the County still allows it, and they do. Mr. Holman stated Town staff will look into it and get back to Council.

XI) SCHEDULED MEETINGS

A) SCHEDULED MEETINGS FOR FEBRUARY AND MARCH

XII) ADJOURNMENT

With no further business to discuss, the meeting adjourned at 7:46pm. Submitted by Tara Olson, Deputy Town Clerk.

ATTEST:

_____ _____

Helen Cospolich, CMC, Town Clerk Eric S. Mamula, Mayor

Memo

TOWN OF
BRECKENRIDGE

To:	Town Council
From:	Jeremy Lott, AICP, Planner II
Date:	February 19, 2020 for meeting of February 25, 2020
Subject:	Second Reading: Saint John the Baptist Episcopal Church Development Agreement

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This item came before the Council as a Second Reading at the February 11 meeting but was moved to February 25. At this meeting the Applicant requested a waiver of points for some policies and eligibility of points for others. Staff is still working with the applicant to come up with a finalized version of the Development Agreement and requests that this be continued until March 24, 2020.

Memo

TOWN OF BRECKENRIDGE

To: Town Council

From: Chapin LaChance, AICP

Planner II, Community Development Dept.

Date: 2/19/2020, for the meeting of 2/25/2020

Subject: Second Reading of proposed Development Agreement between the Town of Breckenridge and Dennis Kuhn (203 Briar Rose LLC) for re-subdivision of 203 Briar Rose Lane (Lot 2, Block, 1, Weisshorn Subdivision Filing No. 1)

Dennis Kuhn proposes a Development Agreement regarding subdivision of his property at 203 Briar Rose Lane, which the Council has reviewed at a Work Session on 11/12/2019 and at a first reading on 2/11/2020. Mr. Kuhn proposes to subdivide the lot into two (2) equally sized lots, and construct a single family residence on each lot, one with an accessory apartment. The subdivision of the property would exceed the maximum 2:1 lot depth to width ratio requirement per the Town Code Subdivision Standards.

Staff Analysis

Changes since the first reading, as well as an outline of all the requests and public benefits proposed and how they have changed through the Development Agreement review process, are included in the attached chart.

Council Action

Approval of a Development Agreement is entirely at the discretion of the Council. Staff finds that the proposal enables the Town to attain substantial public benefits that are not otherwise required by the Development Code, and recommends the Council approve the Development Agreement on second reading. Staff will be available at the Work Session to answer any questions the Council may have.

Development Agreement Process for 203 Briar Rose LLC (Kuhn)			
Topic of Conversation	**Work Session**	**First Reading**	**Second Reading**
	November 12, 2019	February 11, 2020	February 25, 2020
Subdivision Standard waiver	Proposed: Exempt the subdivision of the lot from the maximum 2:1 lot depth to width ratio requirement. Council OK	No changes	No changes
Extended vesting	N/A	Proposed: Extend the vested property rights period for the Development Agreement from three (3) years to six (6) years. Council OK	No changes
Density	N/A	Proposed: Exempt the new lot with a deed-restricted accessory apartment from negative points for the main residence and accessory apartment exceeding the Land Use Guidelines recommended above-ground density of 5 UPA, provided that the combined above ground density of both new lots does not exceed 5 UPA. Council OK	No changes

Fee waivers	Proposed: Waive certain Planning Division fees (approx. $16,000): • Development Agreement application fee • Development Permit application fee • Subdivision Permit application fee	No changes	Waive all Building Division permit fees for the accessory apartment (approx. $2,700 - $5,000): Building Permit, Mechanical Permit, Electrical Permit, Plumbing Permit. <u>Staff analysis:</u> Building Division fees have typically been waived for employee housing projects in the past, so staff supports the Building Division fees waiver for the accessory apartment. Staff estimates these fees will range from approximately $2,700 to $5,000 for a 700 sq. ft. accessory apartment built in 2020, and could be more or less depending on construction valuation at the time of construction. Clarification has been added that there are not any other fees waived in association with the Development Agreement.
Public Benefits			
On-site Employee Housing	Proposed: Construct and deed-restrict an onsite accessory apartment for employee housing. Minimum size specified as 800 sq. ft. Council OK	Minimum size reduced to 700 sq. ft. Council OK	Proposed: Minimum size reduced to 500 sq. ft. <u>Staff analysis:</u> Staff does not have any concerns with a reduction in the minimum size of the accessory apartment from 700 sq. ft. to 500 sq. ft. The minimum size of an employee housing unit is 250 sq. ft. per Town Code.

Off-site employee housing		Proposed: Deed-restrict the existing Gold Camp Condos Unit B-59 for employee housing within two (2) months of the effective date of the Development Agreement. Council OK	No changes
Public Trail Easement	Proposed as 23 ft. Open Space dedication	Changed to 30 ft. Public Trail Easement dedication. Council OK	No changes
Other			
Total Density	N/A	N/A	Clarification added that Lot 2A and 2B shall have unlimited below ground density, because the Land Use District #12 Guidelines only regulate above ground density.

FOR WORKSESSION/SECOND READING – FEB. 25

NO CHANGE TO ORDINANCE FROM FIRST READING

CHANGES TO DEVELOPMENT AGREEMENT ARE MARKED

COUNCIL BILL NO. 6

Series 2020

AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT WITH
203 BRIAR ROSE LLC, A COLORADO LIMITED LIABILITY COMPANY
(203 Briar Rose Lane)

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Findings. The Town Council of the Town of Breckenridge finds and determines as follows:

A. 203 Briar Rose LLC, a Colorado limited liability company ("**Briar Rose**") owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

Lot 2, Block 1, Weisshorn Subdivision Filing No. 1; also known as 203 Briar Rose Lane, Breckenridge, Colorado 80424

("**Property**").

B. Briar Rose proposes to resubdivide the Property into two (2) equally sized lots to be denominated as Lot 2A and Lot 2B.

C. Briar Rose also proposes to construct on Lot 2B an accessory apartment.

D. Briar Rose's proposal to resubdivide the Property does not comply with the Town's Subdivision Standards (Chapter 2 of Title 9 of the Breckenridge Town Code) because it would violate Section 9-2-4-5C2 which requires that the depth of a platted lot shall not be greater than twice the lot width.

E. Briar Rose's proposed density for the Property does not comply with the recommendations of the Town's Development Code (Chapter 2 of Title 9 of the Breckenridge Town Code) , because it would exceed the acceptable above ground density of 5.0 Units Per Acre according to Section 9-1-19-3A, "Policy 3 (Absolute) Density/Intensity" and the Land Use Guidelines for Land Use District 12.

F. A development agreement is necessary in order to accommodate the subdivision of the Property proposed by Briar Rose.

G. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

H. The vested rights period for a development agreement is normally three (3) years. As used in this Agreement, the term "vested property rights period" shall have the meaning, purpose, and effect afforded such term in the Town's Development Code[1] and Subdivision Standards, and applicable state law.

I. The Town Council is authorized to provide that a development agreement has a vested property rights period longer that than three (3) years when warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions.

J. The commitments proposed by Briar Rose in connection with this Agreement are set forth hereafter, and are found and determined by the Town Council to be adequate.

K. The Town Council has received a completed application and all required submittals for a development agreement ("**Application**"); had a preliminary discussion of the Application and this Agreement; determined that it should commence proceedings for the approval of this Agreement without referring it to the Town's Planning Commission; and, in accordance with the procedures set forth in Section 9-9-10C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

L. A proposed development agreement between the Town and the Briar Rose has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto and incorporated herein by reference ("**Development Agreement**").

M. The Town Council has reviewed the proposed Development Agreement.

N. The approval of the proposed Development Agreement is warranted in light of all relevant circumstances.

O. The procedures to be used to review and approve a development agreement are provided in Chapter 9 of Title 9 of the Breckenridge Town Code. The requirements of such Chapter have substantially been met or waived in connection with the approval of the proposed Development Agreement and the adoption of this ordinance.

Section 2. Approval of Development Agreement. The Development Agreement between the Town and 203 Briar Rise LLC of Breckenridge, a Colorado limited liability company (**Exhibit "A"** hereto), is approved, and the Town Manager is authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 3. Notice of Approval. The Development Agreement shall contain a notice in the form provided in Section 9-9-13 of the Breckenridge Town Code. In addition, a notice in

compliance with the requirements of Section 9-9-13 of the Breckenridge Town Code shall be published by the Town Clerk one time in a newspaper of general circulation in the Town within fourteen days after the adoption of this ordinance. Such notice shall satisfy the requirement of Section 24-68-103, C.R.S.

Section 4. Police Power Finding. The Town Council finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. Authority. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 6. Effective Date. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2020. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE

By:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

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

DEVELOPMENT AGREEMENT
(Including Extended Vested Property Rights)

This Development Agreement ("**Agreement**") is made as of the ____ day of _____, 2020 ("**Effective Date**") between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("**Town**") and 203 BRIAR ROSE LLC, a Colorado limited liability company ("**Briar Rose**"). Town and Briar Rose are sometimes collectively referred to in this Agreement as the "**Parties**," and individually by name or as a "**Party**."

Recitals

A. Briar Rose owns the following described real property in the Town of Breckenridge, Summit County, Colorado:

Lot 2, Block 1, Weisshorn Subdivision Filing No. 1; also known as 203 Briar Rose Lane, Breckenridge, Colorado 80424

("**Property**").

B. Briar Rose proposes to resubdivide the Property into two (2) equally sized lots to be denominated as Lot 2A and Lot 2B.

C. Briar Rose also proposes to construct on Lot 2B an accessory apartment as more fully set forth hereafter.

D. Briar Rose's proposal to resubdivide the Property does not comply with the Town's Subdivision Standards[1], because it would violate Section 9-2-4-5C2 which requires that the depth of a platted lot shall not be greater than twice the lot width.

E. Briar Rose's proposed density for the Property does not comply with the recommendations of the Town's Development Code[2], because it would exceed the acceptable above ground density of 5.0 Units Per Acre according to Section 9-1-19-3A, "Policy 3 (Absolute) Density/Intensity" ("**Policy 3A"**) and the Land Use Guidelines for Land Use District 12.

[1] Chapter 2 of Title 9 of the Breckenridge Town Code.
[2] Chapter 1 of Title 9 of the Breckenridge Town Code.

F. A development agreement is necessary in order to accommodate the subdivision of the Property proposed by Briar Rose.

G. Pursuant to Chapter 9 of Title 9 the Breckenridge Town Code the Town Council has the authority to enter into a development agreement.

H. The vested rights period for a development agreement is normally three (3) years. As used in this Agreement, the term "vested property rights period" shall have the meaning, purpose, and effect afforded such term in the Town's Development Code[2] and Subdivision Standards, and applicable state law.

I. The Town Council is authorized to provide that a development agreement has a vested property rights period longer that than three (3) years when warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of the development, economic cycles, and market conditions.

J. The commitments proposed by Briar Rose in connection with this Agreement are set forth hereafter, and are found and determined by the Town Council to be adequate.

K. The Town Council has received a completed application and all required submittals for a development agreement ("**Application**"); had a preliminary discussion of the Application and this Agreement; determined that it should commence proceedings for the approval of this Agreement without referring it to the Town's Planning Commission; and, in accordance with the procedures set forth in Section 9-9-10C of the Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

Agreement

1. Subject to the provisions of this Agreement, the Town's Planning Commission[3] is hereby authorized to review and approve Briar Rose's Class B subdivision permit application to resubdivide the Property into two (2) equally sized lots, Lot 2A and Lot 2B ("**Subdivision Permit Application**") and a Class B-Major Development Permit to construct improvements on Lot 2A and Lot 2B ("**Development Permit Application**").

2. The Subdivision Permit Application shall not be denied solely on the basis that it fails to meet the requirements of Section 9-2-4-5C2 of the Subdivision Standards. All other requirements of the Subdivision Standards, the Town's Land Use Guidelines, and other Town land use laws and regulations shall be applied to the Subdivision Permit Application in

[3]The term "Planning Commission" as used in this Agreement includes the Town Council of the Town of Breckenridge, if the decision of the Planning Commission on the Application is "called up" by the Town Council pursuant to Section 9-2-3-2 of the Subdivision Standards. In the event of a call up, the Town Council shall make the final decision on the Application.

accordance with the Planning Commission's normal process for evaluating an application for a permit to resubdivide real property.

3. The Development Permit Application for a single family residence on Lot 2B shall not be assigned negative points under Section 9-1-19-3R, "Policy 3 (Relative) Density/Intensity" of the Development Code ("**Policy 3R**") unless the proposed above ground density of Lot 2B exceeds 5.63 UPA (3,122 sq. ft.). All other requirements of the Development Code, the Town's Land Use Guidelines, and other Town land use laws and regulations shall be applied to the Development Permit Application in accordance with the Planning Commission's normal process for evaluating an application for a permit to develop real property.

4. The Development Permit Application for a single family residence on Lot 2A shall be evaluated under the Planning Commission's normal process for evaluating an application for a permit to develop real property.

5. Following the resubdivision of the Property, Briar Rose intends to develop one (1) single family residence on each of the two (2) resubdivided lots. Briar Rose acknowledges that such proposed development will require additional development permit(s) to be issued by the Town under the Town's Development Code. In connection with Briar Rose's application for development permit(s) to construct single family residences on each of the two (2) resubdivided lots Lot 2A and 2B), the Parties agree that the floor area on each of the two resubdivided lots shall be as follows[4]:

(i) the recommended maximum above ground density for the single family residence on Lot 2B (the lot that will include the accessory apartment) shall be 2,422 square feet, and the maximum density of the accessory apartment shall be as provided in the Development Code;

(ii) the recommended maximum above ground density for the single family residence on Lot 2A (the lot without an accessory apartment) shall be 2,422 square feet (4.37 Units Per Acre).

(iii) Lot 2A and Lot 2B shall have unlimited below ground density in accordance with the Land Use District 12 Guidelines.

(iv) The recommended maximum above ground densities for the two single family residences set forth above may be exceeded pursuant to Policy 3R.

(v) If an individual lot exceeds 5 Units Per Acre of above ground density, the floor area of an Accessory Apartment on that lot shall be excluded from the additional 20% aboveground floor area allowance for a main residence garage under Policy 3R in

4 An example of maximum use of recommended above ground density and mass according to this Development Agreement is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference.

order to avoid a larger mass bonus to the main residence because of the Accessory Apartment.

6. As the commitments encouraged to be made in connection with an application for a development agreement pursuant to Section 9-9-4 of the Breckenridge Town Code, it is agreed as follows:

(i) within two (2) months of the Effective Date of this Agreement as defined in the introductory section of this Agreement B59 Gold Camp LLC, a Colorado limited liability company, shall execute, acknowledge, and deliver to the Town a Restrictive Covenant and Agreement, acceptable in both form and content to the Town, restricting in perpetuity the occupancy of Unit B-59, Gold Camp Condominiums II to employee housing ("**B59 Restrictive Covenant**"). The form and content of the B59 Restrictive Covenant shall be acceptable to the Town Attorney. Pursuant to Section 9-1-26 of the Development Code, at the time of its recording with the Summit County Clerk and Recorder the B59 Restrictive Covenant shall not be subordinated to any senior lien or encumbrance, except the lien of the general property taxes. The agreement of B59 Gold Camp LLC, a Colorado limited liability company, with respect to the B59 Restrictive Covenant is evidenced by its approving signature at the end of this Agreement ;

(ii) not later than the recording of the subdivision plat dividing the Property into two (2) lots, Briar Rose shall dedicate to the Town a public trail easement 30 feet in width along the rear portion of Lot 2 along the Klack drainage extended from the westerly property boundary to the east. The form of the dedication shall be acceptable in both form and substance to the Town.

(iii) prior to the issues of a Certificate of Occupancy for the single family residence to be erected on Lot 2B, there shall be constructed and completed on such lot (if attached to main residence) and a Certificate of Occupancy shall have been issued for (if detached from main residence) an accessory apartment not less than 500 square feet in size, and Briar Rose shall execute, acknowledge, and deliver to the Town a Restrictive Covenant and Agreement ("**Lot 2B Restrictive Covenant**"), acceptable in both form and content to the Town, restricting the occupancy of the accessory apartment to employee housing. The form and content of the Lot 2B Restrictive Covenant shall be acceptable to the Town Attorney. Pursuant to Section 9-1-26 of the Development Code, at the time of its recording with the Summit County Clerk and Recorder the Lot 2B Restrictive Covenant shall not be subordinated to any senior lien or encumbrance, except the lien of the general property taxes.

(iv) In connection with an application for a development permit to develop the Property in accordance with this Agreement, the application shall not receive an award of positive points under the Development Code for: (i) any commitment offered to the Town by the Applicant pursuant to this Agreement, or (ii) any other obligation or requirement of the applicant under this Agreement.

7. The Town Council hereby waives the following fees for the accessory apartment, in connection with an application to develop the Property in accordance with this Agreement: (i) building permit fee; (ii) mechanical permit fee; (iii) electrical permit fee; (iv) and plumbing permit fee.

8. All Town fees and charges not specifically waived in this Agreement are not waived and shall be paid by Briar Rose.

9. The Town Council finds and determines that that circumstances warrant an extension of the normal vested property rights period for this Agreement, and that the health, safety and general welfare of the Town will be benefited if the vested property rights for this Agreement are extended as provided in Section 10, below.

10. The Town Council, on behalf of the Town, agrees that the vested property rights period for this Agreement shall be a period of six (6) years beginning with the Effective Date of this Agreement as defined in the introductory section of this Agreement ("**Extended Vesting Period**").

11. The term of this Agreement shall commence on the Effective Date and shall end, subject to earlier termination in the event of a breach of this Agreement, upon the first to occur of: (i) Briar Rose and B59 Gold Camp LLC's compliance with all of the requirements of this Agreement; or (ii) the expiration of the Extended Vesting Period. For avoidance of doubt, any application to resubdivide the Property filed after the expiration of the Extended Vesting Period must comply with all of the Town's then-current land use laws and regulations, including, but not limited, to the then-current Subdivision Standards.

12. Except as provided in Section 24-68-105, C.R.S., and except as specifically provided for herein, the execution of this Agreement shall not preclude the current or future application of municipal, state or federal ordinances, laws, rules or regulations to the Property (collectively, "**laws**"), including, but not limited to, building, fire, plumbing, engineering, electrical, and mechanical codes, and the Town's Development Code, Subdivision Standards, and other land use laws, as the same may be in effect from time to time throughout the term of this Agreement. Except to the extent the Town otherwise specifically agrees, any development of the Property shall be done in compliance with the then-current laws of the Town.

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

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

15. Town shall not be responsible for, and Briar Rose shall have any remedy against the Town, if the Project is prevented or delayed for reasons beyond the control of the Town.

16. Briar Rose not shall commence any development of the Property until it obtains such other and further Town permits and approvals as may be required from time to time by applicable Town ordinances.

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

18. Briar Rose agrees to indemnify and hold the Town, its officers, employees, insurers, and self-insurance pool, harmless from and against all liability, claims, and demands, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligence or intentional act or omission of Briar Rose; any subcontractor of Briar Rose, or any officer, employee, representative, or agent of Briar Rose or of any subcontractor of Briar Rose, or which arise out of any worker's compensation claim of any employee of Briar Rose, or of any employee of any subcontractor of Briar Rose; except to the extent such liability, claim or demand arises through the negligence or intentional act or omission of Town, its officers, employees, or agents. Briar Rose agrees to investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at the sole expense of Briar Rose. Briar Rose also agrees to bear all other costs and expenses related thereto, including court costs and attorney's fees. This section 18 shall survive the expiration or termination of this Agreement and shall be fully enforceable thereafter, subject to any applicable statute of limitation.

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

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

21. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed to constitute a continuing waiver, unless expressly provided for by a written amendment to this Agreement signed by the Parties; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type.

22. This Agreement shall be recorded in the office of the Clerk and Recorder of Summit County, Colorado.

23. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign immunity under any applicable state or federal law.

24. Personal jurisdiction and venue for any civil action commenced by any Party to this Agreement shall be deemed to be proper only if such action is commenced in District Court of Summit County, Colorado. Briar Rose each expressly waive any right to bring such action in or to remove such action to any other court, whether state or federal. **BOTH PARTIES WAIVE ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION TO ENFORCE, INTERPRET OR CONSTRUE THIS AGREEMENT.**

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

If to the Town:	Rick G. Holman, Town Manager Town of Breckenridge P.O. Box 168 Breckenridge, CO 80424
With a copy (which shall not constitute notice to the Town) to:	Timothy H. Berry, Esq. Town Attorney P.O. Box 2 Leadville, CO 80461
If to Briar Rose:	203 Briar Rose LLC c/o Dennis G. Kuhn P.O. Box 165 Breckenridge, CO 80424

Notices mailed in accordance with the provisions of this Section 25 shall be deemed to have been given upon delivery. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process.

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

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

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Rick G. Holman, Town Manager

ATTEST:

_____
Helen Cospolich, CMC, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2020 by Rick G. Holman, as Town Manager, and Helen Cospolich, CMC, as Town Clerk, of the Town of Breckenridge, a Colorado municipal corporation.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

203 BRIAR ROSE LLC, a Colorado limited liability company

By: _____

Name: Dennis G. Kuhn

Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2020, by Dennis G. Kuhn, as Manager of 203 Briar Rose LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

APPROVED AS TO UNIT B-59, GOLD CAMP II CONDOMINIUMS (SECTION 3(i)):

B59 GOLD CAMP LLC, a Colorado limited liability company

By: _____

Name: Dennis G. Kuhn

Title: Manager

STATE OF COLORADO)
) ss.
COUNTY OF SUMMIT)

The foregoing was acknowledged before me this _____ day of _____, 2020, by Dennis G. Kuhn, as Manager of B59 Gold Camp LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires:_____

_____
Notary Public

EXHIBIT A:

Weisshorn Subdivision Filing 1, Block 1, Lot 2 (Kuhn Development Agreement; 203 Briar Rose Lane): Example scenario of maximum recommended above ground density and mass with Development Agreement

Above Ground Density

- 5 UPA x 0.693 AC x 1,600 sq. ft. = 5,544 sq. ft. for existing Lot 2.
- 5,544 sq. ft. – 700 sq. ft. of Accessory Apartment = 4,844 sq. ft. to split evenly between two main residences.
- 4,844 /2 = 2,422 sq. ft.
- Lot 2A:
    - 2,422 sq. ft. (4.37 UPA)
- Lot 2B:
    - 2,422 sq. ft. (main residence) + 700 sq. ft. (Acc. Apt.) = 3,122 sq. ft. (5.63 UPA)

Mass

- Lot 2A:
    - 2,422 sq. ft. (main residence) + 484.4 sq. ft. (20% for a garage) = 2,906.4 sq. ft.
- Lot 2B:
    - 2,422 sq. ft. (main residence) + 484.4 sq. ft. (20% for a garage) = 2,906.4 sq. ft.
    - 2,906.4 sq. ft. + 700 sq. ft. (Acc. Apt.)= 3,606.4 sq. ft.
- 2,906.4 sq. ft. (Lot 2A mass) + 3,606.4 sq. ft. (Lot 2B mass) = 6,512.8 sq. ft. mass combined

Total Density (including below ground)

Unlimited, per LUD #12 Guidelines

Memo

To: Town Council

From: Eli Johnston, Chief Building Official

Date: 2/19/2020

Subject: Sustainable Energy Code Adoption First Reading

In 2019, Breckenridge adopted the Summit Community Climate Action Plan, a document that sets carbon reduction goals for our community. Two-thirds of Summit County's emissions come from energy use in buildings – roughly one-third from residential buildings and one-third from commercial. In order to reach our goals of reducing emissions 50 percent by 2030 and 80 percent by 2050 in the Climate Action Plan, we must reduce building energy use.

One of the emissions-reduction strategies identified in the Climate Action Plan is adopting a Sustainable Building Code. This Sustainable Building Code would require energy savings in new construction above what can be achieved through the 2018 International Energy Conservation Code (IECC), which was recently adopted by the Town.

Through a year-long process that included Breckenridge, Summit County, Dillon, Silverthorne, High Country Conservation Center, local builders, architects, and energy consultants, our group determined that an acceptable Sustainable Building Code should utilize a nationally recognized program. The recommendations below meet those goals while achieving 10 percent energy savings in both residential and commercial new construction (compared to the 2018 IECC).

- **Residential Energy Efficiency Codes**

  The Zero Energy Ready Home program is a U.S. Department of Energy certification program for residential buildings. Homes that are Zero Energy Ready certified are so efficient that, with a renewable energy system such as solar panels added, they can offset all or most of their annual energy consumption.

- **Commercial Energy Efficiency Codes**

  The final recommendations require new commercial buildings to demonstrate 10 percent energy savings by following either Prescriptive or Performance Pathways. Prescriptively, buildings will have to either install solar PV to offset 10 percent of building energy use or install three energy efficiency packages as outlined in the 2018 IECC. If complying via the Performance Path, energy modeling must show that the proposed design will achieve 10 percent energy savings compared to the code-defined baseline buildings.

- **Electric Vehicle (EV) Charging Infrastructure**

  In addition to Zero Energy Ready Home Program certification, the proposed requirements for residential also include a requirement for electric vehicle (EV) charging infrastructure to be roughed into newly constructed homes and garages. For multifamily dwellings and commercial occupancies, the proposed requirements include a minimum number of Electric Vehicle Supply Equipment (EVSE)

installed spaces and EV capable spaces to be provided, based upon the total number of parking spaces.

Staff met with Council at the February 11th work session to discuss the code changes. The discussion focused on the changes to the residential and commercial Energy Codes. Attached is the draft ordinance adopting the updated Codes. There are no substantive changes from the work session. Staff will be available at the meeting to answer any questions from Council.

FOR WORKSESSION/FIRST READING – FEB. 25

COUNCIL BILL NO. ___

Series 2020

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 8 OF THE BRECKENRIDGE TOWN CODE BY AMENDING THE INTERNATIONAL RESIDENTIAL CODE, 2018 EDITION, AND THE INTERNATIONAL ENERGY CONSERVATION CODE, 2018 EDITION

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Amend Section 8-1-5 of the Breckenridge Town Code, concerning the amendments to the International Residential Code, by adding the following provisions after item number 42, and renumbering all following subsections of Section 8-1-5:

43. Section N1101.4 Above code program is amended by adding a new subsection N1101.4.1 Summit Sustainable Building Code to read as follows:

N1101.4 Summit Sustainable Building Code (SSBC). All new structures defined as a residential building under Section N1101.6 of this chapter shall be designed and comply with the Department of Energy's Zero Energy Ready Home National Program.

Exception: All new residential structures defined per section N1101.4.1 shall register and submit to be reviewed and inspected through the Department of Energy's Zero Energy Ready Home National Program as a training exercise per the Town of Breckenridge Building Department. The training exercise program will be effective July 1, 2020 through December 31, 2020. Full compliance with the Department of Energy's Zero Energy Ready Home National Program shall be effective January 1, 2021.

44. Table N1102.1.2 (IECC R402.1.2) Insulation and Fenestration Requirements by Component is amended by adding footnotes j and k to read as follows:

Footnote j. R23 blown in bibs are permitted to be installed in walls in lieu of the R20+5 for additions and remodels. If utilizing R23 blown in bibs, the roof/ceiling insulation reductions detailed in N1102.2.1 and N1102.2.2.2 are not allowed.

Footnote k. A fenestration U-Factor of 0.32 is permitted for window replacements for Climate Zones 7 and 8.

45. Section N1104 Electrical Power and Lighting Systems is amended by adding subsection N1104.2, Electric Vehicle (EV) charging for new construction to read as follows:

N1104.2 Electric Vehicle (EV) charging for new construction. New construction shall facilitate future installation and use of Electric Vehicle Supply Equipment (EVSE) in accordance with the National Electrical Code (NFPA 70).

N1104.2.1 One and two family dwellings and townhouses. For each dwelling unit, at least one EV Ready Space shall be provided. The branch circuit or raceway shall be identified as "EV Ready" in the service panel or subpanel directory and the termination shall be marked as "EV Ready". The rough and final inspection shall include a blanked electrical box and a raceway terminating in the electrical panel.

46. Section N1107.1 (R501.1) Scope is amended by adding subsection N1107.1.1, Additions and alterations to read as follows:

N1107.1.1 (R501.1.2) Additions and alterations. Additions and interior alterations to an existing building where the total valuation is $50,000 or greater, an energy audit shall be provided for the existing structure prior to permit issuance. The energy audit recommendations and/or conclusions shall not affect the scope of the work submitted for the permit.

Exceptions: Re-roofs, exterior siding repair or replacement, and deck additions, repairs, or alterations shall not require an energy audit to be conducted.

Section 2. Amend Section 8-1-9 of the Breckenridge Town Code, concerning amendments to the International Energy Conservation Code, by adding the following new provisions:

2. Section C101 Scope and General Requirements is amended by adding a new section C101.6 Summit Sustainable Building Code (SSBC).

C101.6 Summit Sustainable Building Code. (SSBC) In addition to the requirements of Section C101.5, new buildings shall comply with the Summit Sustainable Building Code, in accordance with Sections C101.6.1 and C101.6.2.

C101.6.1 Residential SSBC. All new residential structures in groups R-2, R-3, and R-4 occupancies above 3 stories but not more than 5 stories shall be in compliance with the Department of Energy's Zero Energy Ready Home National Program.

Exception: All new residential structures defined per section C101.6.1 shall register and submit to be reviewed and inspected through the Department of Energy's Zero Energy Ready Home National Program as a training exercise per the Town of Breckenridge Building Department. The training program will be effective July 1, 2020 through December 31, 2020. Full compliance with the Department of Energy's Zero Energy Ready Home National Program shall be effective January 1, 2021.

C101.6.2 Commercial SSBC. All new structures defined as a Commercial Building in Chapter 2 except structures defined under C101.6.1 of this code shall comply with amended Sections C401.2, C404.11, and C405.10.

3. Section 202 Definitions is amended by adding the following definitions within the alphabetical order of the existing definitions:

Electric Vehicle (EV). A vehicle registered for on-road use, primarily powered by an electric motor that draws current from a rechargeable storage source that is charged by being plugged into an electrical current source.

Electric Vehicle Supply Equipment (EVSE). The electrical conductors and associated equipment external to the electric vehicle that provide a connection between the premises wiring and the electric vehicle to provide electric vehicle charging.

Electric Vehicle Supply Equipment (EVSE) Installed Space. A parking space with electric vehicle supply equipment capable of supplying a 40-ampere dedicated branch circuit rated at 208/240 volt from a building panel board.

EV Capable Space. A designated parking space which is provided with a listed raceway capable of accommodating a 40-ampere minimum 208/240 volt dedicated branch circuit for each future EV Ready or EVSE Installed parking space. Raceways shall not be less than trade size 1 (nominal 1-inch inside diameter). Raceways shall originate at the main service or subpanel and shall terminate into a listed cabinet, box, or, enclosure in close proximity to the proposed location of the EV Capable parking spaces. Raceways are required to be continuous at enclosed, inaccessible or concealed areas and spaces. The service panel and/or subpanel shall provide capacity to install a 40-ampere minimum 208/240 volt dedicated branch circuit and space(s) reserved to permit installation of a branch circuit overprotection device.

EV Ready Space. A designated parking space which is provided with minimum one 40-ampere minimum 208/240 volt dedicated branch circuit for EVSE servicing electric vehicles. The circuit shall terminate in a suitable termination point such as a receptacle, junction box, or an EVSE, and be located in close proximity to the proposed location of the EV Ready parking spaces.

4. Section C401.2 Application is amended to read as follows:
C401.2 Application. Commercial buildings shall comply with one of the following:

1. The requirements of ANSI/ASHRAE/IESNA 90.1. The building's annual energy cost shall achieve savings of 25 percent or greater than the baseline building energy model developed using ASHRAE 90.1 Energy Cost Budget protocol.

2. The requirements of Sections C402 through C405 and C408. In addition, commercial buildings shall comply with amended Section C406 and tenant spaces shall comply with Section C406.1.1.

3. The requirements of Sections C402.5, C403.2, C403.3 through C403.3.2, C403.4 through C403.4.2.3, C403.10.1 through C403.10.3, C403.11, C403.12, C404, C405, C407, and C408. The building energy cost shall be equal to or less than 75 percent of the standard reference design building.

5. Section C404 Service Water Heating is amended by adding a new Section 404.11 Building Water Use Reduction.

C404.11 Building Water Use Reduction. All commercial buildings shall comply with the requirements as set forth in Section C404.11 and as shown in Table C404.11.1.

Exception: All structures complying with the Department of Energy's Zero Energy Ready Home National Program do not have to comply with Section C404.11.

TABLE C404.11.1
PLUMBING FIXTURES AND FITTINGS REQUIREMENTS

PLUMBING FIXTURE	MAXIMUM
Water Closets (toilets) – flushometer single-flush valve type	Single-flush volume of 1.28 gal (4.8 L)
Water Closets (toilets) – flushometer dual-flush valve type	Full-flush volume of 1.28 gal (4.8 L)
Water Closets (toilets) – single-flush tank-type	Single-flush volume of 1.28 gal (4.8 L)
Water Closets (toilets) – dual-flush tank-type	Full-flush volume of 1.28 gal (4.8 L)
Urinals	Flush volume 0.5 gal (1.9 L)
Public lavatory faucets	Flow rate – 0.5 gpm (1.9 L/min)
Public metering self-closing faucet	0.25 gal(1.0 L) per metering cycle
Residential bathroom lavatory sink faucets	Flow rate – 1.5 gpm (5.7 L/min)
Residential kitchen faucets	Flow rate – 1.8 gpm (6.8 L/min)[a]
Residential showerheads	Flow rate – 2.0 gpm (7.6 L/min)
Residential shower compartment (stall) in dwelling units and guest rooms	Flow rate from all shower outlets total of 2.0 gpm (7.6 L/min)211 elk

a. With provision for a temporary override to 2.2 gpm (8.3 L/min) as specified in Section 404.11.1(g)

C404.11.1 Plumbing Fixtures and Fittings. Plumbing fixtures (water closets and urinals) and fittings (faucets and showerheads) shall comply with the following requirements as shown in Table C404.11.1.

A. Water Closets (toilets) – flushometer valve type. For single-flush, maximum flush volume shall be determined in accordance with ASME A112.19.2/CSA B45.1 and shall not exceed 1.28 gal (4.8 L) per flush. For dual-flush, the full flush volume shall not exceed 1.28 gal (4.8L) per flush. Dual –flush fixtures shall also comply with the provisions of ASME A112.19.14.

B. Water Closets (toilets) – tank-type. Tank-type water closets shall be certified to the performance criteria of the USEPA WaterSense Tank-Type High-Efficiency Toilet Specification and shall have a maximum full-flush volume of 1.28 gal (4.8L) per flush. Dual-flush fixtures shall also comply with the provisions of ASME A112.19.14.

C. Urinals. Maximum flush volume, when determined in accordance with ASME A112.19.2/CBA B45.1, shall not exceed 0.5 gal (1.9L) per flush. Flushing urinals shall comply with the performance criteria of the USEPA WaterSense Specification for Flushing Urinals. Non-water urinals shall comply with ASME A112.19.19 (vitreous china) or IAPMO Z124.9 (plastic) as appropriate.

D. Public Lavatory Faucets. Maximum flow rate shall not exceed 0.5 gpm (1.9L/min) when tested in accordance with ASME A112.18.1/CSA B 125.1.

E. Public Metering Self-Closing Faucet. Maximum water use shall not exceed 0.25 gal (1.0 L) per metering cycle when tested in accordance with ASME A112.18.1/CSA B125.1.

F. Residential Bathroom Lavatory Sink Faucets. Maximum flow rate shall not exceed 1.5 gpm (5.7 L) when tested in accordance with ASME A112.18.1/CSA B125.1. Residential WaterSense High-Efficiency Lavatory Faucet Specifications.

G. Residential Kitchen Faucets. Maximum flow rate shall not exceed 1.8 gpm (6.8 L/min) when tested in accordance with ASME A112.18.1/CSA B125.1. Kitchen faucets shall be permitted to temporarily increase the flow greater than 1.8 gpm (6.8 L/min) but shall not exceed 2.2 gpm (8.3 L/min) and must automatically revert to the established maximum flow rate of 1.8 gpm (6.8 L/min) upon physical release of the activation mechanism or closure of the faucet valve.

H. Residential Showerheads. Maximum flow rate shall not exceed 2.0 gpm (7.6 L/min) when tested in accordance with ASME A112.18.1/CSA B125.1. Residential showerheads shall comply with the performance requirements of the USEPA WaterSense Specifications for Showerheads.

I. Residential Shower Compartment (stall) in Dwelling Units and Guest Rooms. The allowable flow rate from all shower outlets (including rain systems, waterfalls, body sprays, and jets) that can operate simultaneously shall be limited to a total of 2.0 gpm (7.6 L/min).

Exception: Where the area of a shower compartment exceeds 2600 inch² (1.7 m²), an additional flow of 2.0 gpm (7.6 L/min) shall be permitted for each multiple of 2600 inch² (1.7 m²) of floor area or fraction thereof.

J. Water Bottle Filling Stations. Water bottle filling stations shall be an integral part of, or shall be installed adjacent to, not less than 50% of all drinking fountains installed indoors on the premises.

C404.11.2 Appliances. Commercial appliances shall comply with the following requirements:

A. Clothes Washers and Dishwashers installed within dwelling units shall comply with the ENERGY STAR program requirements for Clothes Washers and ENERGY STAR Program requirements for Dishwashers. Maximum water use shall be as follows:

1. Clothes Washers – Maximum water factor (WF) of 5.4 gal/ft³ of drum capacity (0.7 L/L of drum capacity)

2. Dishwashers – Standard size dishwashers shall have a maximum WF 3.8 gal/full operating cycle (14.3 L/full operating cycle). Compact sizes shall have a maximum WF of 3.5 gal/full operating cycle (13.2 L/full operating cycle). Standard and compact size shall be defined by ENERGY STAR criteria.

B. Clothes washers installed in publicly accessible spaces (multifamily and hotel common areas), and coin/card operated clothes washers of any size used in laundromats, shall have a maximum WF of 4.0 gal/ft³ of drum capacity during normal cycle (.053 L/L of drum capacity during normal cycle).

C. Commercial dishwashers in commercial food service facilities shall meet all ENERGY STAR requirements as listed in the ENERGY STAR Program requirements for Commercial Dishwashers, Version 2.0.

C404.11.3 Commercial Food Service Operations. Commercial food service operations (restaurants, cafeterias, food preparation kitchens, caterers, etc.) shall comply with the following requirements:

A. Shall use high-efficiency pre rinse spray valves (I.e. valves that function at 1.3 gpm (4.9 L/min) or less and comply with a 26 second performance requirement when tested in accordance with ASTM F2324.

B. Shall use dishwashers that comply with the requirements of the ENERGY STAR Program for Commercial Dishwashers.

C. Shall use boiler-less/connectionless food steamers that consume no more than 2.0 gal/h (7.5 L/h) in the full operational mode.

D. Shall use combination ovens that consume not more than 10 gal/h (38 L/h) in full operational mode.

E. Shall use air-cooled ice machines that comply with the requirements of the ENERGY STAR Program for Commercial Ice Machines.

F. Shall be equipped with hands-free faucet controllers (foot controllers, sensor activated, or other) for all faucet fittings within the food preparation area of the kitchen and the dish room, including pot sinks and washing sinks.

C404.11.4 Medical and Laboratory Facilities. Medical and laboratory facilities, including clinics, hospitals, medical centers, physician and dental offices, and medical and nonmedical laboratories of all types shall comply with the following:

A. Use only water-efficient steam sterilizers equipped with:

1. Water-tempering devices that allow water to flow only when the discharge of condensate or hot water from the sterilizer exceeds 140°F (60°C).
2. Mechanical vacuum equipment in place of venture-type vacuum systems for vacuum sterilizers.

B. Use film processor water-recycling units where large-frame X-ray films of more than 6 inches (150 mm) in either length or width are processed.

Exception: Small dental X-ray equipment is exempt from this requirement.

C. Use digital imaging and radiography systems where the digital networks are installed.

D. Use a dry-hood scrubber system or, if the applicant determines that a wet-hood scrubber is required, the scrubber shall be equipped with a water recirculation system. For perchlorate hoods and other applications where a hood wash-down system is required, the hood shall be equipped with self-closing valves on those wash down systems.

E. Use only dry vacuum pumps unless fire and safety codes (International Fire Code) for explosive, corrosive, or oxidative gases require a liquid ring pump.

F. Use only efficient water treatment systems that comply with the following criteria:

1. For all filtration processes, pressure gauges shall determine and display when to backwash or change cartridges.
2. For all ion exchange and softening professes, recharge cycles shall be set by volume of water treated or based on conductivity or hardness.

3. For reverse osmosis and nanofiltration equipment with a capacity greater than 27 gal/h (100 L/h), reject water shall not exceed 60% of the feed water and shall be used as scrubber feed water or for the other beneficial uses on the project site.
4. Simple distillation is not an acceptable means of water purification.

G. With regard to food service operations within medical facilities, comply with Section 404.11.3.

6. Section C405 Electrical Power and Lighting Systems is amended by adding a Section C405.10 EV Charging for New Construction to read as follows:

C405.10 Electric Vehicle (EV) Charging for New Construction. The building shall be provided with electric vehicle (EV) charging in accordance with this section and the National Electrical Code (NFPA 70). When parking spaces are added or modified without an increase in building size, only the new parking spaces are subject to this requirement.

C405.10.1 Group A, B, E, I, M, R, and S-2 Occupancies. Group A, B, E, I, M, R occupancies with 3 or more dwelling units and/or sleeping units, and open or enclosed parking garages under S-2 occupancy shall be provided with electric vehicle charging in accordance with Table C405.10.1. Calculations for the number of spaces shall be rounded up to the nearest whole number. All EVSE Installed and EV Capable Spaces are to be included in the calculation for the minimum number of vehicle spaces as required by the International Building Code.

TABLE C405.10.1
EV Installed and EV Capable Space Requirements

Total Number of Parking Spaces	Minimum Number of EVSE Installed Spaces	Minimum Number of EV Capable Spaces
1-10	1	-
11-15	2	3
16-19	2	4
20-25	2	5
26+	2	20% of total parking spaces

C405.10.2 Identification. Construction documents shall designate all electric vehicle capable and electric vehicle supply equipment installed spaces and indicate the locations of conduit and termination points serving them. The circuit breakers or circuit breaker spaces reserved for the electric vehicle capable spaces and electric vehicle supply equipment installed spaces shall be clearly identified in the panel board.

C405.10.3 Accessible Parking. Where new EVSE Installed Spaces and/or new EV Capable Spaces and new accessible parking are both provided, parking facilities shall be designed so that at least one accessible parking space shall be EV Capable or EVSE Installed.

7. Section C406.1 Requirements is amended to read as follows:

C406.1 Requirements. Buildings shall comply with the following:

1. On-site supply of renewable energy in accordance with Section C406.5.

2. Provisions of a dedicated outdoor air system for certain HVAC equipment in accordance with Section C406.6.

3. One additional package selected from the following:

A. More efficient HVAC performance in accordance with Section C406.2.
B. Reduced lighting power in accordance with Section C406.3.
C. Enhanced lighting controls in accordance with Section C406.4.
D. High-efficiency service water heating in accordance with Section C406.7.
E. Enhanced envelop performance in accordance with Section C406.8.
F. Reduced air infiltration in accordance with Section C406.9.

Exception: If the total on-site renewable energy installed per Section C406.5 is at least 10 percent of the energy used within the building for mechanical and service water heating equipment and lighting regulated in Chapter 4, then buildings shall not be required to comply with provisions 2 and 3 of Section C406.1.

8. Section C406.5 On-site renewable energy is amended to read as follows:

C406.5 On-site renewable energy. The total minimum ratings of on-site renewable energy systems shall not be less than 3 percent of the energy used within the building for building mechanical and service water heating equipment and lighting regulated in Chapter 4.

9. Section C406.6 Dedicated outdoor air system is amended by adding Section C406.6.1.

C406.6.1 Energy Recovery System. Where the supply of air flow rate of a fan system exceeds 30 cfm of outside air, the system shall include an energy recovery system. The energy recovery system shall be configured to provide a change in the enthalpy of the outdoor air supply of not less than 50 percent of the difference between the outdoor air and return air enthalpies, at design conditions. Where an air economizer is required, the energy recovery system shall include a bypass or controls that permit operation of the economizer as required by Section C403.5.

10. Section R101.1 Title is amended by adding the name “Town of Breckenridge”.

11. Section R101.5 Compliance is amended by adding a new Section R101.5.2 Sustainable Building Code to read as follows:

R101.5.2 Sustainable Building Code. All new structures defined as Residential Buildings under Chapter 2 of this code shall be designed and comply with the Department of Energy's Zero Ready Home National Program.

Exception: All new residential structures defined per Section R101.5.2 shall register and submit to be reviewed and inspected through the Department of Energy's Zero Energy Ready Home National Program as a training exercise per the Town of Breckenridge Building Department. The training program will be effective July 1st, 2020 through December 31st, 2020. Full compliance with the Department of Energy's Zero Energy Ready Home National Program shall be effective January 1st, 2021.

12. Section R202 Definitions is amended by adding the following definitions within the alphabetical order of the existing definitions:

Electric Vehicle (EV). A vehicle registered for on-road use, primarily powered by an electric motor that draws current from a rechargeable storage source that is charged by being plugged into an electrical current source.

Electric Vehicle Supply Equipment (EVSE). The electrical conductors and associated equipment external to the electric vehicle that provide a connection between the premises wiring and the electric vehicle to provide electric vehicle charging.

Electric Vehicle Supply Equipment (EVSE) Installed Space. A parking space with electric vehicle supply equipment capable of supplying a 40-ampere dedicated branch circuit rated at 208/240 volt from a building panel board.

EV Capable Space. A designated parking space which is provided with a listed raceway capable of accommodating a 40-ampere minimum 208/240 volt dedicated branch circuit for each future EV Ready or EVSE Installed parking space. Raceways shall not be less than trade size 1 (nominal 1-inch inside diameter). Raceways shall originate at the main service or subpanel and shall terminate into a listed cabinet, box, or, enclosure in close proximity to the proposed location of the EV Capable parking spaces. Raceways are required to be continuous at enclosed, inaccessible or concealed areas and spaces. The service panel and/or subpanel shall provide capacity to install a 40-ampere minimum 208/240 volt dedicated branch circuit and space(s) reserved to permit installation of a branch circuit overprotection device.

EV Ready Space. A designated parking space which is provided with minimum one 40-ampere minimum 208/240 volt dedicated branch circuit for EVSE servicing electric vehicles. The circuit shall terminate in a suitable termination point such as a receptacle, junction box, or an EVSE, and be located in close proximity to the proposed location of the EV Ready parking spaces.

13. Table R402.1.2 Insulation and Fenestration Requirements by Component is amended by adding footnotes j and k to read as follows:

Footnote j. R23 blown in bibs are permitted to be installed in walls in lieu of the R20+5 for additions and remodels. If utilizing the R23 bibs, the roof/ceiling insulation reductions detailed in R402.2.1 and R402.2.2 are not allowed.

Footnote k. A fenestration U-Factor of 0.32 is permitted for window replacements for Climate Zone 7 and 8.

14. Section R404 Electrical Power and Lighting Systems is amended by adding a new Section R404.2, Electric vehicle (EV) charging for new construction to read as follow:

R404.2 Electric vehicle (EV) charging for new construction. New construction shall facilitate future installation and use of Electric Vehicle Supply Equipment (EVSE) in accordance with the National Electrical Code (NFPA 70).

R404.2.1 One and two family dwellings and townhouses. For each dwelling unit, at least one EV Ready Space shall be provided. The branch circuit shall be identified as "EV Ready" in the service panel or subpanel directory and the termination shall be marked as "EV Ready".

Exceptions: 1. EV Ready Spaces are not required where no parking spaces are provided.
2. This section does not apply to parking spaces used exclusively for delivery vehicle purposes.

R402.2 Multifamily dwellings (3 or more units). EVSE Installed and EV Capable Spaces shall be provided in accordance with Table R404.2.2. Where the calculation of percent served results in a fractional parking space, it shall be rounded up to the next whole number. The service panel or subpanel circuit directory shall identify the space reserved to support EV charging, as "EVSE Installed" or "EV Capable".

TABLE R404.2.2
EV Ready Space and EV Capable Space Requirements

Total Number of Parking Spaces	Minimum Number of EV Ready Spaces	Minimum Number of EV Capable Spaces
1-10	1	-
11-15	1	3
16-19	2	4
20-25	2	5
26+	2	20% of total parking spaces

R404.2.3 Identification. Construction documents shall designate all electric vehicle capable spaces, electric vehicle ready spaces, and electric vehicle supply equipment installed spaces and indicate the locations of conduit and termination points serving them. The circuit breakers or circuit breaker spaces reserved for the electric vehicle capable spaces, electric vehicle ready spaces, and electric vehicle supply equipment installed

spaces shall be clearly identified in the panel board. The conduit for the electric vehicle capable spaces shall be clearly identified at both the panel board and the termination point at the parking space.

R404.2.4 Accessible Parking. Where new EVSE Installed Spaces and/or new EV Ready Spaces and new accessible parking are both provided, parking facilities shall be designed so that at least one accessible parking space shall be EV Ready or EVSE Installed.

15. R501.1 Scope is amended by adding Section R501.1.2, Additions and alterations.

R501.1.2 Additions and alterations. Additions and interior alterations to an existing building where the total valuation is $50,000 or greater, an energy audit shall be provided for the existing structure prior to permit issuance. The energy audit recommendations and/or conclusions shall not affect the scope of work submitted for the permit.

Exceptions: Re-roofs, exterior siding repair or replacement, and deck additions, repairs, or alterations shall not require an energy audit to be conducted.

Section 3. Except as specifically amended hereby, the Breckenridge Town Code, and the various secondary codes adopted by reference therein, shall continue in full force and effect.

Section 4. The Town Council finds, determines, and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. The Town Council finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) Section 31-15-601, C.R.S.; (ii) Section 5.13 of the Breckenridge Town Charter; and (iii) the powers granted to home rule municipalities by Article XX of the Colorado Constitution.

Section 6. This ordinance shall be published as provided by Section 5.9 of the Breckenridge Town Charter, and shall become effective July 1, 2020.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2020. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

500-417\Energy Amendments (02-29-20)(First Reading)

Memo

To:	Town Council
From:	Jeremy Lott, AICP, Planner II
Date:	February 18, 2020 (for meeting of February 25, 2020)
Subject:	First Reading: Accessory Dwelling Unit Code Amendment

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In February 2019, the Development Code was updated with a provision that required accessory apartments be deed restricted to individuals working in Summit County at least thirty (30) hours per week which is consistent with the County regulations. Staff is proposing changes to the existing Development Code to provide clarity to the accessory apartment policy and reduce the likelihood of the Town approving primary unit designs that could be easily used as separate “lock-off” units. A summary of changes includes:

- Establishing criteria regarding kitchens and wet bars
- Requiring family members within Accessory Dwelling Units meet the 30 hour a week work requirement
- Clarifying what would be required with attached and detached additions

Staff held a worksession with Town Council on February 11, 2020. There have been no changes to the proposed amendments since that date. The first reading is attached for review. Staff will be available at the meeting to answer any questions.

FOR WORKSESSION/FIRST READING – FEB. 25

Additions To The Current Breckenridge Town Code Are
Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

COUNCIL BILL NO. _____

Series 2020

AN ORDINANCE AMENDING CHAPTER 1 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE, KNOWN AS THE "TOWN OF BRECKENRIDGE DEVELOPMENT CODE," CONCERNING ACCESSORY DWELLING UNITS

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Section 9-1-5 of the Breckenridge Town Code is amended by the addition of the following definitions:

KITCHEN:	**A room or portion of a room available for the preparation or cooking of food that may include a refrigerator, dishwasher, cooktop, and/or cupboards. Only one (1) kitchen is allowed per dwelling unit.**
PRIMARY UNIT:	**The main unit located on any residential property. This includes single-family, duplex, multi-unit, and/or townhouse residential uses.**
WET BAR:	**An area of a common room (living room, great room, dining room, entertainment room, etc.) within a dwelling unit used for the storage of food that may include (but not required to install) a refrigerator, a sink, and/or a countertop, but shall not include a cooktop or oven. Wet bars shall be within common rooms with areas larger than 300 square feet. Hallways shall not be considered in calculation of square footage and a wet bar shall not be located within a hallway.**

Section 2. The definition of "Accessory Dwelling Unit" which is part of the definition of "Residential Use" in Section 9-1-5 of the Breckenridge Town Code are amended to read as follows:

ACCESSORY **DWELLING UNIT** ~~Apartment~~:	A ~~residential~~ **dwelling** unit located on the same parcel of land as a ~~single-family~~ **primary** unit~~,~~

~~which~~ **that** is secondary in size and use to the ~~single-family~~ **primary** unit ~~and meets the following criteria:~~. **An accessory dwelling unit may have a separate kitchen from the primary unit and may be attached or detached from the primary unit. Only one accessory dwelling unit is allowed per primary unit. An accessory** dwelling unit ~~**apartments**~~ **shall meet the following criteria:**

1.~~A.~~ The total ~~dwelling~~ area of the ~~unit~~ **accessory dwelling unit** is no greater in size than one-third (1/3) of the total ~~dwelling area~~ **density** of the ~~single-family~~ **primary** unit.

2.~~B.~~ The total ~~dwelling~~area of the ~~unit~~ **accessory dwelling unit** is no greater in size than one thousand two hundred (1,200) square feet.

3.~~C.~~ Legal title to the accessory **dwelling unit** ~~apartment~~ and ~~single-family~~ **primary** unit is held in the same name.

4.~~D. With the exception of subsection D1 of this definition,~~ **An** accessory **dwelling unit** ~~apartments~~ may only be occupied by persons employed at least thirty (30) hours per week in Summit County with a lease term of not shorter than ~~six (6)~~ **three (3)** months.

~~1. Accessory apartments may be occupied by persons with disabilities or persons sixty five (65) years or older.~~

5.~~2.~~ All permits issued for accessory **dwelling units** ~~apartments~~ shall include the requirement that the property owner record a covenant restricting the use and occupancy of the property ~~with the requirements set forth under subsections D (introductory text) and D1 of this definition~~. The covenant shall grant enforcement power to the Town of Breckenridge or an authorized designee **approved by the Town**.

6.An accessory dwelling unit shall not be occupied by a family member unless said individual meets the employment requirement in subsection 5 of this definition.

7.Accessory dwelling units shall not be used as a short term rental as defined under Lodging Services within Chapter 3-1-2 of this code.

8.All detached structures containing density shall be considered an accessory dwelling unit, for purposes of this Code, unless no domestic water service is provided.

9.Attached additions which contain both density and an exterior entrance shall be considered an accessory dwelling unit, unless an interior connection to the primary unit is provided.

~~Units that meet all of the criteria will be classified as a portion of the single-family unit, while those that do not meet all the criteria specified shall be classified as either a duplex (if attached) or a second home (if detached).~~

Section 3. The following definitions in Section 9-1-5 of the Breckenridge Town Code are amended to read as follows:

DWELLING UNIT:	Any structure or part thereof, designed to be occupied as living quarters for any period of time**. A dwelling unit may be a primary unit and/or an accessory dwelling unit.**
LIMITED KITCHEN:	**Allowed only in Hotel/Lodging/Inn uses only, this m**~~M~~ay include a refrigerator, dishwasher, cooktop, and cupboards. Gas piping and two hundred twenty (220) volt electrical service may not be provided or roughed-in in a limited kitchen.

Section 4. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 5. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in the Breckenridge Town Charter.

Section 6. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2020. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

Memo

To: Breckenridge Town Council

From: Mark Truckey, Community Development Director

Date: February 18, 2020 (For February 24, 2020 Meeting)

Subject: Development Agreement Code Amendments (First Reading)

Staff has previously had discussions with the Council regarding Development Agreements and subsequent development permit approvals based on the Development Agreements. A concern Council members have expressed is that positive points can be awarded during the development permit review process for an item that was committed to in the Development Agreement. An example would be when an applicant, as part of the public benefits offered in exchange for a Development Agreement, offers to provide a trail easement. Although the trail easement is an obligation of the Development Agreement there is still the opportunity for the applicant to receive positive points under the Town's Development Code during the development permit process..

The attached ordinance makes amendments to the Development Agreement section of the Town's Development Code to address this issue. With the proposed amendments, no positive points may be subsequently awarded in the development permit process for "any commitment offered to the Town" or for "any other obligation or requirement of the applicant under the development agreement".

Staff has also included language that clarifies that the Council has the ability to specify when point assignments may be waived in the development permit process. This comes into play when, for example, the applicant requests to exceed overall density in a Development Agreement. Unless the negative points incurred for going over density are waived, the project would not be able to receive development permit approval. As always, every Development Agreement decision is at the discretion of the Council.

Finally, staff has included a few more technical housekeeping changes to address several issues such as concurrent development applications (submitted at same time as Development Agreement) and public notice provisions.

FOR WORKSESSION/FIRST READING – FEB. 25

Additions To The Current Breckenridge Town Code Are
Indicated By **Bold + Double Underline**; Deletions By ~~Strikeout~~

COUNCIL BILL NO. ___

Series 2020

AN ORDINANCE AMENDING CHAPTER 9 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE CONCERNING DEVELOPMENT AGREEMENTS

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO:

Section 1. Section 9-9-5 of the Breckenridge Town Code is amended to read as follows:

9-9-5: DEVELOPMENT AGREEMENTS; GENERAL:

A. ~~A development agreement may be approved by the town council either in connection with the approval of a development permit or as a separate approval at the election of the applicant.~~ The decision by the town council to enter into a development agreement with an applicant is always discretionary; nothing in this code shall be interpreted or construed as requiring the town council to approve a development agreement under any circumstances. ~~If a request for approval of a development agreement is combined with an application for a development permit, the application for the development permit shall be reviewed under the applicable policies, standards and criteria of this code, including the point analysis provisions of this code if applicable, but the approval or conditional approval of the application for development permit shall not require the approval of the accompanying request for a development agreement.~~ There is never an entitlement on the part of the applicant to the approval of a development agreement.

B. An application for a development permit that is based upon a development agreement may not be submitted until the development agreement has been approved by the Town Council.

C. A development agreement may provide for the specific manner in which a development permit application will be treated under the various absolute and relative polices of the development code, or the policies of the subdivision standards. This includes how points will be awarded or assessed under the various relative polices of the development code, and the authority to waive required compliance with any absolute development code policy or policy of the subdivision standards.

Section 2. Section 9-9-8 of the Breckenridge Town Code is amended to read as follows:

9-9-8: FEE:

~~If an application for approval of a development agreement is not included as a part of a development permit application, a~~**A**n application for approval of a development agreement shall be accompanied by a ~~separate,~~ nonrefundable fee in an amount equal to the fee for a Class A development permit application. Such fee is determined by the Town Council to reasonably reimburse the Town for the direct and indirect costs incurred by the Town in processing such an application. ~~No extra fee shall be required if an application for approval of a development agreement is included as part of a development permit application.~~

Section 3. Section 9-9-9 of the Breckenridge Town Code is amended to read as follows:

9-9-9: SUBMITTAL REQUIREMENTS:

A completed application for approval of a development agreement shall be submitted a minimum of twenty eight (28) days prior to the requested work session with the Town Council. The development agreement application, whether included as part of a development permit application or submitted as a separate application, shall include the following information and documentation:

A. Proof of ownership of the land to be included within the development agreement~~, which includes an updated or current title insurance policy or title commitment issued no more than thirty (30) days before submission of the application~~.

B. A properly acknowledged letter of authorization from the owner of the land to be included within the development agreement permitting a designated representative to process the application.

C. A properly acknowledged statement of consent to proceed with the proposed development agreement, executed by all owners of fee title to the land to be included within the development agreement.

D. A narrative description describing the nature of the application's compliance with the applicable threshold criteria under the code section authorizing the execution of the development agreement.

E. A description of the commitments proposed by the applicant as described in section 9-9-4 of this chapter.

F. ~~A draft agreement in compliance with the mandatory development agreement provisions set forth in section 9-9-12 of this chapter.~~

~~G.~~ Such other reasonable information as the Director may require.

Section 4. Section 9-9-12 of the Breckenridge Town Code is amended by the addition of a new subsection J, which shall read as follows:

J. In connection with an application for a development permit to develop the real property that is the subject of a development agreement the application shall not receive an award of positive points under the Development Code for any commitment offered to the Town by the applicant pursuant to Section 9-9-4, or any other obligation or requirement of the applicant under the development agreement.

Section 5. Section 9-9-14 of the Breckenridge Town Code is amended to read as follows:

9-9-14: RECORDING OF DEVELOPMENT AGREEMENT:

Within thirty (30) days of **the effective date of the ordinance** ~~final adoption of the~~ approving **a development agreement** ~~and authorizing ordinance~~, the applicant shall submit a copy of the approved development agreement to the director for execution by the town and subsequent recording, together with the required recordation fees. ~~The development agreement shall become effective upon recordation.~~

Section 6. Chapter 9 of Title 9 of the Breckenridge Town Code is amended by the addition of a new Section 9-9-15, which shall read as follows:

9-9-15: AMENDMENT OF DEVELOPMENT AGREEMENT:

A development agreement may be amended by a written agreement approved by a nonemergency ordinance adopted by the Town Council in accordance with the procedures set forth in section 5.10 of the Town Charter. No notice other than the notice required by subsection 5.10(d) of the Town Charter shall be required in connection with the adoption of an ordinance approving an amendment to a development agreement.

Section 7. The Town Council hereby finds, determines and declares that this ordinance is necessary and proper to provide for the safety, preserve the health, promote the prosperity, and improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants thereof.

Section 8. The Town Council hereby finds, determines and declares that it has the power to adopt this ordinance pursuant to: (i) the Local Government Land Use Control Enabling Act, Article 20 of Title 29, C.R.S.; (ii) Part 3 of Article 23 of Title 31, C.R.S. (concerning municipal zoning powers); (iii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iv) Section 31-15-401, C.R.S.(concerning municipal police powers); (v) the authority granted to

home rule municipalities by Article XX of the Colorado Constitution; and (vi) the powers contained in the Breckenridge Town Charter.

Section 9. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2020. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ___ day of ____, 2020, at 7:00 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By: _____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

Memo

TOWN OF BRECKENRIDGE

To: Town Council

From: Jessie Burley, Sustainability Coordinator

Date: 2/19/2020

Subject: Mountain Community Solar (CEC) agreement resolution

Clean Energy Collective, on behalf of Mountain Community Solar 1, has presented the Town of Breckenridge with an opportunity to subscribe to 800 kW of solar in a community solar garden coming online in 2020. The CEC/Xcel Energy Solar Rewards Program is designed to reduce monthly electricity bills, protect against rising energy costs and provide positive financial payment with no changes to the Town's facilities.

This arrangement will have no initial cost to the town, and it is expected to generate a 5% savings to the Town over 20 years. The Town, as the community solar subscriber, pays the solar garden developer for the price of the energy produced at 95% the Xcel Energy bill credit rate for the solar. Xcel sets the bill credit rate on an annual basis with the PUC.

This subscription will produce approximately 1.7 - 1.5 million kWh of electricity annually over the course of 20 years. The environmental benefits are 58,011,275 lbs of CO2 avoided, 65,778,887 of car travel avoided, or 89,475 trees planted. This is roughly 32% of the Town's municipal energy use (in 2019).

Attachments:
CEC's 5% Discount Proposal (dated January 16, 2020)
Resolution to enter into agreement for 800 kW of community solar
Exhibit A: Community Solar Subscription Agreement

January 16, 2020

Revised Proposal – 5% Discount Proposal

Clean Energy Collective is pleased to present the Town of Breckenridge the opportunity to participate in the savings produced by solar panels in Clean Energy Collective's (CEC) Community Solar Arrays for Xcel Energy customers. This opportunity is through the Colorado Community Solar Gardens Act, House Bill 10-1342 and the Xcel Energy Community Solar Rewards program. The CEC/Xcel Energy Solar Rewards Program is designed to reduce monthly electricity bills, protect against rising energy costs and to provide positive financial payback, all with no changes to your facilities. CEC develops remote off-site solar arrays, not on your roof or land that encourage multiple customers to enjoy the savings. With no effect to your location the maintenance is all taken care of by CEC not your facilities staff.

The proposed renewable energy system requires no down payment and can generate financial savings from the first month of service. This proposal is based upon al SG class accounts, we will finalize account selection prior to project interconnection.

Clean Energy Collective

CEC is the nation's leading developer of community solar solutions. CEC pioneered the model of delivering clean power-generation through large-scale facilities that are collectively serving participating utility customers. Since establishing the first community-owned solar array in the country in 2010, CEC has more than 100 community solar arrays online or under development with over 27 utility partners across 12 states, these developments represent over 177 MW of community solar capacity. CEC has been nationally recognized for pioneering the community solar project as the primary vehicle to bring solar power to all rate-payers, especially those where on site solar is not an option.

U.S. DEPARTMENT OF ENERGY National Innovative Green Power Program of the Year

In addition to winning distinction as the National Innovative Green Power Program of the Year, Clean Energy Collective, was named to the 2014 Inc. 500 list, an exclusive ranking of the nation's fastest-growing private companies. Ranked number 194 overall, and 11th within the Energy segment, CEC was recognized for its innovative community-owned solar solution being adopted by utilities and communities across the country. Between 2010 and 2013 CEC's revenue grew 2,217 percent. These awards signify a track record of success and are important strengths to note in your selection of CEC as your partner for reduced energy costs in your strategy to support renewable energy sources.

The following proposal was developed to address your specific energy use patterns, reduction of expense, environmental and societal benefits based on your particular usage. We stand ready to answer questions you may have and look forward to be a part of your energy cost savings and sustainable energy strategies.

Regards,

Mike Malone
Sr. Vice President of Sales
Clean Energy Collective

Clean Energy Collective in Colorado

CEC is developing large scale community solar facilities in Colorado, with multiple projects serving Xcel Energy customers throughout the Xcel Energy territory. These projects are utility scale, incorporating the most advanced solar panels, inverters, automated maintenance and single axis tracking. These methods help to ensure the highest on-bill credit rates for our solar projects. Customers of Xcel Energy can now receive reduced energy costs from local renewable energy simply by participating in one or more of the CEC community-owned solar arrays.

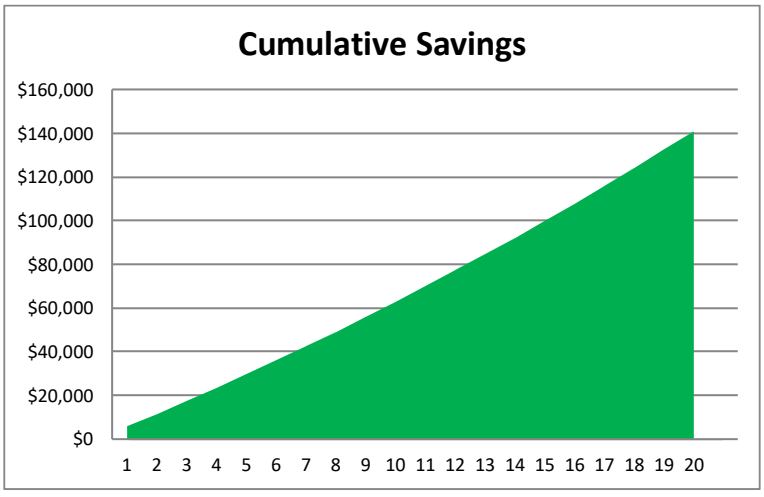
System Size		
Panel Size (watts)	**Panels**	**kW**
113	7,111	800
Year 1		
SRC Credits		**$112,972**
CEC Payments		**($107,323)**
Year One Savings	**5.0%**	**$5,649**
20 Years		
SRC Credits		**$2,823,456**
CEC Payments		**($2,682,284)**
Total Savings	**5.0%**	**$141,173**
20 Year Environmental Benefits		
CO2 Avoided (lbs)		**58,011,275**
Car Travel Avoided (miles)		**65,778,887**
Trees Planted		**89,475**

How Clean Energy Collective's Community Solar Works

Commercial, Government and Non-Profit Xcel Energy utility customers can participate in CEC's Community Solar Program without making an upfront payment. CEC customers are assigned a number of panels in a community solar facility based on their meters and in turn receive Solar Rewards Credits from Xcel Energy for the power produced; directly on their monthly electric bills. The following month customers will make a monthly payment to CEC for a portion (95%) of the credits they received. Customers generate these automatic clean energy savings in one easy step, without change to their property.

Monthly Credit

Each month, your utility will calculate the amount of kilowatt hours (kWh) attributable to each customer in the community solar array. Once the kWhs attributable to each customer are determined, the utility will apply a credit to your electric bill that is the product of the kWh produced and the Solar Rewards Credit Rate for your account. Credits are applied to your Xcel Energy electric bills one month in arrears and directly offset the monthly electricity charges on your bill.



As your utility's rates change over time, the Solar Rewards Credit Rate changes keeping pace with the established tariff. As rates changes, your credit rate will move in unison. When rates increase or decrease your savings can increase or decrease.

Xcel Energy will continue to bill customers for all of the electricity consumed under prevailing tariff rates. They will then apply the Solar Rewards Credit against the total charges on your electric bill. The Solar Rewards Credits will reduce the whole dollar cost of the bill, with any excess credits rolled over and applied to future months' billings. This program attacks the entire utility bill expense, not just your kWh usage charges.

Customer Participation Rules

To participate in the CEC/Xcel Energy Solar Rewards program you must have an active account with Xcel Energy and maintain that account throughout the life of the agreement. Any location, meter or account will need to be determined eligible by Xcel Energy. You may participate in more than one project, making it possible to maximize your savings from renewable energy or to supply savings to multiple locations in different areas. You can change the utility account up to 2 times per year where credits are posted as your energy requirements change. In order to participate, you will be required to sign a 20-year contract.

Xcel Energy requires that each community solar array have no more than 40% dedicated to any one customer. Fortunately, with the large number of sites awarded to CEC, you may combine capacity in a variety of projects to meet your objectives, while remaining in compliance with these restrictions. With your historical annual electricity consumption and expense information, CEC can provide a system that generates a solar offset of up to 120% of your annual electricity usage.

Customer Payment

There is no down payment to participate in the CEC/Xcel Energy Community Solar Rewards program. From the very first month after the solar array is connected to Xcel Energy's grid you can generate Solar Rewards Credits that reduce your utility costs. The month after receiving your on-bill credit for the power produced you will pay CEC 95% of the credits your receive and retain all the credit above that as savings every month. You pay for the credits are they are received on your utility bill and can benefit from saving the first month from the on-bill credits. You will receive year after year savings under the program based on our estimates.

Transfer

Customers may assign the credits received to any meter on their account. This allows you the opportunity to potentially move future credits from one location or account to others as your organization's needs change. Any credits already earned to an account will stay on the designated meter until they are used. To comply with the utility's regulations, CEC provides two opportunities each year for customers to make panel reassignment changes.

Operations & Maintenance Program

CEC is responsible for the ongoing operations and maintenance of all Community Solar Arrays. Ongoing operations and maintenance includes active daily monitoring of production and weather information, with real-time visibility into actual production. Any unexpected degradation in production is flagged and investigated by CEC and our maintenance contractors. The manufacturer's 25-year panel warranty covers expected annual production assuming a degradation rate after year 1 of 0.67% per year for the next 24 years. The charts provided to you in the following pages factor this rate into the numbers.

The CEC O&M Program provides:

- Real time monitoring of the array's production.
- Real time monitoring of the weather and irradiation at the array.

- Baseline production monitoring against the expected production per year, not just the manufacturers' warranties. If production falls by more than 2%, the array is inspected and faulty components are replaced or repaired as required.
- Annual inspections of the array by certified technicians.
- 25-year panel warranties from the manufacturer.
- Two 10-year successive inverter warranties from the manufacturer.
- 10-year installation warranty from the installation contractor.
- Immediate repair or replacement of faulty or defective parts.
- Insurance against all damages at full replacement value.

Summary:

The CEC community solar program offers customers the unparalleled opportunity to:

- Achieve immediate savings on your utility costs, from the first month, with no payback period
- Reduce or hedge your long-term energy costs with a 20-year agreement that rises and falls with utility costs
- Lock in long term savings for 20-years
- Support renewable energy sources and be seen as an environmental leader in the community

The CEC community solar program comes without the restrictions of having to:

- Secure long-term financing or commit a large down payment
- Alter your property or facility to accommodate solar panels
- Budget or assign resources to the maintenance of an on-site solar power installation

The CEC community solar program is a fast and easy way to implement a renewable energy savings program for your organization within the state of Colorado.

A specific estimation of Production, Credits, Payments and Savings follows.

The CEC Program provides the following production, savings and cost estimates:

ESTIMATED POWER PRODUCTION AND SAVINGS							
Utility Rate Inflation			3.00%		**Panels**	**7,111**	
Year 1 Solar Rewards Credit Rate			$0.06457		**KW**	**800**	
					20 Year Savings $	$141,173	
					20 Year Savings %	5%	
Year	**Annual kWh**	**Solar Rewards Credit Rate Average ($/kWh)**	**Total Solar Rewards Payment**	**Annual PPA Payments**	**Total Savings Generated**	**Cumulative Savings**	**Effective Discount Rate**
1	1,749,600	$0.0646	$112,972	($107,323)	$5,649	$5,649	5%
2	1,737,930	$0.0665	$115,585	($109,805)	$5,779	$11,428	5%
3	1,726,260	$0.0685	$118,253	($112,340)	$5,913	$17,340	5%
4	1,714,591	$0.0706	$120,977	($114,928)	$6,049	$23,389	5%
5	1,702,921	$0.0727	$123,758	($117,570)	$6,188	$29,577	5%
6	1,691,251	$0.0749	$126,597	($120,268)	$6,330	$35,907	5%
7	1,679,581	$0.0771	$129,496	($123,021)	$6,475	$42,382	5%
8	1,667,911	$0.0794	$132,454	($125,831)	$6,623	$49,005	5%
9	1,656,241	$0.0818	$135,473	($128,699)	$6,774	$55,778	5%
10	1,644,572	$0.0842	$138,554	($131,626)	$6,928	$62,706	5%
11	1,632,902	$0.0868	$141,698	($134,613)	$7,085	$69,791	5%
12	1,621,232	$0.0894	$144,906	($137,660)	$7,245	$77,036	5%
13	1,609,562	$0.0921	$148,179	($140,770)	$7,409	$84,445	5%
14	1,597,892	$0.0948	$151,517	($143,941)	$7,576	$92,021	5%
15	1,586,222	$0.0977	$154,923	($147,177)	$7,746	$99,767	5%
16	1,574,553	$0.1006	$158,397	($150,477)	$7,920	$107,687	5%
17	1,562,883	$0.1036	$161,939	($153,843)	$8,097	$115,784	5%
18	1,551,213	$0.1067	$165,552	($157,275)	$8,278	$124,061	5%
19	1,539,543	$0.1099	$169,236	($160,774)	$8,462	$132,523	5%
20	1,527,873	$0.1132	$172,992	($164,342)	$8,650	$141,173	5%
Total	**32,774,732**		**$2,823,456**	**($2,682,284)**	**$141,173**		**5%**
	Annual kWh is the estimated production from your portion of the solar facility.						

FOR WORKSESSION/ADOPTION FEBRUARY 25

RESOLUTION NO. __

SERIES 2020

A RESOLUTION APPROVING A COMMUNITY SOLAR SUBSCRIPTION AGREEMENT WITH MOUNTAIN COMMUNITY SOLAR 1, LLC

WHEREAS, the Town of Breckenridge wishes to promote the public health and safety of its residents and visitors, including access to clean air, clean water, and a livable environment; and

WHEREAS, there is scientific consensus regarding the reality of climate change and the recognition that human activity, especially the combustion of fossil fuels that create greenhouse gases, is an important driver of climate change; and

WHEREAS, climate change is locally expected to shorten our ski season, make our forests more prone to drought and wildfire, reduce snowpacks and water supplies, and present a variety of other threats on a global scale that could harm our economy, safety, public health, and quality of life; and

WHEREAS, the Town of Breckenridge remains committed to its adopted goals to reduce energy consumption and increase renewable energy sources as outlined in the SustainableBreck Plan and Summit Community Climate Action Plan; and

WHEREAS, the transition to a low-carbon community reliant on the efficient use of renewable energy resources will provide a range of benefits including improved air quality, enhanced public health, increased national and energy security, local green jobs, and reduced reliance on finite resources; and

WHEREAS, the community's economy is based on its popularity as a tourism destination and the Town of Breckenridge has an opportunity to participate in local and state-level initiatives, demonstrating leadership by example; and

WHEREAS, the Town of Breckenridge's current stable economy is based on it being a highly-visited destination and we have an opportunity to broadly influence dialogue on climate change; and

WHEREAS, the Town of Breckenridge has already taken a variety of important actions to reduce greenhouse gas emissions and transition to renewable energy sources in our community, including installing some 1,500 kw of solar gardens and solar arrays on Town property, subscribing to community solar in Colorado, undertaking numerous energy efficiency upgrades in municipal facilities, and implementing several programs designed to increase energy efficiency and make renewables more accessible to Town residences and businesses; and

WHEREAS, the Town of Breckenridge desires to work in partnership with its utility provider Xcel Energy to move towards 100 percent renewable energy sources in the future; and

WHEREAS, "renewable energy" includes energy derived from wind, solar, geothermal, and other non-polluting sources that is not derived from fossil or nuclear fuel and does not adversely impact communities or the environment; and

WHEREAS, the public will continue to be provided opportunities and encouraged to participate in the process for planning and implementation of renewable energy initiatives; and

WHEREAS, a proposed Community Solar Subscription Agreement with Mountain Community Solar 1, LLC, a Colorado limited liability company, has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference; and

WHEREAS, the proposed Community Solar Subscription Agreement will provide 800 kilowatts of subscribed community solar power to come online in 2020; and

WHEREAS, the Town Council has reviewed the proposed Community Solar Subscription Agreement, and finds and determines that it should be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Community Solar Subscription Agreement with Mountain Community Solar 1, LLC, a Colorado limited liability company ("**Exhibit "A"** hereto), is approved, and the Town Manager is authorized to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. Minor changes to or amendments of the approved agreement may be made by the Town Manager if the Town Attorney certifies in writing that the proposed changes or amendments do not substantially affect the consideration to be received or paid by the Town pursuant to the approved agreement, or the essential elements of the approved agreement.

Section 3. This resolution is effective upon adoption.

RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2020.

TOWN OF BRECKENRIDGE

By: _____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

_____
Town Attorney Date

COMMUNITY SOLAR SUBSCRIPTION AGREEMENT

This Community Solar Subscription Agreement (the "***Agreement***") is entered into as of _____, 2020 (the "***Effective Date***") and is by and between Mountain Community Solar 1, LLC, a Colorado limited liability company ("***Company***"), and **Town of Breckenridge, Colorado, a Colorado municipal corporation** ("***Customer***"). In this Agreement, Company and Customer are sometimes referred to individually as a "***Party***" and collectively as the "***Parties***."

RECITALS

WHEREAS, Company is in the business of financing, developing, owning, operating and maintaining solar electric generation facilities.

WHEREAS, Customer is a Colorado municipality, county, school district, special district or other political subdivision.

WHEREAS, Company has offered to provide to Customer under this Agreement a means of procuring low-cost electrical energy as utility cost-savings measures under C.R.S. 29-12.5-101 et seq.

WHEREAS, the Board (as defined below) has received the analysis and recommendations concerning such utility cost-savings measure from a person experienced in the design and implementation of utility cost-savings measure.

WHEREAS, Customer is an active electric account holder with the utility listed on Appendix A (the "***Utility***") serving the Utility Service Location (as defined below), and Customer desires to participate in the Solar Rewards Community Service Program (the "***Program***"), as further defined in Section 1 below.

WHEREAS, Company has constructed or intends to construct a Community Solar Garden (as defined in the Community Solar Garden Regulations (as defined below)) at the facility location set forth in Appendix A (the "***Facility***"). Company will interconnect the Facility with the Utility pursuant to the terms of the Tariff (as defined below), generator interconnection agreement, any other applicable tariff, or other agreements required to be executed with the Utility (collectively, the "***ICA***") pursuant to which Company or its Affiliate will deliver power generated at the Facility to the Utility. The Utility will provide Bill Credits (as defined below) to Customer as set forth in the Program and as directed by Company or its Affiliate.

WHEREAS, Customer wishes to subscribe to a portion of the electric generating capacity of the Facility (such portion, the "***Solar Interest***") during the Term (as defined below) in order to receive Bill Credits from the Utility, subject to the terms and conditions, and at the prices, set forth in this Agreement.

WHEREAS, the Board has found pursuant to C.R.S. 29-12.5-103 that the amount of money the Customer would spend on such utility cost-savings measure is not likely to exceed the amount of money the Customer would save in energy costs over the term of this Agreement.

WHEREAS, the Board has found that the obligations entered into by the Customer under this Agreement shall not cause the total outstanding indebtedness incurred by the Customer under C.R.S. 29-12.5-103 to exceed the applicable limit set forth in C.R.S. 29-12.5-103(2)(b).

NOW, **THEREFORE**, in consideration of the foregoing recitals, the mutual promises, representations, warranties, covenants, conditions herein contained, and the appendices attached hereto, Company and Customer agree as follows:

1 DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined in this Article 1 or elsewhere in this Agreement shall be given their common and ordinary meanings.

"***Affiliate***" means any person or entity that directly, or indirectly through one or more intermediaries, controls or is controlled by or partnered with, or is under common control with the person or entity specified.

"***Applicable Legal Requirements***" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party's rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Facility, as well as the Bill Credits distributed pursuant to the Program.

"***Bill Credits***" means the Solar Rewards Community Service Credit (as defined under the Community Solar Garden Regulations) that is the monthly amount paid by the Utility to the Customer as a credit on the Customer's retail electric service bill to compensate the Customer for its beneficial share of photovoltaic energy produced by the Facility and delivered to the Utility as calculated pursuant to Section 3.3 which are based upon the Customer's Solar Output pursuant to the terms of this Agreement. The value of the Bill Credit will appear as a line-item credit, and offset charges, on Customer's Utility bill.

"***Bill Credit Payment***" means the monthly amount due from Customer to Company under this Agreement as calculated pursuant to Section 5.1.

"***Bill Credit Rate***" means the applicable rate for the Customer's class and subclass as determined under the rate schedule in the Tariff in effect at the time of energy generation (in $/kWh) as may be periodically revised by the Utility based upon variations in the Utility's retail rate from time to time.

"***Board***" means the governing body of the above referenced Customer.

"***Commercial Operations Date***" means the date on which the Facility (i) generates electric energy on a commercial basis, and (ii) is interconnected to the local electrical distribution system

and has been authorized by the Utility. Such date shall be specified by Company either in Appendix A, or by a separate notice provided to Customer pursuant to Section 2.2.

"***Commission***" means the Colorado Public Utilities Commission.

"***Community Solar Garden Regulations***" means the Colorado statute C.R.S § 40-2-127; Commission rules governing Community Solar Gardens (Commission Rule 3650-3668); Utility rules and regulations on file with the Commission, as each may be amended from time to time.

"***Customer's Capacity***" means the amount of capacity Customer has subscribed to under this Agreement expressed in terms of kW as set forth in Appendix A and shall be updated after the Commercial Operations Date. Customer's Capacity shall include the Initial Capacity plus any increases or decreases made by Company (Current Capacity), if any, pursuant to Section 3.1.

"***Customer's Solar Output***" means the portion of the Facility's production allocable to Customer as determined in accordance with Section 3.2.

"***Customer's Portion***" means the Customer's Capacity expressed as a percentage of the total nameplate capacity of the Facility. The Customer's Portion in this Agreement is set forth in Section 3.1.

"***Eligibility Period***" means the period commencing on the Eligibility Date (as defined below) through the termination of this Agreement.

"***Environmental Attributes***" means any credit, benefit, reduction, offset, financial incentive, and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facility, its production capacity and/or electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy credits, renewable generation attributes, or renewable energy certificates (each referred to as "***REC***s") or any similar certificates or credits under the laws of any jurisdiction, including, without limitation, solar RECs, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facility, its production capacity and/or electricity generation. For the avoidance of doubt, the term Environmental Attributes does not include Bill Credits as defined pursuant to this Agreement.

"***Estimated Initial Annual Customer's Solar Output***" means the Customer's Solar Output estimated to occur during the twelve (12) month period following the Commercial Operations Date.

"***Facility Meter***" means Company's electric meter located at the Facility and used to measure the solar electricity generated at the Facility for purposes of determining the Bill Credit Payment, if the Utility Meter is unavailable.

"***Facility Solar Output***" means the amount of solar electricity generated during the Production Month at the Facility and delivered to the Utility Meter.

"***Fixed Bill Credit Rate***" means the applicable retail rate for the Customer's class and subclass as determined under the rate schedule in the Tariff in effect at the time of energy generation (in $/kWh) as may be periodically revised by the Utility based upon variations in the Utility's retail rate from time to time.

"***Force Majeure Event***" means any event or circumstance not within the reasonable control of Company which precludes Company from carrying out, in whole or in part, its obligations under this Agreement, including, without limitation, Acts of God, hurricanes or tornados, fires, epidemics, landslides, earthquakes, floods, other natural catastrophes, strikes, lock outs or other industrial disturbances. Notwithstanding the contrary, economic hardship or unavailability of funds shall not constitute a Force Majeure Event.

"***Governmental Authority***" means (i) any federal, state or local government, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity, (ii) any independent system operator or regional transmission owner or operator, and (iii) any transmission or distribution entity providing net metering, distribution or transmission services to the Facility, including the Utility.

"***kW***" means kilowatt DC.

"***kWh***" means kilowatt hour AC.

"***Lender***" means the entity or person(s) directly or indirectly providing financing to Company in connection with the Facility.

"***Membership Information List***" means the form Company files with the Utility to inform the Utility of what percentage of the Facility Solar Output each customer is entitled to in the form of Bill Credits. Company shall update the Membership Information List from time to time as allowed under the Community Solar Garden Regulations and Tariff.

"***Production Month***" means a monthly period during which solar electricity is generated at the Facility and delivered to the Utility Meter.

"***Program***" means the Solar Rewards Community Service Program offered by the Utility pursuant to the Tariff, the Community Solar Garden Regulations, and requirements of the ICA which may at any time be applicable to a Party's rights and obligations hereunder, each as may be amended from time to time.

"***Replacement Customer***" means a customer of the Utility that is eligible to participate in the Program and is acceptable to Company in Company's sole discretion that takes over Customer's Capacity

"***Tariff***" means the Utility's Colorado PUC No. 8 Tariff, Schedule of Solar Rewards Community Servivce that is approved by the Commission and any other appropriate jurisdictional regulatory bodies, as may be amended from time to time.

"***Tax Incentives***" means any tax credits, incentives or depreciation allowances established under any federal or state law, including, without limitation, investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated, bonus or other depreciation).

"***Utility Meter***" means the Utility account meter located at the Facility and used by the Utility to measure the energy delivered by the Facility to the Utility.

"***Utility Service Location***" means the location at which Customer receives electrical service from the Utility. The Utility Service Location is specified in Appendix A hereto, and is subject to change in accordance with the terms and conditions of Section 7.

2 TERM

2.1 Term. The term of this Agreement (the "***Term***") shall commence on the Effective Date and terminate twenty (20) years from the Facility's Commercial Operations Date unless earlier terminated in accordance with this Agreement, in which case the Term shall expire on the effective date of such termination.

2.2 Initial Accrual of Bill Credits. Customer shall begin to accrue Bill Credits in accordance with the terms of this Agreement on the date by which all of the following shall have occurred (the "***Eligibility Date***"): (i) the Commercial Operations Date, (ii) the Facility has qualified as a Community Solar Garden, (iii) Customer has been added to the Membership Information List, and (iii) the Utility has accepted the Membership Information List with such Customer information included. If the Commercial Operations Date is not known by the Effective Date, Company will provide Customer with notice of the Commercial Operations Date once known. Appendix A will be updated after the Commercial Operations Date with the Commercial Operations Date, the Facility location, the Facility's total nameplate capacity, the Customer's Capacity, the Customer's Portion, and the Estimated Initial Annual Customer's Solar Output. Such updated Appendix A shall be added to this Agreement without the need for additional consent or signature of the Parties.

3 CUSTOMER'S SUBSCRIPTION

3.1 Capacity. Commencing on the Eligibility Date and continuing throughout the Eligibility Period, Customer shall subscribe to _____ % of the nameplate capacity of the Facility (the "***Customer's Portion***"). The initial Customer's Portion expressed in terms of kW capacity is referred to as the "***Initial Capacity.***" The Company shall update Appendix A with the exact Initial Capacity in kW within thirty (30) days of the Commercial Operations Date of the Facility. Company may increase or decrease the Customer's Capacity at any time by providing written notice and an updated Appendix A to Customer, if such increase does not violate the Program Limitation in Section 4.1 (the "***Current Capacity***"). Company may not decrease Customer's Capacity below the Initial Capacity unless otherwise pursuant the terms to this Agreement.

3.2 Determination of Solar Output. Customer acknowledges the measurement of Facility Solar Output shall be based upon readings at the Utility Meter. If readings from the Utility Meter are unavailable, the Company shall base the measurement of the Facility Solar Output from the Facility Meter. Each month during the Eligibility Period of this Agreement, for as long as the Customer is in compliance with the requirements of this Agreement, the Program and the Utility, the Utility will record the amount of solar electricity generated that month at the Facility and delivered to the Utility Meter (the "***Facility Solar Output***"). The Utility will then multiply the Facility Solar Output by Customer's Portion to arrive at the "Customer Solar Output" for that month in kWhs. The amount of solar electricity generated is measured in kilowatt hours AC or "kWh", and the month over which such solar electricity is measured is referred to herein as the "***Production Month***."

3.3 Calculation of Bill Credits. Bill Credits are calculated pursuant to the Program by the Utility and are based upon readings at the Utility Meter. Bill Credits are applied solely by the Utility based upon the terms and conditions of the Program. Company will provide the Utility with Customer's information so that the Utility can post the appropriate allocation of Bill Credits to Customer's Utility bill, pursuant to the allocations shown in the Membership Information List. Bill Credits to be applied on the Customer's Utility account are calculated as the Bill Credit Rate multiplied by the Customer's Solar Output based upon readings at the Utility Meter for the Production Month. Customer acknowledges and agrees that Company's sole obligation regarding payment of Bill Credits to Customer is to request and use commercially reasonable efforts to require Utility to deliver Bill Credits. The duration, terms and conditions of the Program, including the Bill Credit Rate used to determine Bill Credits, are subject to the sole and exclusive control of the Utility, and Company has not made any representations or warranties with respect to the expected duration of the Program or the amounts to be provided by the Utility as Bill Credits. Customer understands that (i) the Bill Credits received by Customer for a particular Production Month will be reflected on Customer's statement from the Utility as a monetary credit amount and not as an electricity quantity; and (ii) such Bill Credits will be reflected on Customer's monthly invoice according to the Utility's billing cycle, which may be approximately two (2) months after the Production Month in which the Bill Credits are generated by the Facility.

3.4 Title; Environmental Attributes and Tax Incentives Excluded. Customer shall not be entitled to any ownership interest in, and as between Customer and Company, Company shall have title to, the Facility and all solar panels. Customer acknowledges and agrees that Customer's Solar Interest does not include any Environmental Attributes or Tax Incentives associated with the Facility, and Customer shall not claim the Environmental Attributes or Tax Incentives associated with the Facility.

3.5 Taxes. Customer shall be responsible for any applicable sales, use, import, excise, value added, or other taxes or levies (other than Company's income taxes) associated with this Agreement.

4 ACKNOWLEDGMENTS REGARDING THE PROGRAM

4.1 Program Limitation. The Program imposes certain requirements on participation in the Program, which include the following: (i) Customer's Solar Output measured over twelve (12) months shall not exceed one-hundred twenty percent (120%) of Customer's electric energy consumption during the most recent twelve (12) month billing period, and (ii) Customer's Utility Service Location must be within the same service territory as the Utility (collectively, the "***Program Limitation***"). The Estimated Initial Annual Solar Output from the Customer's Capacity as set forth in Appendix A shall not exceed the Program Limitation. Customer's participation (or the participation of others at the same Utility Service Location) in other Utility programs relating to renewable energy payments, credits or rebates may further limit the Bill Credits or capacity which Customer can receive or which may be attributed to Customer in connection with this Agreement and the Program. The Utility is not obligated to provide Bill Credits to the extent Customer's Solar Output exceeds the Program Limitation. Company reserves the right to decrease the Customer's Capacity in order to maintain Customer's compliance with the Program Limitation. The Program Limitation set forth in this Section 4.1 is derived from the Program, and this Agreement will be deemed automatically amended to incorporate any changes to corresponding provisions in the Program.

4.2 Program Requirements. To participate in the Program, Customer must, in addition to other applicable requirements, (i) be and remain a current customer of record of the Utility for electric service throughout the Term, and (ii) be and remain in compliance with all requirements of this Agreement, the Program and the Utility throughout the Term.

4.3 Customer's Subscription Contingent on Allocation of Bill Credits by the Utility. Customer's subscription is contingent upon and subject to the Utility's acceptance and allocation of Bill Credits to Customer's Utility account. During the Term, (i) if for any reason the Utility refuses to allocate a portion or all of the Bill Credits to Customer's Utility account on a temporary basis, this Agreement shall remain in full force and effect, but Company shall promptly refund to Customer any amount paid to Company by Customer for such Bill Credits which the Utility refused to credit to Customer's Utility account, and (ii) if for any reason the Utility refuses to allocate the Bill Credits to Customer's Utility account on a permanent basis, either Party may terminate this Agreement by written notice to the other Party. Notwithstanding anything to the contrary, this Section 4.3 does not apply to the extent that the reason that the Utility refuses to allocate Bill Credits to Customer is a result of Customer failing to pay Customer's Utility bill.

4.4 Additional Requirements. From time to time during the Term, Company may request and Customer shall within ten (10) days of such request provide financial information reasonably requested by Company and/or its Lender in order to perform a financial analysis of Customer. If such information is not provided within such time, or if Company determines in Company's sole discretion that such information is

unsatisfactory, Company may terminate this Agreement upon written notice to Customer.

5 PAYMENT

5.1 Bill Credit Payment. The Bill Credit Payment for each month shall equal ninety-five percent (95%) of the Bill Credits attributable to Customer's Solar Output for the prior Production Month.

5.2 Invoice for Bill Credit Payment. After the Eligibility Date, Company will provide Customer with electronic notice of the Bill Credit Payment due from Customer on or about the 60th day after the end of the Production Month upon which such Bill Credit Payment is based (the "***Invoice***"). The Invoice shall be based on readings at the Utility Meter if available. In the event the Utility does not provide Utility Meter readings at all or on a timely basis, the Invoice shall be based on readings at the Facility Meter. Customer shall pay all invoiced amounts owed to Company by automatic electronic funds transfer via the Automated Clearing House ("***ACH***") wire transfer, from the Designated Payment Account (as defined in Appendix B) identified by Customer in Appendix B, or by any other approved electronic payment method. Customer shall execute the "Payment Authorization Form" attached as Appendix B and incorporated herein.

5.3 Records and Audits. Each Party shall keep, for a period of not less than three (3) years after the date of each Invoice, records sufficient to permit verification of the accuracy of billing statements, charges, computations and payments reflected on such Invoice. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such Invoice during the other Party's normal business hours. Company shall, at Customer's request (such request to not occur more than once annually), provide documentation of the amount of electricity generated by the Facility during the Production Months covered by Customer's request and/or the calculation of the applicable Bill Credit Payment; provided that in connection with any such request Customer shall provide Company with Customer's Utility bills for the Production Months covered by Customer's request.

5.4 Dispute. Customer shall only be entitled to dispute an amount owed or paid by Customer within twelve (12) calendar months from the date of issuance of such Invoice. Upon resolution of the dispute, any required payment shall be made within seven (7) business days of such resolution. Any overpayments shall be returned by Company upon request or deducted from subsequent payments. If the Parties are unable to resolve a payment dispute under this Section 5.4, the Parties shall follow the procedure set forth in Section 14.6.

6 INTERACTION WITH THE UTILITY

6.1 Appointment of Company as Customer's Agent. Customer information includes, without limitation, Customer's name, address, Customer's Utility Service Location, the Utility account numbers and meter numbers associated with the Utility Service Location, the Customer's Solar Output, and other Customer information listed on Appendix A (collectively, the "***Customer Information***"). Company agrees to be, and Customer hereby appoints Company, as Customer's representative for submitting Customer Information to the Utility, with full power and authority to supply to the Utility such information as may be required by the Utility under the Program. In addition, Customer hereby authorizes the Utility to release to Company the consumption and other account information of Customer listed in Appendix A to help Company to carry out the terms of this Agreement and the Program, and shall execute any documents that either Company or the Utility may request to permit the release of such information.

6.2 Provision of Information to Utility and Disclosure Forms. Within ten (10) days of any request made from time to time, Customer shall provide to Company and/or the Utility all applications, documentation, and information required by Company or the Utility, as applicable, and otherwise to qualify Customer to participate in the Program. Customer shall sign any disclosure form provided by Company within ten (10) days. Company may terminate this Agreement if Customer fails to provide such signed disclosure form back to Company within such ten (10) days.

7 CHANGE OF CUSTOMER LOCATION; CAPACITY CHANGES

7.1 Change in Location.

7.1.1 Advance Notice. Customer shall provide Company with six (6) months advance notice of any change which may cause Customer to not be the Utility's customer at the Utility Service Location for any of the accounts listed on Appendix A.

7.1.2 New Eligible Location Within Utility Service Territory. If Customer shall cease to be Utility's customer at the Utility Service Location and within thirty (30) days thereof moves to a new location within the service territory of the Utility, Customer shall take all steps and provide all information required by the Utility under the Program to substitute Customer's new service location as the Utility Service Location under this Agreement, and this Agreement shall continue in effect. If such requirements are not met within such time or if the Utility Service Location or any new service location exceeds the Program Limitation or otherwise does not comply with the Utility's requirements, Customer's ability to participate in the Program may cease or be limited in accordance with Program requirements. Company may update Customer's Utility Service Location in Appendix A with the new address without the need for additional consent or signature of the Parties.

7.1.3 Other Termination of Utility Service. If Customer ceases to be a Utility customer for electric service at the Utility Service Location and Customer's new location is not eligible under the Program or capacity cannot be allocated

to another account if applicable, Company may terminate this Agreement in accordance with Section 10.3.

7.2 Decrease in Capacity. At any time during the Term, Company may decrease Customer's Capacity to keep Customer in compliance with the Program Limitation. Customer will be charged a downsize fee in the amount of $50.00 per kW of decrease in Customer's Capacity (the "***Downsize Fee***") to be paid to Company within thirty (30) days after Company's determination that Customer's Capacity must be decreased to keep Customer in compliance with the Program Limitation; provided that no Downsize Fee shall be assessed at the time of decreasing Customer's Capacity under any of the following circumstances: (a) downsizing of Customer's Capacity is based on inaccurate estimates for a new customer without historical usage, within the first six (6) months of the Term, (b), or (c) Customer has found a Replacement Customer for the decreased capacity. Within thirty (30) days of Company's determination that Customer's Capacity must be decreased to keep Customer in compliance with the Program Limitation, and (y) Company's receipt of payment of the Downsize Fee, if applicable, Company will take the necessary steps to reduce Customer's Capacity and provide Customer with electronic notice of the new Customer's Capacity and projected date for its commencement, which will take effect at the beginning of Customer's next billing period following Company's notice to Customer of the new Customer's Capacity and projected date for its commencement. The Parties agree and acknowledge that Company will have suffered damages on account of the decreasing capacity and that, in view of the difficulty in ascertaining the amount of such damages, the Downsize Fee constitutes reasonable compensation and liquidated damages to compensate Company on account thereof.

7.3 Transfer to a Replacement Customer. Customer may be permitted to transfer all or some of Customer's Capacity to a Replacement Customer as long as (i) such transfer is made in compliance with all terms and conditions of this Agreement and the Program; and (ii) Customer obtains Company's prior written consent, which consent may be withheld in Company's sole discretion. Without limiting the generality of the foregoing, Customer must have no outstanding obligations in connection with Customer's Utility account or payments dues under this Agreement, and the transferee of the Capacity must qualify for participation in the Program and comply with the Utility's requirements (including but not limited to the Program Limitation). As a condition of any such transfer, Customer and the proposed transferee shall provide the Company with all requested documentation and information related to the transfer, and confirmation of qualification by the Utility to participate in the Program. Upon receipt of such documents and information, the Company will prepare an agreement similar to this Agreement for execution by the Replacement Customer, except that the Term shall be only the remaining Term under this Agreement. Such transfer to an approved Replacement Customer may be subject to a reasonable fee. Upon execution of such new agreement, this Agreement will terminate if all Capacity is transferred. Customer acknowledges and agree that the Company has no obligation to assist Customer in

identifying or qualifying any potential Replacement Customer to whom Customer may transfer Customer's Capacity.

8 REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS; COVENANTS

8.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party as follows:

8.1.1 The Party is duly organized, validly existing, and in good standing under the laws of the state of its formation.

8.1.2 The Party has full legal capacity to enter into and perform this Agreement and that the information provided is true to the best of its knowledge and belief.

8.1.3 The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of the Party has full authority to do so and to fully bind the Party.

8.1.4 The execution and delivery of this Agreement and the performance of the obligations hereunder will not violate any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.

8.1.5 There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or to the Party's knowledge, threatened against the Party, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

9 OPERATIONS AND MAINTENANCE

9.1 Operations and Maintenance Services. Beginning on the Commercial Operations Date through the end of the Term, Company will operate the Facility, and provide customary maintenance services designed to keep the Facility in good working condition. Company will use qualified personnel to perform such services in accordance with industry standards and will pay such personnel reasonable compensation for performing such services.

10 TERMINATION

10.1 Termination of Program. In the event the Utility ceases to offer the Program or a comparable substitute, or in the event that there is a change in the Program such that Customer is no longer eligible to participate in the Program, then either Party may terminate this Agreement after the Utility ceases to provide Customer the Bill Credits.

10.2 Termination Based on Lease. If the lease where the Facility is located is terminated for any reason and not subsequently reinstated, this Agreement will terminate at such time without liability to either Party.

10.3 Event of Default; Termination for Default.

10.3.1 Customer Default. Each of the following events will constitute a default on the part of Customer (a "***Customer Default***"):

a) Customer fails to make any payment to Company when due pursuant to the terms of this Agreement and such failure continues for a period of ten (10) days after receipt of written notice thereof from Company.

b) Customer breaches any warranty or representation of Customer set forth in this Agreement or fails to perform any material obligation or covenant of this Agreement, and such breach or failure is not cured by Customer within thirty (30) days after Customer receives written notice of such breach or failure from Company.

c) Customer no longer has any accounts with the Utility within an eligible service territory.

d) Customer institutes or consents to any proceeding in bankruptcy pertaining to Customer or its property, or Customer fails to obtain the dismissal of any such proceeding within thirty days of filing; a receiver, trustee or similar official is appointed for Customer or substantially all of Customer's property or assets, or such property or assets become subject to attachment, execution or other judicial seizure; or Customer is adjudicated to be insolvent.

e) Customer attempts to claim any Environmental Attributes (including any RECs) or Tax Incentives in connection with the Facility or Customer's Solar Interest.

10.3.2 Company Default. Each of the following events will constitute a default on the part of Company (a "***Company Default***") provided there is no concurrent Customer Default:

a) Company breaches any warranty or representation of Company to Customer set forth in this Agreement, or fails to perform any material obligation of this Agreement, and such breach or failure is not cured by Company within thirty (30) days after Company receives written notice of such breach or failure from Customer, or, if such breach of failure is not capable of cure within such thirty (30) day period, then Company (i) fails to begin such cure within ten (10) days of such written notice or (ii) fails to complete the cure of such breach or failure with sixty (60) days of such written notice using diligent efforts.

10.3.3 Remedies. If a Customer Default occurs and is continuing after the expiration of the cure period applicable thereto, Company may terminate this Agreement for breach by written notice to Customer, and Customer shall be responsible for paying for all Bill Credits that the Utility continues to allocate to Customer until Company can fine a replacement customer, in Company's sole discretion. If a Company Default occurs and is continuing after the expiration of the cure period applicable thereto, Customer may terminate this Agreement by written notice to Company. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party has a duty to mitigate damages that it may incur as a result of a Party's non-performance under this Agreement.

10.4 Force Majeure. If a Force Majeure event occurs, Company shall not be deemed to be in default during the Force Majeure event, provided that: (i) Company gives the Customer written notice within two (2) weeks describing the occurrence and the anticipated period of delay; (ii) no obligations of Company which were to be performed prior to the Force Majeure Event shall be excused; and (iii) Company shall use commercially reasonable efforts to remedy the Force Majeure Event. If any Force Majeure Event lasts longer than ninety (90) days, and Company determines in good faith that such Force Majeure Event substantially prevents, hinders or delays Company's performance of any of its obligations, then either Party may upon written notice terminate the Agreement without further liability, except that neither Party shall be relieved from any payment obligations arising under this Agreement prior to the Force Majeure Event.

10.5 Early Termination. Prior to the Commercial Operations Date, either Party may terminate this Agreement without penalty or any liability if Company has not achieved the Commercial Operations Date within eighteen (18) months after the Effective Date or the Facility fails to qualify as a Community Solar Garden in accordance with the Program and Customer has not been transferred to a different Facility in accordance with Section 12.2, provided that such eighteen-month period shall be extended on a day-for-day basis for any delay in achieving the Commercial Operations Date due to a Force Majeure Event or action or inaction on the part of Customer.

10.6 Effect of Termination. Upon termination of this Agreement for any reason, (i) Company shall remove Customer from the Membership Information List upon the next update to the Utility, and (ii) Company shall have no further obligation to request Utility to deliver and Customer shall have no further obligation to subscribe to any Bill Credits from the Utility; provided, however, that Customer shall pay Company for any Bill Credit Payments with respect to any Bill Credits that have or may continue to be allocated to Customer by the Utility until the Membership List can be changed with a replacement customer. In connection with the foregoing sentence, Customer and Company agree to execute any documents as may be reasonably required by the Utility.

11 LIMITATIONS OF LIABILITY

11.1 Limitation of Liability. LIABILITY OF EACH PARTY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, IN CONNECTION WITH THIS AGREEMENT. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

11.2 COMPANY DOES NOT REPRESENT OR WARRANT ANY MINIMUM PRODUCTION, SOLAR OUTPUT, OR BILL CREDIT AMOUNT. COMPANY DOES NOT SELL, TRANSMIT OR DISTRIBUTE SOLAR ELECTRICITY TO CUSTOMER UNDER THIS AGREEMENT. COMPANY DOES NOT PROVIDE CUSTOMER WITH OWNERSHIP OF, OR ANY INTEREST IN, ANY UTILITY INCENTIVES, TAX INCENTIVES, TAX ATTRIBUTES, ENVIRONMENTAL ATTRIBUTES, ENVIRONMENTAL INCENTIVES, OR RECS UNDER THIS AGREEMENT, ALL OF WHICH WILL BE OWNED BY COMPANY OR THE UTILITY AND USED BY COMPANY AS COMPANY MAY DETERMINE FROM TIME TO TIME. CUSTOMER UNDERSTANDS THAT COMPANY HAS NOT GUARANTEED OR MADE ANY REPRESENTATIONS OR WARRANTIES THAT THE OPERATION OF THE FACILITY WILL BE UNINTERRUPTED OR ERROR FREE. COMPANY DOES NOT REPRESENT OR WARRANT THAT ANY CHANGE TO STATE OR FEDERAL LAW OR CHANGES TO THE TARIFF OR THE PROGRAM WILL NOT ADVERSELY AFFECT CUSTOMER OR WILL NOT CAUSE CUSTOMER TO BE INELIGIBLE FOR THE PROGRAM.

12 ASSIGNMENT

12.1 Prior Written Consent. Customer may not assign this Agreement nor assign or transfer the Bill Credits without the prior written consent of Company, which consent may not be unreasonably conditioned, withheld or delayed. Company may assign this Agreement, or any of Company's rights, duties, or obligations under this Agreement, to another entity or individual, including any affiliate, whether by contract, change of control, operation of law, collateral assignment or otherwise, without Customer's prior written consent.

12.2 Transfer to an Affiliate Facility. Company, in Company's sole discretion, may from time to time transfer Customer to another Facility owned or managed by Company or its Affiliates, provided that Customer receives similar rights and benefits as hereunder. Company shall provide Customer with written notice of such transfer and shall provide an updated Appendix A with the new Facility information. Such updated Appendix A shall be deemed to be added to this Agreement and such transfer may be made without the need for additional consent or signature of the Parties.

13 AMENDMENT FOR FINANCING

13.1 Obligation to Modify this Agreement for Financing. If a Lender requires this Agreement to be modified, or if Company determines that this Agreement needs to be modified in order to finance, develop or operate the Facility, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the original intent of this Agreement in a timely manner. If the Parties, negotiating in good faith, cannot agree on such amendments within thirty (30) days of notice of the required Lender modifications, or if Company determines in good faith that this Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Company shall have the option, but not the obligation, to terminate this Agreement upon thirty (30) days prior written notice to Customer without further liability on the part of either Party, provided that Customer and Company shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

14 MISCELLANEOUS

14.1 Notices. All notices and other formal communications which a Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: electronic notification; hand delivery; reputable overnight courier; or certified mail, return receipt requested, and shall be sent to the following addresses:

If to Company: Mountain Community Solar 1, LLC
c/o Clean Energy Collective, LLC
363 Centennial Parkway, Suite 300
Louisville, CO 80027
Attn: Tom Sweeney

with a copy by email to Tom.Sweeney@easycleanenergy.com

If to Customer: Town of Breckenridge
Town Hall
150 Ski Hill Road
PO Box 168
Breckenridge, CO 80424
Attn: Rick G. Holman

Either Party may change its address and contact person for the purposes of this Section 14.1 by giving notice thereof in the manner required herein.

14.2 Applicability of Open Records Act. The Parties acknowledge and agree (a) that Customer is required to comply with the Colorado Open Records Act, and (b) that the terms of this Agreement contain and constitute confidential and privileged market information and

trade secrets of Company, which if disclosed to Company's competitors could harm the Company. The Customer agrees to not disclose the terms hereof to any other entity or person, except as may be required under the Open Records Act or other requirements of law. Customer will advise Company of any request for the foregoing information under the Open Records Act.

14.3 Governmental Immunity. Customer and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to Customer and its officers, attorneys or employees, as applicable hereto.

14.4 Severability. Should any terms of this Agreement be declared void or unenforceable by a court of competent jurisdiction, such terms will be amended to achieve as nearly as possible the same economic effect for the parties as the original terms and the remainder of this Agreement will remain in full force and effect.

14.5 Service Contract. This Agreement is a service contract under Internal Revenue Code Section 7701(e), and its various subparts.

14.6 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Colorado without regard to principles of conflicts of law.

14.7 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 14.6 shall be the exclusive mechanism to resolve disputes arising under this Agreement.

14.7.1 Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

14.7.2 In the event that the Parties cannot timely resolve a dispute by negotiation, the sole venue for judicial enforcement shall be the district Courts of Colorado. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the State of Colorado in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

14.7.3 Notwithstanding the foregoing, injunctive relief from any court may be sought without resorting to negotiation to prevent irreparable harm that would be caused by a breach of this Agreement.

14.7.4 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

14.8 Entire Agreement. This Agreement, together with its appendices, exhibits contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

14.9 Press Releases. Customer authorizes Company and Company's Affiliates to use Customer's name and the nameplate capacity allocated to Customer hereunder for reporting purposes, such as official reporting to Governmental Authorities, the Utility, public utility commissions and similar organizations, and in marketing materials that Company or Company's Affiliates generate or distribute. Following written notice from Customer to opt out of Company's marketing program, Company shall no longer identify Customer by name in Company's marketing materials.

14.10 Compliance with Laws. Each Party shall comply with all Applicable Legal Requirements pertaining to it.

14.11 Customer Covenants.

14.11.1 Customer Information. The information set forth in Appendix A hereto is accurate, and Customer is a current customer of the Utility named in Appendix A at the Utility Service Location specified therein.

14.11.2 No Other Assignment or Authorization. Customer has not transferred, assigned or sold Customer's Capacity, Solar Interest, or Customer's Solar Output to any other person or entity, and will not do so during the Term, except as permitted under this Agreement. Customer has not provided any other person or entity any of the authority granted to Company under this Agreement and will not do so during the Term.

14.11.3 No Liens or Encumbrances. Customer has not granted or placed or allowed others to place any liens, security interests, or other encumbrances on the Customer's Capacity, Solar Interest, or Customer's Solar Output and will not do so during the Term.

14.11.4 Utility Bill. Customer shall promptly pay Customer's Utility bills by the date due thereof, and Customer understands that any failure to pay Customer's Utility bill on time may cause Customer to no longer be eligible to receive Bill Credits under this Agreement.

14.12 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of each Party hereunder are individual and neither collective nor joint in nature.

14.13 Amendments; Binding Effect; Waiver. Except as otherwise permitted in this Agreement, this Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each of the Parties to this Agreement or its respective successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns. No waiver of any provision of this Agreement will be binding unless executed in writing by the Party making the waiver. Neither receipt nor acceptance by a Party of any payment due herein, nor payment of same by a Party, shall be deemed to be a waiver of any default under this Agreement, or of any right or defense that a Party may be entitled to exercise hereunder.

14.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart.

14.15 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 14.14.

14.16 Estoppel. Customer agrees, at any time within ten (10) days of Company's written request, to execute, acknowledge and deliver to Company a written statement in form and content acceptable to Company stating whether the Agreement has been modified and is in full force and effect, whether Company is in default of said terms, and whether there exist any charges or set-offs against Company, and setting forth such other matters as Company or any Lender or potential lender may reasonably request.

14.17 Survival. The provisions of Sections 3.4, 3.5, 5.4, 5.5, 10, 11, 12, and 14 shall survive the expiration or earlier termination of this Agreement.

14.18 Third-Party Beneficiaries. A Lender is a third-party beneficiary to this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if it were a party hereto.

[*Signature page to follow.*]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CUSTOMER

Town of Breckenridge

By: _____

Name: Rick G. Holman

Title: Town Manager

COMPANY

Mountain Community Solar 1, LLC

By: Clean Energy Collective, LLC

Its Manager

By: _____

Tom Sweeney, President of Renewable Assets

List of Appendices to Agreement

Appendix A: Customer and Facility Information

Appendix B: Payment Method Authorization

Appendix C: Payment Rate List

Appendix A

Customer and Facility Information

(This Appendix will be completed and an updated copy of this Appendix will be provided after the Commercial Operations Date of the Facility.)

Customer Name(s):	Town of Breckenridge
Customer Billing Address:	Town Hall 150 Ski Hill Road PO Box 168 Breckenridge, CO 80424
Email:	jessieb@townofbreckenridge.com
Telephone:	970-547-3110
Name of Utility:	Xcel Energy
Facility Name:	Mountain Community Solar 1, LLC
Facility Company Name:	Mountain Community Solar 1, LLC
Facility Location:	TBD
Facility Nameplate Capacity (kW):	TBD
Commercial Operations Date:	TBD

Customer Utility Service Location	Account Number	Meter Number	Initial Capacity (kW)	Current Capacity (kW)	Customer's Portion (%)	Estimated Initial Annual Customer's Solar Output (kWh)

Appendix B

PAYMENT METHOD AUTHORIZATION

Customer shall provide Company with information regarding a checking or savings account which Customer has with a bank or other financial institution, which information shall include the bank's or financial institution's name, the legal name of the account holder, the account number, and the routing number (collectively, the "***Designated Account Information***"), via Company's online customer portal (the "***Account Portal***"), within ten (10) days after Customer's receipt of the Account Portal link and password. The account for which the Designated Account Information is provided, and all successor accounts for which Customer provides Company with Designated Account Information, is referred to in this Agreement as the "***Designated Payment Account***." Customer shall also provide via the Account Portal the information for a valid credit card, to be used only in the event the Designated Payment Account fails or is unable to be used for payment. At all times during the Term, Customer will maintain a Designated Payment Account in good standing with the bank or other financial institution holding such account so as to provide Company with timely and full payment by ACH withdrawal from the Designated Payment Account of each monthly Invoice as such monthly Invoice shall become due. Should a Designated Payment Account be closed or otherwise become unavailable for payment of the monthly Invoice on a timely basis, Customer will provide Company with a replacement Designated Payment Account information within five (5) business days via the Account Portal and provide Company with full payment of any amounts which are then due from Customer to Company. Notwithstanding any other provision of this Agreement, Company shall not, and shall not be obligated to, seek to have the Utility allocate Bill Credits to Customer until Customer has executed the Payment Method Authorization and provided the Designated Account Information.

The Designated Payment Account information to be provided via the Account Portal will be used for the automatic deduction of Customer's payments pursuant to this Agreement from the Designated Payment Account. Customer hereby authorizes Company, or Company's service provider, to debit the Designated Payment Account on behalf of Customer by ACH wire transfer, on a monthly basis, not sooner than thirty (30) days after Customer's receipt of the Invoice (the "***Payment Date***") for payment of regular Invoices issued by Company, and other amounts due, pursuant to the terms of this Agreement (collectively, the "***Payment***"). Customer further authorizes and consents to the use of electronic documents and authorizations in connection with ACH transactions pursuant to this Agreement.

Customer understands and agrees that if sufficient funds are not available from the Designated Payment Account or the Payment fails for any reason on the Payment Date, Company will charge Customer's credit card on file. Customer shall (i) reimburse Company for all penalties and fees incurred as a result of Customer's bank rejecting an ACH withdrawal as a result of unavailable funds or the Designated Payment Account not being properly configured for ACH transactions, (ii) pay an additional ten dollars ($10.00) as a late fee for each failed ACH transaction due to insufficient funds, and (iii) pay an alternate payment method fee of ten dollar ($10.00) for use of any payment method other than the Designated Payment Account (collectively, "***NSF Charges***"). Payment for NSF Charges will be initiated as a separate transaction from the Payment. Customer understands and agrees that no Payment will be considered "paid" until Company receives the funds in full, and that Company shall incur no liability as a result of withdrawal being dishonored

by the account holder's bank, or for any charges made to Customer by Customer's bank in connection with any ACH transaction.

Recurring Bill Credit Payments shall be drafted monthly, and Company shall provide Customer with notice of the Invoice ten (10) days prior to the Payment Date. Depending upon the timing of Payments made by Customer, Company may need to draft more than one month's Bill Credit Payment (including past due amounts) in order to bring the Payments due to a current status.

Customer understands and agrees that the authorizations provided hereby will remain in effect until Company receives a notification of termination in writing from Customer. Customer shall notify Company in writing of any changes in Customer's Designated Payment Account information or of termination of the authorizations at least fifteen (15) days prior to the beginning of the next month. Notice to Company hereunder shall be delivered to the following address:

Clean Energy Collective, LLC
363 Centennial Pkwy. Ste. 300
Louisville, CO 80027
Attn: Accounting

If the above noted Payment Dates fall on a weekend or holiday, Customer understands that the Payments may be executed on the next business day. For ACH debits of Customer's Designated Payment Account, Customer understands that because these are electronic transactions, these funds may be withdrawn from the account as soon as the above noted Payment Dates.

Customer acknowledges that the origination of ACH transactions to the Designated Payment Account must comply with provisions of U.S. law, and that Customer will not dispute these scheduled transactions with Customer's bank, so long as the transactions correspond to the terms indicated in this Appendix B.

Customer certifies that the Designated Payment Account is enabled for ACH transactions. Customer certifies that the Designated Payment Account may be charged or drawn by Customer or in the legal business name of Customer. Customer certifies that the individual designated below has been authorized by Customer to provide the Customer's Designated Account Information electronically via the Account Portal, and to enter into and authorize ACH transactions for and on behalf of Customer:

Name: Brian Waldes
Title: Director of Finance
Email: brianw@townofbreckenridge.com

Company will provide Customer with a link and password to the Account Portal within ten (10) days after the Effective Date hereof by delivery of the link to the email address listed above.

The individual completing this Payment Method Authorization certifies the information contained herein is complete, true and correct, to the best of his or her knowledge, and that he or she has the

authority to bind Customer and is authorized by Customer to enter into the terms and conditions set forth in this Payment Method Authorization for, and on behalf of, Customer.

CUSTOMER:

Town of Breckenridge

By: _____

Name: Rick Holman
Title: Town Manager

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

Cc: Rick Holman, Shannon Haynes

From: James Phelps, Director Public Works

Date: 2/19/2020 (For Feb. 25 – TC Work Session)

Subject: Resolution approving Pre-Disaster Mitigation Grant Contract and Authorization

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The Town of Breckenridge has been awarded a Pre-Disaster Mitigation (PDM) sub-grant from the Federal Emergency Management Administration (FEMA). The grant funding has been obligated to the Colorado Division of Homeland Security and Emergency Management (DHSEM) who is the pass through agency for this federal grant. The grant funds are approved for the Breckenridge Goose Pasture Tarn Dam Project.

The grant is in the amount of $18,884,795.00 ($10,000,000.00 from FEMA, $8,884,795.00 Local Match).

The Town Council's approval of the attached resolution will authorize acceptance of the federal and state grant contract terms, conditions and requirements. The approval also authorizes the Town Manager to execute the grant contract agreement on behalf of the Town of Breckenridge.

Staff will be present to answer any questions.

FOR WORKSESSION/ADOPTION – FEB. 25

RESOLUTION NO. _____

SERIES 2020

A RESOLUTION APPROVING A PRE-DISASTER MITIGATION GRANT CONTRACT FOR THE TOWN'S GOOSE PASTURE TARN DAM PROJECT

WHEREAS, the Town has been awarded a Pre-Disaster Mitigation subgrant in the amount of Ten Million Dollars ($10,000,000) by the Colorado Division of Homeland Security and Management in connection with the Town's Goose Pasture Tarn Dam Project; and

WHEREAS, the Colorado Division of Homeland Security and Management requires the Town to enter into a Grant Contract, a copy of which is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference ("Grant Contract"); and

WHEREAS, the Town Council has reviewed the proposed Grant Contract, and finds and determines that it would be in the best interest of the Town and its residents for Grant Contract to be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The grant contract between the Town and the Colorado Division of Homeland Security and Management (**Exhibit "A"** hereto) is approved, and the Town Manager is hereby authorized, empowered, and directed to execute such contract on behalf of the Town of Breckenridge.

Section 2. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF _____, 2020.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

_____
Town Attorney date

500-420\Grant Contract Resolution (02-13-20)

Exhibit "A"

PDM 2018 Encumbrance #18PDM20BRK

GRANT AWARD LETTER

SUMMARY OF GRANT AWARD TERMS AND CONDITIONS

State Agency Department of Public Safety	**Grant Maximum Amount** $10,000,000.00
Grantee Town of Breckenridge	**Grant Issuance Date** January 22, 2020
Agreement Number Encumbrance #: 18PDM20BRK Subrecipient DUNS#: 016151920 Federal Award Identification # (FAIN): EMD-2019-PC-0003 Total Amount of the Federal Award: $10,000,000.00 Federal Award Date January 22, 2020 Name of Federal Awarding Agency DHS/FEMA CFDA 97.047 Pre-Disaster Mitigation Identification if the Award is for R&D: No	**Grant Expiration Date** April 1, 2022 **Fund Expenditure End Date** April 1, 2022 **Grant Authority** Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended (Pub. L. No. 93-288)(42 U.S.C. 5133). Consolidated Appropriations Act, 2018 (Pub. L. No. 115-141.

Grant Purpose

Town of Breckenridge construction project to rehabilitate Goose Pasture Tarn Dam in Summit County. This includes replacement of both the existing service spillway and emergency spillway with a single overtopping concrete spillway.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Grant:

1. Exhibit A, Statement of Work.
2. Exhibit B, Budget.
3. Exhibit C, Sample Option Letter (Form 1)
4. Exhibit D, Federal Provisions.
5. Exhibit E, FEMA Environmental Closeout.
6. Exhibit F**,** Record of Environmental Consideration (REC).

In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

1. Exhibit D, Federal Provisions.
2. The provisions of the other sections of the main body of this Grant.
3. Exhibit A, Statement of Work.
4. Exhibit B, Budget.

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

GRANTEE **TOWN OF BRECKENRIDGE**	2nd Grantee Signature *if Needed*
By: _____	By: _____
Title: _____	Title: _____
_____ *Signature	_____ *Signature
Date: _____	Date: _____

STATE OF COLORADO
Jared S. Polis, Governor
Department of Public Safety,
Division of Homeland Security and Emergency Management
Kevin R. Klein, Director

_____
By: Kevin R. Klein, Director

Date: _____

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

_____
By: Colorado Department of Public Safety,
State Controller Delegate, Linda M. Bonesteel

Effective Date:_____

TABLE OF CONTENTS

1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the "State") hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the "Grantee") an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties' respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an updated Grant Award Letter showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State, Federal or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee's obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

C. Grantee's Termination Under Federal Requirements

Grantee may request termination of this Grant by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Grant is terminated in this manner, then Grantee shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Budget**" means the budget for the Work described in Exhibit B.

B. "**Business Day**" means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.

C. "**CJI**" means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.

D. "**CORA**" means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

E. "**Grant Award Letter**" means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.

F. "**Grant Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.

G. "**Grant Expiration Date**" means the Grant Expiration Date shown on the first page of this Grant Award Letter.

H. "**Grant Issuance Date**" means the Grant Issuance Date shown on the first page of this Grant Award Letter.

I. "**Exhibits**" exhibits and attachments included with this Grant as shown on the first page of this Grant.

J. "**Extension Term**" means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter.

K. "**Federal Award**" means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Regulations by a Federal Awarding Agency to the Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

L. "**Federal Awarding Agency**" means a Federal agency providing a Federal Award to a Recipient. The FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) is the Federal Awarding Agency for the Federal Award which is the subject of this Grant.

M. "**Goods**" means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.

N. "**Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

O. "**Initial Term**" means the time period between the Grant Issuance Date and the Grant Expiration Date.

P. "**Matching Funds**" means the funds provided Grantee as a match required to receive the Grant Funds.

Q. "**Party**" means the State or Grantee, and "Parties" means both the State and Grantee.

R. "**PCI**" means payment card information including any data related to credit card holders' names, credit card numbers, or the other credit card information as may be protected by state or federal law.

S. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S.

T. "**PHI**" means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: **(i)** that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and **(ii)** that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

U. "**Recipient**" means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Federal Award.

V. "**Services**" means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.

W. "**State Confidential Information**" means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

X. "**State Fiscal Rules**" means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.

Y. "**State Fiscal Year**" means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

Z. "**State Records**" means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

AA. "**Sub-Award**" means this grant by the State (a Recipient) to Grantee (a Subrecipient) funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to this Sub-Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

BB. "**Subcontractor**" means third-parties, if any, engaged by Grantee to aid in performance of the Work. "Subcontractor" also includes sub-grantees.

CC. "**Subrecipient**" means a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization entity that receives a Sub-Award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Grant, Grantee is a Subrecipient.

DD. "**Tax Information**" means Federal and State of Colorado tax information including, without limitation, Federal and State tax returns, return information, and such other tax-related information as may be protected by Federal and State law and regulation. Tax Information includes, but is not limited to all information defined as Federal tax information in Internal Revenue Service Publication 1075.

EE. "**Uniform Guidance**" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the "Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.

FF. "**Work**" means the delivery of the Goods and performance of the Services described in this Grant Award Letter.

GG. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Grantee any amount under this Grant that exceeds the Grant Amount shown on the first page of this Grant Award Letter. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active

Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds.

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the "Local Match Amount"). Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies.

D. Reimbursement of Grantee Costs

The State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget as long as the Grantee provides the requested adjustment to the State for approval with the appropriate federal program agency prior to actual adjustments to line items of the Budget and the change does not modify any requirements of the Work. The State shall reimburse Grantee for the Federal share of properly documented allowable costs related to the Work after the State's review and approval thereof, subject to the provisions of this Grant. The State shall only reimburse allowable costs if those costs are: **(i)** reasonable and necessary to accomplish the Work and for the Goods and Services provided; and **(ii)** equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 10% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

6. REPORTING - NOTIFICATION

A. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. Grantee shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Grantee. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work. If Grantee enters into a subcontract or subgrant with an entity that would also be considered a Subrecipient, then the subcontract or subgrant entered into by Grantee shall contain provisions permitting both Grantee and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party. Additionally, if Grantee is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Grantee shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: **(i)** the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, **(ii)** the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, **(iii)** the most recently issued version of the U.S. Department

of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and **(iv)** the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant or any terms of the Federal Award, the State may terminate some or all of this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

Except as herein specifically provided otherwise or as required or permitted by federal regulations related to any Federal Award that provided any of the Grant Funds, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this **§13**.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall

be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

16. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Federal Provisions

Grantee shall comply with all applicable requirements of Exhibit D at all times during the term of this Grant.

EXHIBIT A, STATEMENT OF WORK

1. GENERAL DESCRIPTION OF THE PROJECT(S).

1.1 Project Description. This project is to rehabilitate Goose Pasture Tarn Dam in Blue River, Summit County, Colorado which is owned by the Town of Breckenridge. The construction project includes the following: Replacement of both the existing service spillway and emergency spillway with a single overtopping concrete spillway capable of handling flows up to the inflow design flood in accordance with current Colorado Division of Water Resources Dam Safety Branch requirements. Construction of a crest cutoff wall beneath the single spillway, and extension of the wall to an adequate lateral distance to the east and west of the spillway to mitigate seepage underflows beneath the spillway crest. Installation of a spillway and downstream underdrain/filter system to reduce the potential for internal erosion with the dam. Installation of a cured in place pipe liner used to seal the leaking RCP outlet conduit. Installation of a new water treatment plant (WTP) pipe section through the dam embankment encased in concrete to mitigate the potential for internal erosion along the pipeline. Re-armor the downstream stilling basin area and construction of a small retaining wall on the east side of the pool, to provide bottom and channel bank protection within the pool area upstream of the natural river channel.

1.2 Project Expenses. Project expenses include the costs hire a contractor to complete the work as described in §1.1 of this Exhibit A. All eligible expenses are listed in the budget table in Exhibit B.

1.3 Non-Federal Match: This non-federal match section ☒ applies to or does not apply ☐ to this Grant. If it applies, this Grant requires a non-federal match contribution of **25%** of the total Grant budget. Documentation of expenditures for the non-federal match contribution is required with each drawdown request. If applicable the match ☒ may or may not ☐ include in-kind match.

2. DELIVERABLES:

2.1 Grantee shall submit narrative and financial reports describing project progress and accomplishments, any delays in meeting the objectives and expenditures to date as described in §3 of this Exhibit A.

2.2 List additional grant deliverables: Closeout documentation required for state and FEMA closeout of the grant.

3. REPORTING REQUIREMENTS:

3.1 Quarterly Financial Status and Progress Reports. The project(s) approved in this Grant are to be completed on or before the termination date stated on the Agreement's Signature and Cover Page of the Grant Agreement. Grantee shall submit quarterly financial status and programmatic progress reports for each project identified in this agreement using the forms provided by the Department of Public Safety throughout the life of the grant. One copy of each required report with original or electronic signatures shall be submitted in accordance with the schedule below: (The order of the reporting period quarters below are irrelevant to the grant. If the grant is open during the "report period" reports for that period are due on the dates listed. If the grant is for more than one year, reports are due for every quarter that the grant remains open.)

Report Period	Due Date
October – December	January 15
January –March	April 15
April – June	July 15
July – September	October 15

3.2 Final Reports: Grantee shall submit final financial status and progress reports that provide final financial reconciliation and final cumulative grant/project accomplishments within 45 days of the end of the project/grant period. The final report may not include unliquidated obligations and must indicate the exact balance of unobligated funds. The final reports may substitute for the quarterly reports for the final quarter of the grant period. If all projects are completed before the end of the grant period, the final report may be submitted at any time before its final due date. Further reports are not due after the Division of Homeland Security and Emergency Management has received, and sent notice of acceptance of the final grant report.

4. TESTING AND ACCEPTANCE CRITERIA:

The Division of Homeland Security and Emergency Management shall evaluate this Project(s) through the review of Grantee submitted financial and progress reports. The Division of Homeland Security and Emergency Management may also conduct on-site monitoring to determine whether the Grantee is meeting/has met the performance goals, administrative standards, financial management and other requirements of this grant. The Division of Homeland Security and Emergency Management will notify Grantee in advance of such on-site monitoring.

5. PAYMENT:

5.1 Payment Schedule: Grantee shall submit requests for reimbursement using the Division of Homeland Security and Emergency Management's provided form at least quarterly. One original or electronically signed/submitted copy of the reimbursement request is due on the same dates as the required financial reports. All requests shall be for eligible actual expenses incurred by Grantee, as described in detail in the budget table(s) of this Exhibit. Requests shall be accompanied by supporting documentation totaling at least the amount requested for reimbursement and any required non-federal match contribution. If any financial or progress reports are delinquent at the time of a payment request, the Division of Homeland Security and Emergency Management may withhold such reimbursement until the required reports have been submitted.

5.2 Payment Amount: If non-federal match is required, such match shall be documented with every payment request. Excess match documented and submitted with one reimbursement request shall be applied to subsequent requests as necessary to maximize the allowable reimbursement.

5.3 Remittance Address. If mailed, payments shall be sent to the representative identified in **§6** of this Exhibit:

Town of Breckenridge
PO Box 168
Breckenridge, CO 80424

6. PRINCIPAL REPRESENTATIVES:

For the State:
Larisa Cannon, Grants and Contracts Manager
Department of Public Safety,
Division of Homeland Security and Emergency Management
9195 E. Mineral Avenue, Suite 200
Centennial, CO 80112
larisa.cannon@state.co.us

For Grantee:
James Phelps, Director Public Works
Town of Breckenridge

PO Box 168
Breckenridge, CO 80424
jamesp@townofbreckenridge.com

7. ADMINISTRATIVE REQUIREMENTS:

Required Documentation: Grantees shall retain all procurement and payment documentation on site for inspection. This shall include, but not be limited to, purchase orders, receiving documents, invoices, vouchers, equipment/services identification, and time and effort reports.

7.1 Sufficient detail shall be provided with reimbursement requests to demonstrate that expenses are allowable and appropriate as detailed below:

7.1.1 **Equipment or tangible goods**. When requesting reimbursement for equipment items with a purchase price of or exceeding $5,000, and a useful life of more than one year, the Grantee shall provide a unique identifying number for the equipment, with a copy of the Grantee's invoice and proof of payment. The unique identifying number can be the manufacturer's serial number or, if the Grantee has its own existing inventory numbering system, that number may be used. The location of the equipment shall also be provided. In addition to ongoing tracking requirements, Grantee shall ensure that equipment items with per unit cost of $5,000 or more are prominently marked in a manner similar to the following: Purchased with funds provided by the U.S. Department of Homeland Security.

7.1.2 **Services**. Grantees shall include contract/purchase order number(s) or employee names, the date(s) the services were provided and the nature of the services.

7.2 **Procurement:** A Grantee shall ensure its procurement policies meet or exceed local, state, and federal requirements. Grantees should refer to local, state, and federal guidance prior to making decisions regarding competitive bids, sole source or other procurement issues. In addition:

7.2.1 Any sole source transaction in excess of $100,000 shall be approved in advance by the Division of Homeland Security and Emergency Management.

7.2.2 Grantees shall ensure that: (a) All procurement transactions, whether negotiated or competitively bid, and without regard to dollar value, are conducted in a manner that provides maximum open and free competition; (b) Grantee shall be alert to organizational conflicts of interest and/or non-competitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade; (c) Contractors who develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement; and (d) Any request for exemption of item a-c within this subsection shall be submitted in writing to, and be approved by the authorized Grantee official.

7.2.3 Grantee shall verify that the Contractor is not debarred from participation in state and federal programs. Sub-grantees should review contractor debarment information on http://www.sam.gov.

7.2.4 When issuing requests for proposals, bid solicitations, and other published documents describing projects or programs funded in whole or in part with these grant funds, Grantee and Subrantees shall use the phrase -"This project was supported by grant #18PDM20BRK, issued by the Division of Homeland Security and Emergency Management."

7.2.5 Grantee shall verify that all purchases are listed in **§1 or §7** of this Exhibit. Equipment purchases, if any, shall be for items listed in the Approved Equipment List (A.E.L) for the grant period at https://www.fema.gov/authorized-equipment-list. Additionally, funds used to support emergency communications activities should comply with the FY 2016 SAFECOM Guidance for Emergency Communication Grants, at http://www.safecomprogram.gov

7.2.6 Grantee shall ensure that no rights or duties exercised under this grant, or equipment

purchased with Grant Funds having a purchase value of $5,000 or more, are assigned without the prior written consent of the Division of Homeland Security and Emergency Management.

7.2.7 Grantee shall ensure that all funds are needed to supplement and not to supplant the Grantee's own funds.

7.3 Additional Administrative Requirements:

7.3.1 The Grantee must request approval in advance for any change to this Grant Agreement, using the forms and procedures established by the Division of Homeland Security and Emergency Management.

7.3.2 All applicant agencies that own resources currently covered by the Colorado Resource Typing Standards must agree to participate in the State's Emergency Resource Inventory Report and update their information on a quarterly basis.

7.3.3 All funding related to exercises must be managed and executed in accordance with the Homeland Security Exercise and Evaluation Program (HSEEP) and must be National Incident Management System (NIMS) compliant. Regardless of exercise type or scope, After Action Reports/Improvement Plans are due to the State Training and Exercise Program Manager within 45 days of the exercise.

EXHIBIT B, BUDGET

BUDGET:

Project Activity/Line Item	*Federal Share*	*Local Share*	*TOTAL Project*
Mobilization and Site Preparation	$2,032,147.55	$1,805,521.45	$3,837,669.00
Demolition and Excavation	$1,070,838.21	$951,417.79	$2,022,256.00
Earthwork	$699,004.67	$621,051.33	$1,320,056.00
Drainage Systems	$49,974.60	$44,401.40	$94,376.00
Spillway	$4,995,189.52	$4,438,123.48	$9,433,313.00
High Level Outlet Works and Plant Intake	$459,397.10	$408,164.90	$867,562.00
Low Level Outlet Works Rehabilitation	$264,768.56	$235,241.44	$500,010.00
Miscellaneous	$428,679.79	$380,873.21	$809,553.00
TOTAL BUDGET	**$10,000,000.00**	**$8,884,795.00**	**$18,884,795.00**
TOTAL AWARD AMOUNT	**$10,000,000.00**		

EXHIBIT C, SAMPLE OPTION LETTER (FORM 1)

State Agency Department of Public Safety	**Option Letter Number** Insert the FORM 1 Number (e.g. "1" for the first option)
Grantee Insert Grantee's Full Legal Name, including "Inc.", "LLC", etc...	**Option Agreement Number** Insert CMS Number
Original Agreement CMS Number: Insert CMS Number Encumbrance #: MG4145xxxxxx Subrecipient DUNS#: Insert DUNS Number Executive Order Identification #: EMW-2017-SS-00050-S01 Award Date Insert Full Date Disaster Emergey Fund Identification if the Award is for R&D: No	**Option Agreement Maximum Amount** $**Insert Amount** **Agreement Performance Beginning Date** Month Day, Year **Current Agreement Expiration Date** Month Day, Year

1. OPTIONS:

A. Option to extend for an Extension Term

B. Option to modify Budget table under the Agreement

2. REQUIRED PROVISIONS:

A. **For use with Option 1(A):** In accordance with §(s) Number of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning Month Day, Year and ending on the current Agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

B. **For use with all Options that modify the Agreement Maximum Amount:** The Agreement Maximum Amount table on the Agreement's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above. The maximum amount payable by the State for performance of this Grant Agreement is increased/decreased to $ and the maximum amount of local matching funds, if applicable, is $. The total project amount is $.

Project Activity/Line Item	*State Share*
Organization	$ 0.00
Planning	$ 0.00
Equipment	$ 0.00
Training	$ 0.00
TOTAL AWARD AMOUNT	**$ 0.00**

3. OPTION EFFECTIVE DATE:

The effective date of this Option Letter is upon approval of the State Controller.

STATE OF COLORADO Jared S. Polis, Governor Department of Public Safety, Division of Homeland Security and Emergency Management _____ By: Kevin R. Klein, Director Date: _____	In accordance with §24-30-202 C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate. **STATE CONTROLLER** **Robert Jaros, CPA, MBA, JD** By:_____ Colorado Department of Public Safety, Linda Bonesteel, Office of Grants Management Director Option Effective Date:_____

EXHIBIT D, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS.

1.1. The Grant Award Letter to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Federal Provisions shall control.

2. DEFINITIONS.

2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.

2.1.1. "Agreement" means the Grant Award Letter to which these Federal Provisions are attached and includes all Award types in §2.1.2.1 of this Exhibit.

2.1.2. "Award" means an award of Federal financial assistance, and the agreement setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.

2.1.2.1. Awards may be in the form of:

2.1.2.1.1. Grants;

2.1.2.1.2. Contracts;

2.1.2.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

2.1.2.1.4. Loans;

2.1.2.1.5. Loan Guarantees;

2.1.2.1.6. Subsidies;

2.1.2.1.7. Insurance;

2.1.2.1.8. Food commodities;

2.1.2.1.9. Direct appropriations;

2.1.2.1.10. Assessed and voluntary contributions; and

2.1.2.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

2.1.2.1.12. Any other items specified by OMB in policy memoranda available at the OMB website or other source posted by the OMB.

2.1.2.2. Award ***does not*** include:

2.1.2.2.1. Technical assistance, which provides services in lieu of money;

2.1.2.2.2. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

2.1.2.2.3. Any award classified for security purposes; or

2.1.2.2.4. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

2.1.3. "Contractor" means the party or parties to an Agreement funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

2.1.4. "Data Universal Numbering System (DUNS) Number" means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

2.1.5. "Entity" means all of the following as defined at 2 CFR part 25, subpart C;

2.1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

2.1.5.2. A foreign public entity;

2.1.5.3. A domestic or foreign non-profit organization;

2.1.5.4. A domestic or foreign for-profit organization; and

2.1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

2.1.6. "Executive" means an officer, managing partner or any other employee in a management position.

2.1.7. "Federal Award Identification Number (FAIN)" means an Award number assigned by a Federal agency to a Prime Recipient.

2.1.8. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR §200.37

2.1.9. "FFATA" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."

2.1.10. "OMB" means the Executive Office of the President, Office of Management and Budget.

2.1.11. "Prime Recipient" means a Colorado State agency or institution of higher education that receives an Award.

2.1.12. "Subaward" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR §200.38. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

2.1.13. "Subrecipient" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee. The term does not include an individual who is a beneficiary of a federal program.

2.1.14. "Subrecipient Parent DUNS Number" means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

2.1.15. "Federal Provisions" means these Federal Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Transparency Act and Uniform Guidance, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2.1.16. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

2.1.17. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

2.1.17.1. Salary and bonus;

2.1.17.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

2.1.17.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

2.1.17.4. Change in present value of defined benefit and actuarial pension plans;

2.1.17.5. Above-market earnings on deferred compensation which is not tax-qualified;

2.1.17.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

2.1.18. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

2.1.19. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

2.1.20. "Vendor" means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

3. COMPLIANCE.

3.1. Contractor shall comply with all applicable provisions of the Transparency Act, all applicable provisions of the Uniform Guidance, and the regulations issued pursuant thereto, including but not limited to these Federal Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REQUIREMENTS.

4.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

4.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

5. TOTAL COMPENSATION.

5.1. Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

5.1.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

5.1.2. In the preceding fiscal year, Contractor received:

5.1.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.2.2. $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

5.1.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

6. REPORTING.

6.1. Contractor shall report data elements to SAM and to the Prime Recipient as required in this Exhibit if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Agreement price. The reporting requirements in this Exhibit are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Agreement and shall become part of Contractor's obligations under this Agreement.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR REPORTING.

7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award

modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS.

8.1. If Contractor is a Subrecipient, Contractor shall report as set forth below.

8.1.1. **To SAM.** A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

8.1.1.1. Subrecipient DUNS Number;

8.1.1.2. Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

8.1.1.3. Subrecipient Parent DUNS Number;

8.1.1.4. Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

8.1.1.5. Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

8.1.1.6. Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

8.1.2. **To Prime Recipient.** A Subrecipient shall report to its Prime Recipient, upon the effective date of the Agreement, the following data elements:

8.1.2.1. Subrecipient's DUNS Number as registered in SAM.

8.1.2.2. Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

9. PROCUREMENT STANDARDS.

9.1. Procurement Procedures. A Subrecepient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.

9.2. Procurement of Recovered Materials. If a Subrecepient is a State Agency or an agency of a political subdivision of the State, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an

affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS

10.1. A Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

11. SINGLE AUDIT REQUIREMENTS

11.1. If a Subrecipient expends $750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

11.1.1. **Election.** A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

11.1.2. **Exemption.** If a Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

11.1.3. **Subrecepient Compliance Responsibility.** A Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

12. CONTRACT PROVISIONS FOR SUBRECEPIENT CONTRACTS

12.1. If Contractor is a Subrecipient, then it shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Agreement.

12.1.1. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375,

"Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.

12.1.1.1. During the performance of this contract, the contractor agrees as follows:

12.1.1.1.1. Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

12.1.1.1.2. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

12.1.1.1.3. Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

12.1.1.1.4. Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

12.1.1.1.5. Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

12.1.1.1.6. In the event of Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

12.1.1.1.7. Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing

such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

12.1.2. **Davis-Bacon Act.** Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

12.1.3. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12.1.4. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

12.1.5. **Debarment and Suspension (Executive Orders 12549 and 12689).** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

12.1.6. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

13. CERTIFICATIONS.

13.1. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

14.2. A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

14.3. There are no Transparency Act reporting requirements for Vendors.

15. EVENT OF DEFAULT.

15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Agreement and the State of Colorado may terminate the Agreement upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Agreement, at law or in equity.

EXHIBIT E, FEMA ENVIRONMENTAL CLOSEOUT

ENVIRONMENTAL CLOSEOUT PROCEDURES

Because the environmental laws fall within FEMA's area of responsibility, verification that the requirements of the environmental documents were met must be provided at the time of grant closeout. The applicant or applicant's agent must certify the conditions stated in the Categorical Exclusion (CATEX) or Finding of No Significant Impact (FONIS) document were met, attach all copies of permits and other required documentation, and submit to FEMA with the closeout packet.

Examples of conditions of environmental documents (not all inclusive):

1. Stormwater permits (EPA's NPDES; Section 401 of the Clean Water Act)
2. Dike permit
3. Army Corps of Engineers Section 10 or 404 permits
4. Floodplain development permit
5. Local permits for debris removal; abandonment of private wells, asbestos, etc.
6. Documentation that agency recommendations such as Best Management Practices (mitigation) were followed
7. Documentation that applicant received coordinated approvals from agencies on final design or plan where requested

This process begins at the time of grant award by the State. The applicant will have already received a copy of the environmental documentation from FEMA staff outlining the conditions to be met. The State should further emphasize the applicant's responsibilities. The quarterly 404 Report must reflect the progress being made on environmental conditions.

The applicant must sign FEMA's Environmental Closeout Declaration and attach a statement or explanation of what action was taken to address each condition or explain why an action was not required. Copies of all permits must be attached.

Funding will be jeopardized if environmental conditions are not followed and required permits are not obtained.

SUB-RECIPIENT INSTRUCTIONS:

1. Please provide a concise narrative of how each condition(s) in the Record of Environmental Compliance (REC) was complied with.
2. Include any permits, letters, or memorandum, photos, documentation or additional requirements.
3. Provide any additional documentation need to satisfy all environmental requirements.
4. Complete and sign the Declaration.
5. Upload all documents in the Large Closeout Module in EMGrants

ENVIRONMENTAL CLOSEOUT DECLARATION:

This form must be signed after project completion and submitted as part of the grant closeout documentation. Also, please provide comments to each of the stipulations explaining how the requirements were met.

I attest that all conditions listed in the approved project's environmental document were followed and the appropriate permits and documentation are attached.

_____
Project Title

_____ _____
Name of Applicant or Applicant's Agent (Print) Title

_____ _____
Signature of Applicant or Applicant's Agent Date

FEDERAL EMERGENCY MANAGEMENT AGENCY

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

NEPA DETERMINATION

Non Compliant Flag: No
EA Draft Date:
EA Final Date:
EA Public Notice Date:
EA Fonsi
Level: CATEX
EIS Notice of Intent
EIS ROD Date:

Comment The Town of Breckenridge is proposing to rehabilitate Goose Pasture Tarn Dam in Blue River, Summit County, Colorado (project area). The existing service spillway, which is an overtopping reinforced concrete chute spillway, is unstable and could fail under normal flow conditions. Colorado Dam Safety imposed a restriction in the reservoir level to prevent normal flows from going over the service spillway until a repair could be implemented. The objectives of the proposed action are to reduce the risk of dam safety issues by implementing the following:

¿ Replacement of both the existing service spillway and emergency spillway with a single overtopping concrete spillway capable of handling flows up to the inflow design flood in accordance with current Colorado Division of Water Resources Dam Safety Branch requirements.
¿ Construction of a crest cutoff wall beneath the single spillway, and extension of the wall to an adequate lateral distance to the east and west of the spillway to mitigate seepage underflows beneath the spillway crest.
¿ Installation of a spillway and downstream underdrain/filter system to reduce the potential for internal erosion within the dam.
¿ Installation of a cured in place pipe (CIPP) liner used to seal the leaking RCP outlet conduit.
¿ Installation of a new water treatment plant (WTP) pipe section through the dam embankment encased in concrete to mitigate the potential for internal erosion along the pipeline.
¿ Re-armor the downstream stilling basin area and construction of a small retaining wall on the east side of the pool, to provide bottom and channel bank protection within the pool area upstream of the natural river channel. - djones58 - 01/03/2020 20:37:07 GMT

CATEX CATEGORIES

Catex Category Code	Description	Selected
*n7	(*n7) Federal Assistance for Structure and Facility Upgrades. Federal assistance for the reconstruction, elevation, retrofitting, upgrading to current codes and standards, and improvements of pre-existing facilities in existing developed areas with substantially completed infrastructure, when the immediate project area has already been disturbed, and when those actions do not alter basic functions, do not exceed capacity of other system components, or modify intended land use. This category does not include actions within or affecting streams or stream banks or actions seaward of the limit of moderate wave action (or V zone when the limit of moderate wave action has not been identified).	Yes

EXTRAORDINARY

Extraordinary Circumstance Code	Description	Selected ?
	No Extraordinary Circumstances were selected	

ENVIRONMENTAL LAW / EXECUTIVE ORDER

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
Bald and Golden Eagle Protection Act (BGEPA)	Completed	Review concluded	The proposed project has the potential to impact Bald and Golden eagles. The proposed actions are subject to compliance with the Bald or Golden Eagle Protection Act (BGEPA). If active eagle nests are observed in the project area, appropriate USFWS and CPW buffer zones and/or work restrictions may be required. In accordance with USFWS guidelines, the applicant is responsible for obtaining and complying with any necessary permits from USFWS. Additional guidance is available at: https://www.fws.gov/birds/policiesand¿regulations.php andhttps://cpw.state.co.us/Documents/WildlifeSpecies/LivingWithWildlife/RaptorBufferGuidelines2008.pdf. See project conditions. - djones58 - 01/03/2020 20:29:25 GMT
Clean Air Act (CAA)	Completed	Project will not result in permanent air emissions - Review concluded	
Coastal Barrier Resources Act (CBRA)	Not Applicable	Project is not on or connected to CBRA Unit or otherwise protected area - Review concluded	
Clean Water Act (CWA)	Completed	Project would affect waters, including wetlands, of the U.S.	The project will affect water of the U.S. under the jurisdiction of the USACE. Therefore, the sub-recipient shall consult with USACE to determine project requirements. The proposed action will result in 0.167 acres of temporary impacts on wetlands, and 2.0 acres of temporary impacts on waters of the U.S. The town of Breckenridge is requesting authorization for the proposed action under the U.S. Army Corps of Engineers¿ Nationwide Permit system [33 Code of Federal Regulations (CFR) 330.6], specifically Nationwide Permit 3a. See PCN in Appendix A of the CATEX (attached) for more information. See project conditions - djones58 - 01/03/2020 20:07:50 GMT
	Completed	Project may require Section 404/401 or Section 9/10 (Rivers and Harbors Act) permit, including qualification under Nationwide Permits - Review concluded	
Coastal Zone Management Act (CZMA)	Not Applicable	Project is not located in a coastal zone area and does not affect a coastal zone area - Review concluded	
Executive Order 11988 - Floodplains	Completed	No effect on floodplain/flood levels and project outside floodplain - Review concluded	The proposed action does not affect the Blue River floodplain as shown on Flood Insurance Rate Map 08117C0483F (effective 11/16/18) and 08117C0484E (effective 11/16/2011). The project area is

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
			located in Zone X, an area with minimal flood hazard. No change in base flood elevation will occur under the proposed action. No additional analysis, documentation, or coordination is needed. - djones58 - 01/03/2020 20:30:14 GMT
Executive Order 11990 - Wetlands	Completed	Located in wetlands or effects on wetlands	The proposed action will result in 0.167 acres of temporary impacts on wetlands, and 2.0 acres of temporary impacts on waters of the U.S. The 0.167 acre of temporarily impacted wetlands will be returned to pre¿project conditions following construction completion. Efforts to avoid further impacts to wetlands and the Blue River will be implemented in accordance with the required USACE Section 404 permit. The stream banks downstream of the dam would not be permanently affected by the proposed action. The proposed action, including the avoidance and mitigation measures will result in a net benefit to the Blue River by reducing dam failure risk and improving flood and water flow control. Additionally, the proposed action will also reduce the risk of dam and spillway failure for the residents and structures located downstream of the dam and spillway. Overall, the benefits for the residents and structures located downstream of the dam and spillway outweigh the requirements of EO 11990 with regards to wetlands [44 CFR 9.9 (e)(3)]. A Public Notice intent to complete an action in wetlands was advertised in the Summit County Journal December 6, 2019. No substantive comments were received during the 15 day comment periods. Affidavit of publication is included in the project file. See Appendix C of the CATEX (attached) for Executive Order 11988, Floodplain Management and Executive Order 11990, Protection of Wetlands Compliance Memorandum for more information. Note project conditions related to wetland impacts. - djones58 - 01/03/2020 20:33:53 GMT
	Completed	Possible adverse effect associated with constructing in or near wetland	
	Completed	8 Step Process Complete - documentation attached - Review concluded	
Executive Order 12898 - Environmental Justice for Low Income and Minority Populations	Completed	No Low income or minority population in, near or affected by the project - Review concluded	

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
Endangered Species Act (ESA)	Completed	Listed species and/or designated critical habitat present in areas affected directly or indirectly by the federal action	The U.S. Fish and Wildlife Service (Service) lists the following threatened, endangered, and candidate species with potential habitat in Summit County or with potential to be affected by projects in Summit County: Canada lynx (Lynx canadensis), North American wolverine (Gulo gulo luscus), greater sage grouse (Centrocercus urophasianus), Mexican spotted owl (Strix occidentalis lucida), yellow-billed cuckoo (coccyzus americanus), penland alpine fen mustard (Eutrema edwardsii spp. Penlandii), bonytail chub (Gila elegans), Colorado pikeminnow (Ptychocheilus lucius), greenback cutthroat trout (Oncorhynuchus clarki stomias), humpback chub (Gila cypha), razorback sucker (Xyrauchen texanus). There is no likelihood for the proposed action to affect the lynx, North American wolverine, greater sage grouse, Mexican spotted owl, yellow-billed cuckoo, or penland alpine fen mustard because of the lack of suitable habitat in the project area. The greenback cutthroat trout is currently only known to occur in a small creek in El Paso and Teller counties. The proposed action is not anticipated to result in depletions on the Blue River, a tributary of the Upper Colorado River Basin; therefore, the Colorado River fish (bonytail chub, Colorado pikeminnow, humpback chub, and razorback sucker) would not be affected by the proposed action. Therefore, the proposed action will not result in direct or indirect impacts to potential habitat for threatened, endangered, and candidate species listed under the Endangered Species Act. Consultation with the Service is not required; however, FEMA notified the Service of our determination on November 22, 2019. See Appendix B of the CATEX (attached) for more information. - djones58 - 01/03/2020 19:53:33 GMT
	Completed	No effect to species or designated critical habitat (See comments for justification) - Review concluded	
Farmland Protection Policy Act (FPPA)	Completed	Project does not affect designated prime or unique farmland - Review concluded	
Fish and Wildlife Coordination Act (FWCA)	Completed	Project does not affect, control, or modify a waterway/body of water - Review concluded	The proposed action will result in modifications to the Goose Pasture Tarn Lake Dam. Section 2(a) of the Fish and Wildlife Coordination Act, requires Service consultation whenever the waters of any stream or other body of water are proposed or authorized to be impounded,

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
			diverted, channelized, controlled or modified for any purpose. A threatened and endangered species habitat assessment letter was sent to the Service on November 22, 2019 describing the proposed action, the project area habitat characteristics, and the potential for suitable habitat to be present and affected by the proposed action. In addition, Clint Henke with ERO Resources Corporation spoke with John Ewert with Colorado Parks and Wildlife about the proposed action on November 4, 2019. Neither the Service nor CPW expressed concern with the project or provided recommendations or mitigation measures. See Appendix B for more information regarding Service and CPW coordination. No additional analysis, documentation, or coordination is needed. - djones58 - 01/03/2020 20:23:53 GMT
Migratory Bird Treaty Act (MBTA)	Completed	Project not located within a flyway zone - Review concluded	See project conditions. - djones58 - 01/03/2020 20:25:33 GMTThe proposed action will result in the removal of vegetation; however, the underlying purpose of the proposed activity will not result in a take as defined in the Migratory Bird Treaty Act. If vegetation is removed during nesting season (typically February through September) it is recommended that the vegetation will be surveyed for active bird nests. No additional analysis, documentation, or coordination is needed. - djones58 - 01/03/2020 20:26:22 GMT
Magnuson-Stevens Fishery Conservation and Management Act (MSA)	Completed	Project not located in or near Essential Fish Habitat - Review concluded	
National Historic Preservation Act (NHPA)	Completed	Standard Section 106 review	A Class I and Class III cultural resource survey of the project area was conducted in September 2018. The Class I file search results indicated no previously conducted surveys in the project area, and therefore no previously documented cultural resources. The Class III pedestrian survey resulted in identification of two sites ¿ a newly defined segment of State Highway 9 (today known as Wagon Road) (5ST1461.2) and Goose Pasture Tarn Dam (5ST1542). Due to a lack of historic integrity and/or association with significant historic trends, FEMA consultant, ERO, recommended segment 5ST1461.2 as non¿supporting of the eligibility of the entire resource for listing in the NRHP and 5ST1542 as not eligible for listing in the NRHP. Because no historic properties are in the project area, FEMA determined there would be ¿no historic properties affected¿ for the project pursuant to 36 C.F.R. 800.4

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

Environmental Law/ Executive Order	Status	Description	Comment
			(d)(1) of the NHPA. The CO SHPO concurred with FEMA¿s determination on December 10, 2019 (HC #76952). See Appendix D of the CATEX (attached) for more information. Interested parties were contacted and no substantive comments were received. - djones58 - 01/03/2020 19:43:50 GMT
	Completed	Building or structure 50 years or older or listed on the National Register in the project area and activity not exempt from review	
	Completed	Determination of No Historic Properties Affected (FEMA finding/SHPO/THPO concurrence attached) - Review concluded	
	Completed	Project affects undisturbed ground	
	Completed	Project area has no potential for presence of archeological resources	
	Completed	Determination of no historic properties affected (FEMA finding/SHPO/THPO concurrence or consultation attached) - Review concluded	
State Air Quality Laws	Completed	Review concluded	See project conditions. - djones58 - 01/03/2020 20:29:35 GMT
State Hazardous Materials and Solid Waste Laws	Completed	Review concluded	See project conditions. - djones58 - 01/03/2020 20:29:44 GMT
State Water and Soil Laws	Completed	Review concluded	See project conditions. - djones58 - 01/03/2020 20:29:51 GMT
Wild and Scenic Rivers Act (WSR)	Completed	Project is not along and does not affect Wild and Scenic River - Review concluded	

CONDITIONS

Special Conditions required on implementation of Projects:

This finding is conditioned on the following mitigation and stipulations:

1. The Town must obtain all applicable federal, tribal, state and local permits, approvals, etc. and comply with all permit requirements and conditions.

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

2. The Town must coordinate with the local and/or Summit County Floodplain Administrator to obtain a Floodplain Development Permit and complete a CLOMR and a LOMR, if required.

3. The Town shall consult with the U.S. Army Corps of Engineers to determine final project requirements. The Town is responsible for obtaining any needed permits and verifying and complying with all permit requirements, including wetland mitigation, any permit conditions, preconstruction notification requirements, and regional conditions as provided by the U.S. Army Corps of Engineers. The subrecipient is responsible for implementing, monitoring, and maintaining all Best Management Practices (BMPs) and Pre¿ Construction Notification (PCN) conditions of applicable nationwide permits.

4. The Town must coordinate with the Colorado Department of Public Health and Environment (CDPHE) and obtain appropriate Clean Water Act Section 401 Water Quality certifications, as applicable.

5. The Town must obtain and comply with a Colorado Department of Public Health and Environment (CDPHE) National Pollutant Discharge Elimination System Construction Stormwater permit, if required.

6. In order to minimize impacts to the adjacent wetlands, appropriate erosion and sediment control measures must be installed to control the discharge of pollutants from the construction site. Impacts to wetlands must be avoided or mitigated in accordance with the terms and conditions of the Section 404 CWA permit.

7. The Town must coordinate with the State of Colorado Division of Water Resources Dam Safety Branch and obtain all required permits.

8. Removal of vegetation in the project area has the potential to impact Bald and Golden eagles. The proposed actions are subject to compliance with the Bald or Golden Eagle Protection Act (BGEPA). In accordance with US Fish and Wildlife (USFWS) guidelines, the applicant is responsible for obtaining and complying with any necessary permits from USFWS. If active nests are observed in the project area, appropriate USFWS buffer zones and/or work restrictions may be required. If no activity is observed, then no restrictions would apply. See https://www.fws.gov/birds/policies¿and¿regulations.php for guidance.

9. To avoid impacts to migratory birds and raptors, no vegetation should be removed from February to September, which is the nesting/fledging period for most song birds and raptors. If work must occur during the nesting season, it is recommended that a survey for active bird nests be completed.

Source of condition: NEPA Determination Monitoring Required: No

10. If cultural resources are encountered during project activities, work would be stopped, and FEMA and the Colorado State Historic Preservation Officer (SHPO) must be notified.

11. Fill materials (soil, boulders, and/or riprap, etc.) must be obtained on¿site or from previously approved sources (Colorado State Licensed Pits, existing commercial sources, existing contractor or County Stockpiles); otherwise additional coordination with FEMA and the Colorado SHPO will be required to obtain necessary approvals.

12. The Town is responsible for complying with all Colorado Air Pollution Control Division (APCD) regulations and permits as applicable. The first step to obtain a permit is to determine whether the project will need an Air Pollution Emissions Notice (APEN). Information on APENs and air permits is found at www.colorado.gov/pacific/APEN. Please contact James DiLeo at Colorado Dept of Public Health and Environments Air Pollution Control Division at 303¿692¿3127 or jim.dileo@state.co.us if you have any questions or need additional information.

13. Contractor and/or Subcontractors will properly handle, package, transport, and dispose of hazardous materials and/or waste in accordance with all local, State, and Federal regulations, laws, and ordinances. If hazardous substances are released to the project area during construction, these Federal, State, and local requirements must be followed in response and cleanup.

14. All waste material associated with the project must be disposed of properly and not placed in identified floodplain or wetland areas.

15. Construction traffic should be closely monitored and controlled as appropriate. All construction activities will be conducted in a safe manner in accordance with OSHA requirements. To alert motorists and pedestrians of project activities, appropriate signage and barriers will be on site prior to and during construction activities. During construction activities, the construction site(s) will be fenced off to discourage trespassers.

16. The Town must implement standard Best Management Practices (BMP) to minimize erosion and sedimentation; reduce emissions, fugitive dust, fuel leaks and spills, and noise; control invasive species and comply with all applicable

RECORD OF ENVIRONMENTAL CONSIDERATION (REC)

Project PDMC-PJ-08-CO-2018-006 (0)

Title: Resilient Infrastructure Dam Safety Mitigation at Goose Pasture Tarn Dam

federal, tribal, state and local requirements.

Source of condition: NEPA Determination Monitoring Required: No

Standard Conditions:

Any change to the approved scope of work will require re-evaluation for compliance with NEPA and other Laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires recipient to comply with all federal, state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

If ground disturbing activities occur during construction, applicant will monitor ground disturbance and if any potential archeological resources are discovered, will immediately cease construction in that area and notify the State and FEMA.

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Shannon Haynes, Assistant Town Manager

Date: 2/19/2020

Subject: Project THOR Middle Mile Broadband Network Intergovernmental Agreement

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As Council is aware, the Town is partnering with Summit County Government (SCG) on the fiber Meet Me Center (MMC) located at the Justice Center (501 North Park Avenue) on county owned land. This MMC, along with the MMC in Frisco, provide a connection to the THOR Middle Mile Broadband Network. The THOR network is an important connection for Fiber9600 as it provides a fiber link between Summit County and Denver, which includes a redundant pathway.

The attached IGA details the terms and conditions that apply to:

- Expectation for services supplied to the Town by the County
  The County, through the THOR network, will provide transport services (a fiber connection) for Town buildings.
- Payment and invoicing for non-recurring costs associated with the construction of the Breckenridge MMC
  The Town and SCG agreed to split the construction costs of the Breckenridge MMC 60/40.
- Payment and invoicing for monthly-recurring costs for both the Breckenridge and Frisco MMCs
  The Town and SCG agreed to split the monthly recurring cost for both MMCs 50/50 less any revenues. Other entities (government, quasi-governmental) may also choose to procure service on the THOR network thereby reducing the cost to the Town and County.
- Expectations, payment and invoicing for utilities and maintenance of the Breckenridge MMC
  The Town will be responsible for providing utilities and maintaining the Breckenridge MMC. Those costs will be split evenly between the Town and the County.
- Planned revenue share for any lease revenue associated with both the Breckenridge and Frisco MMCs
  Entities may lease space within the MMCs. Any revenue associated with these leases will be split equally between the Town and County.

I will be available at the work session on Tuesday, February 25th to answer questions.

INTERGOVERNMENTAL AGREEMENT

Among

SUMMIT COUNTY, COLORADO And

THE TOWN BRECKENRIDGE, COLORADO

THIS INTERGOVERNMENTAL AGREEMENT (this "Agreement") is made and entered effective as of November 1, 2019 ("Effective Date"), among SUMMIT COUNTY, COLORADO (the "County"), a body corporate and political subdivision of the State of Colorado (the "State"), and the TOWN BRECKENRIDGE, COLORADO (the "Town"), a Colorado municipal corporation. The County and the Town are referred to collectively herein as "the Parties" or individually as "a Party."

WHEREAS, pursuant to title 29, article 1, part 2, Colorado Revised Statutes, as amended, and Article XIV, Section 18 of the State Constitution, governments may contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units and any such contract may provide for the joint exercise of the function, service or facility; and

WHEREAS, the Parties desire to enter into this Agreement to provide local broadband solutions for the community utilizing the Project THOR Middle Mile Broadband Network owned by the Northwest Colorado Council of Governments (the "NWCCOG"); and

NOW, THEREFORE, the Parties agree as follows:

I. DEFINITIONS

In addition to words defined parenthetically in this Agreement, the following words shall have the following meanings:

"**Force Majeure**" means any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Agreement due to causes beyond the control of that Party, including, without limitation, strikes, boycotts, labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage or any other circumstance for which such Party is not responsible or which is not in its power to control.

"MRC" means the monthly recurring cost of a Service which will be as set forth in Section IV (1)(b) as agreed upon by the Parties and documented on a Service Order, as applicable.

"Network" or "Project THOR" means the limited infrastructure included as part of the THOR network infrastructure and will not include access to any network assets or infrastructure owned, leased and/or operated by Summit County Government or Colorado Department of Transportation, except as those network assets or infrastructure are included as part of THOR network infrastructure.

"NRC" means the costs associated with the construction of the Breckenridge Meet Me Center.

"Project THOR MEET ME CENTERS" or **"MMCs"** means the Meet Me Center hosted by the County and the Town. The Meet Me Centers are referred to collectively as

"MMCs" or individually as "Breckenridge MMC" and "Frisco MMC".

"Service(s)" means the services particularly described in each Service Order.

"Service Order(s)" means fully-executed orders for specific Services on the standard Service Order forms, including attachments thereto. Each Service Order shall be issued and accepted by the Parties in accordance with the provisions of this Agreement. Each Service Order will contain specific provisions with respect to prices, features, locations, descriptions of service, duration, Service Level Agreements and other terms as appropriate.

"Transport" means the intra-network traffic between MMC Host locations independent of network traffic connecting to the Internet.

II. SCOPE OF AGREEMENT

This Agreement establishes general terms and conditions which apply to the Services being supplied by the County to the Town pursuant to this Agreement. Each Service Order issued and accepted hereunder, and the Services ordered there under, shall be subject to the terms of this Agreement.

This Agreement further establishes the general terms and conditions regarding the building, maintenance, costs and profit sharing of the Breckenridge MMC and Frisco MMC.

III. SERVICES

Section 1. Internet Usage. To the extent the Services are used in connection with the Town's use of the Internet, the Town warrants and represents to the County that the Services will be used only for lawful purposes, and the Town shall not transmit, retransmit or store material in violation of any federal or state laws or regulations.

Section 2. Sole Use of the Town. The Town agrees that the contracted Services are for its sole use, and may not, under any circumstances, be used, re-sold, sub-let, shared or traded in any way unless agreed to in a Service Order.

Section 3. Payment for Services. Payment and invoicing shall be made handled per the following:

a. Invoicing and Payment. An invoice for Services per a Service Order will be sent to the Town quarterly. The Town will pay all amounts owed under each Service Order within thirty (30) days after the invoice date (the "Due Date"). The County reserves the right to charge interest on delinquent amounts at the lower of one and one-half percent (1.5%) per month or such other rate or rates as may be permitted under applicable law.

b. Disputed Payments. In the event the Town, in good faith disputes any charges invoiced by the County, the Town shall promptly pay all undisputed charges, and shall notify the County in writing of any such disputed amounts within 60 days of the Due Date, identifying

in reasonable detail its reasons for the dispute and the nature and amount of the dispute. All amounts not timely (within 60 days of the Due Date) and appropriately disputed shall be deemed final and not subject to further dispute. The County will review the amounts in dispute within thirty (30) days after its receipt of such notice. If the County determines that the Town was billed in error, a credit for the amount billed incorrectly will be made to the next invoice. If the County and the Town determine that the amount was billed correctly, the Town will pay the amount by the Due Date of the next invoice.

Section 4. Service Levels. Service is backed by the following Service Levels:

a. Installation Service Level. The Parties acknowledge that the County installed the Service prior to the execution of this Agreement.

b. Maintenance. An excused outage "Excused Outage" shall mean any preventative, routine or scheduled maintenance that is performed on a Service, the MMCs, County Facilities, the Network, or any component thereof, that is reasonably likely to affect the Service, for which the County shall provide at least ten (10) days' notice of timing and scope to the Town.

Additionally, an Excused Outage may also include unscheduled system maintenance or system repairs, upgrades and reconfigurations; issues resulting from mechanical or electronic breakdowns; public emergency or necessity; Force Majeure; or restrictions imposed by law which, may result in temporary impairment or interruption of Service. As a result, the County does not guarantee continuous or uninterrupted Services and reserves the right from time to time to temporarily reduce or suspend Service without notice based on these exceptions.

The Town releases the County and its elected officials, officers, employees and agents from any and all obligations, charges, claims, liabilities, opportunity costs and fees incurred, whether foreseeable or unforeseeable, as the result of Service interruption, omission or degradation, including the impact resulting to the Town.

c. Managed Network Services and Support. The County will provide access to Tier I and Tier II network support during standard business hours of Monday through Friday from 8:00AM MT to 5:00 PM MT. Further service outage support will be provided by the County via network operator Visional Communications Inc., dba Mammoth Networks (Mammoth). Mammoth operates a 24-hour monitoring center with support access to the THOR Network infrastructure for all support issues. The County is responsible for notifying all THOR customers of network service interruptions and when support services are being provided by Mammoth.

To report any service outage or other service issues to the County, the Town can contact the County IS Service Desk at 970-453-3510 or servicedesk@summitcountyco.gov Monday through Friday between the hours of 8:00 AM MT and 5:00 PM MT.

d. Network Monitoring. Network monitory logs without interpretation will be provided upon the Town's request.

e. Availability of Service Level. The County shall provide Level 2 (Ethernet) service at an availability service level of 99.9%. Network down time will be calculated based on a network outage, which causes the Town to fully lose service delivery. The County, via the

network operator, Mammoth, is responsible for backup transport and the process of failing over to the backup transport in the event of a network outage. The service availability set forth in this section shall not apply to service unavailability caused by an Excused Outage outlined in Section IV(4)(b) of this agreement.

i. The Town shall be entitled to an outage credit based upon the monthly Service Unavailability experienced except as provided in Section IV(4)(b). The amount of credit shall be calculated according to the following schedule:

Monthly Service Level Availability Percentage		**Outage credit %**
Upper Level	**Lower Level**	**% of MRC credit per affected Service**
100%	>=99.9%	0%
<99.9%	>=99.5%	5%
<99.5%	>=99.0%	10%
<99.0%	>=95.0%	25%
<95.0%	>=90.0%	50%
<90.0%	>=00.0%	100%

f. Latency. The average transit delay ("Latency") will be measured via roundtrip pings. Latency for the Service will not exceed 10ms. The Town shall be entitled to a latency credit based upon the following schedule:

Maximum	**Latency Credit (as a % of the MRC for the Affected Service)**		
10ms	11 - 15ms = 10 %	16-20ms = 25%	> 20ms = 50%

g. Jitter. Jitter is a measurement of the interpacket delay variance of the Service and is measured by generating synthetic user datagram protocol (UDP) traffic. The Town shall be entitled to a jitter credit based upon the following schedule:

Maximum	**Jitter Credit (as a % of the MRC for the Affected Service)**		
1ms	1.1 - 2ms = 10 %	2.1 - 3ms = 25%	> 3ms = 50%

IV. MEET ME CENTERS

Section 1. Payment and Invoicing.

a. Non-Recurring Cost (NRC). The Parties have agreed to share the NRC associated with Project THOR and the building and installation of the Breckenridge MMC. The County shall pay 40% and the Town shall pay 60% of the total NRC. The Town will invoice the County by April 1, 2020 for the NRCs associated with the Breckenridge MMC. Payment will be due within thirty (30) days of receipt.

b. Project THOR Monthly-Recurring Costs (MRC). The Parties have agreed to

equally split the MRCs for the MMCs minus any revenues received on the Network. The County and Town will mutually agree on a method for calculating the shared cost.

c. Invoice. The County shall invoice the Town for MRCs every six (6) months in June and December of each year for the upcoming 6-month period. Each invoice will include a detailed calculation of the amount due. Payment will be due within thirty (30) days of receipt.

There may be an annual adjustment to the MRC based on the overall financial stability and revenues received on the Network. Future adjustments to rates or Services purchased shall be documented in mutually executed Service Orders, subject to the terms and conditions of this Agreement.

d. Utilities for Breckenridge MMC. The Parties agree to split the monthly cost of utilities equally for the Breckenridge MMC. The Town shall invoice the County every six (6) months in January and July of each year for the previous 6-month period. If the County, determines that the utility lines interfere with the use or development of the County's property on which the Breckenridge MMC has been located ("County Property"), the County may relocate the utility lines to a mutually agreed upon location. The Parties agree the cost of relocation shall be split equally between them.

Section 2. Building Specifications and Maintenance. The Parties acknowledge that the Town constructed the Breckenridge MMC prior to the execution of this Agreement, and that the Town has issued a certificate of occupancy for such building.

a. County Right to Relocate. The location of the Breckenridge MMC is depicted in Exhibit A. If the County, determines that the location of the Breckenridge MMC interferes with the use or development of the County Property, the County may relocate the Breckenridge MMC to a mutually agreed upon location. The Parties agree the cost of relocation shall be split equally between them.

b. Equipment Specifications. It is agreed that the Breckenridge MMC meets all of the equipment requirements as described in Exhibit B.

c. Maintenance. Town staff shall be responsible for performing or having performed any routine building maintenance required for the Breckenridge MMC. The Parties agree to equally split the cost of routine maintenance. The Town shall invoice the County every six (6) months in January and July of each year for the previous 6-month period.

Section 3. Lease Revenue. The Parties agree to equally split any lease revenues from the Breckenridge MMC and Frisco MMC. The County shall oversee the leases for both MMC locations. County shall provide Town with an accounting and payment of any revenue in invoices issued in December and June of each year.

Section 4. Participation in Project THOR. If Project THOR ends, is terminated, or if the County decides not to participate in Project THOR, this Agreement shall terminate and the Parties shall enter into a new agreement regarding the future use of the Breckenridge MMC.

III. GENERAL PROVISIONS

Section 1. Term.

a. Initial Term. The initial term of this Agreement commenced on the Effective Date ("Initial Term") and shall terminate on December 31, 2022. The Initial Term is required by the Colorado Department of Local Affairs as part of the Project THOR program grants received and managed by NWCCOG. The Parties understand and agree that notwithstanding the Effective Date of this Agreement the Project THOR Network depends upon completion of various MMC's and fiber builds and will occur over a 3-6 month period, after which time the Parties expect that all entities will have completed construction work to facilitate the Services anticipated under Project THOR.

b. Renewal. Unless otherwise terminated as provided in Article III(2), this Agreement will automatically renew for up to five (5) additional three (3) year terms (each a "Renewal Term") unless either Party gives notice of termination to the other Party not less than 180 days prior to the end of a Renewal Term. If notice of termination is properly given, this Agreement shall terminate at the end of the applicable three (3) year renewal term.

Section 2. Termination and Default.

a. Voluntary Termination. This Agreement can be terminated by either Party at any time with one hundred eighty (180) days written notice after the Initial Term.

b. Default. The failure to comply with any of the terms and conditions of this Agreement shall constitute a default under this Agreement. If either Party believes the other Party has failed to comply with any of the terms and conditions of the Agreement, the non-defaulting Party shall provide written notice of such alleged breach to the defaulting Party with specificity. The defaulting Party shall have the right to cure any alleged breach within thirty (30) days of receipt of such notice or, in the event of a default not capable of being corrected within thirty (30) days, the defaulting Party shall commence correcting the default within thirty (30) days of receipt of notification thereof and thereafter correct the default with due diligence.

In the event that the defaulting Party fails to cure that breach within thirty (30) days after receiving notice, the other Party may terminate this Agreement immediately upon written notice of the Party in breach.

Section 3. Contract with Intergovernmental Entity.

a. Annual Appropriation. Nothing in this Agreement shall be deemed or construed as creating a multiple fiscal year obligation on the part of the either Party within the meaning of Colorado Constitution Article X, Section 20, or any other constitutional or statutory provisions. Each Party's fiscal obligations hereunder are expressly conditional upon annual appropriation by its respective governing body, in its sole discretion. The Parties understand and agree that any decision by a governing body to not appropriate funds for payment shall result in termination of this Agreement. If any Party is not going to appropriate funds for its next fiscal year to continue under this Agreement, it shall utilize best efforts to advise the other Party of the intent not to appropriate by October 1st of each year.

b. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., or any other applicable law, as now or hereafter amended.

Section 4. Miscellaneous Provisions.

a. Entire Agreement. This Agreement and all Exhibits represent the entire agreement between the Parties and there are no other promises or conditions in any other agreement whether written or oral. This Agreement supersedes any prior written or oral agreements between the Parties.

b. Severability. If any provision of this Agreement is invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

c. Limitation on Liability. Neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.

d. Notice. All notices required to be given to the Parties by this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile or electronic mail message was received.

1. Notices to the County shall be addressed to:
   Sarah Vaine
   Assistant County Manager
   Summit County Government
   P.O. Box 68
   Breckenridge, CO 80424
   Sarah.Vaine@SummitCountyCo.Gov

2. Notices to the Town shall be addressed to:
   Shannon B. Haynes
   Assistant Town Manager
   PO Box 168
   Breckenridge, CO 80424
   shannonh@townofbreckenridge.com

If either Party changes its address during the term herein, it shall so advise the other Party in writing as herein provided and any notice thereafter provided to be given shall thereafter be sent by certified mail to

such new address.

e. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

f. Jurisdiction. Venue for any judicial dispute between the Parties arising under or out of this Agreement shall be proper only in the state court of Summit County, Colorado.

g. Authority to Execute. The individual executing this Agreement represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such Party, and this Agreement is binding upon such Party in accordance with its terms.

h. Waiver. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. Both Parties expressly reserve all rights they may have under law to the maximum extent possible, and neither Party shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement.

i. No Joint Venture. The relationship between the Parties shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes. The Parties, in performing any of their obligations hereunder, shall be independent contractors and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

j. Survival. Any provision of this Agreement, which by its nature extends beyond the term hereof or which is required to ensure that the Parties fully exercise their rights and perform their obligations hereunder shall survive the expiration or termination of this Agreement.

k. Headings. Headings used in this Agreement are provided for convenience only and will not be used to construe meaning or intent.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties effective as of the Effective Date set forth above.

TOWN OF BRECKENRIDGE	SUMMIT COUNTY, COLORADO
By:_____	By:_____
Rick G. Holman, Town Manager	Scott Vargo, County Manager

FOR WORKSESSION/ADOPTION – February 25th

RESOLUTION NO. _____

SERIES 2020

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE AND SUMMIT COUNTY GOVERNMENT CONCERNING THE PROJECT THOR MIDDLE MILE BROADBAND NETWORK

WHEREAS, the Town of Breckenridge and Summit County Government are each authorized by the provisions of Article XIV, Section 18(2)(a), Colorado Constitution, and Sections 29-1-201, et. seq., C.R.S., to enter into contracts with each other for the performance of functions that they are authorized by law to perform on their own; and

WHEREAS, the Town and Summit County Government desire to enter into an agreement to provide local broadband solutions for the community utilizing the Project THOR Middle Mile Broadband Network owned by the Northwest Colorado Council of Governments; and

WHEREAS, a proposed Intergovernmental Agreement between the Town and Summit County Government has been prepared, a copy of which is marked **Exhibit "A"**, attached hereto, and incorporated herein by reference; and

WHEREAS, the Town Council has reviewed the proposed Intergovernmental Agreement and finds and determines that it would be in the best interest of the Town to enter into such agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE, COLORADO, as follows:

Section 1. The proposed Intergovernmental Agreement between the Town of Breckenridge and Summit County Government (**Exhibit "A"** hereto) is approved, and the Town Manager is hereby authorized, empowered, and directed to execute such agreement for and on behalf of the Town of Breckenridge.

Section 2. This resolution shall become effective upon its adoption.

RESOLUTION APPROVED AND ADOPTED THIS _____ DAY OF _____, 2020.

TOWN OF BRECKENRIDGE, a Colorado municipal corporation

By:_____
Eric S. Mamula, Mayor

ATTEST:

_____
Helen Cospolich, CMC,
Town Clerk

APPROVED IN FORM

_____
Town Attorney date

Memo

TOWN OF BRECKENRIDGE

To: Breckenridge Town Council Members

From: Mark Truckey, Director of Community Development

Date: February 19, 2020

Subject: Planning Commission Decisions of the February 18, 2020 Meeting

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DECISIONS FROM THE PLANNING COMMISSION MEETING, February 18, 2020:

CLASS A APPLICATIONS: None

CLASS B APPLICATIONS:
1. Village at Breckenridge Large Vendor Cart, 555 S. Park Avenue, PL-2020-0011
A proposal to replace a Large Vendor Cart on the Village at Breckenridge Plaza, which is proposed to be the second active vendor cart in the plaza. *Approved.*

CLASS C APPLICATIONS: None

TOWN PROJECT HEARINGS: None

OTHER: None

NOT TO SCALE
Breckenridge South
Milne and Eberlein Houses
Restoration Town Project,
102 N. Harris Street
Village at Breckenridge Large
Vendor Cart, 655 S. Park Avenue
Airport Rd
Peerless Dr
Union Tr
Woods Dr
Park Ave N
Windwood Cir
Settlers Dr
Ski Hill Rd
Christie Ln
Highwood Cir
Grandview Dr
Beavers Dr
Lomax Dr
Boulder Cir
Sawmill Rd
SCR 708
SCR 709
Timber Trail Rd
Peak Eight Rd
Four Oclock Rd
Park Ave S
Bluff Ct
Iliff Ct
Kings Crown Rd
Village Rd
Peak Nine Rd
Watson Ave
Wellington Rd
Main St N
French St N
Briar Rose Ln
Luisa Dr
Cold Flake Ter N
Royal Tiger Rd
Corkscrew Dr
Retting Rd
Sheppard Cir
Rachel Ln
Locals Ln
Campion Tr
Pine St N
High St N
Lincoln Ave
Harris St S
High St S
Ridge St S
French St S
Main St S
Adams Ave E
Pine St S
Carter Dr
Hermit Dr
Sunbeam Dr
Klack Rd
Boreas Pass Rd
Columbine Rd
Snowberry Ln
Hwy 9
Broken Lance Dr
Amber Ct
Ville Cloud Dr
Gold King Way
Tomahawk Ln
Red Feather Rd
Riverwood Dr
Brookside Ln
Bright Hope Dr
Sables Dr
Grey Ln
Wolf Lyon Rd
French Gulch Rd
Sisler Green
Bridge St
Logan Dr

PLANNING COMMISSION MEETING

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

ROLL CALL

Christie Mathews-Leidal	Jim Lamb	Ron Schuman
Mike Giller	Steve Gerard	
Dan Schroder-absent	Lowell Moore	

APPROVAL OF MINUTES
With the below changes, the February 4, 2020 Planning Commission Minutes were approved.

Ms. Leidal: On the bottom of page 3, it should reflect that I made reference to mass, not density on the project. On the middle of page 6 of the packet I did not say that I had comments to make the plan better, I said the other Commissioners' comments that had already been stated would make the project better. At the end of the number four response, I was concerned with precedent being set and that we need to have an example of a four sided building with two of the sides having mesh and that it would be very different from having a four sided building with no mesh.

Mr. Gerard: The comment at the bottom of page 9. I made the comment not Mr. Giller.

APPROVAL OF AGENDA
With no changes, the February 18, 2020 Planning Commission Agenda was approved.

PUBLIC COMMENT ON HISTORIC PRESERVATION ISSUES:

- No comments.

WORK SESSIONS:
1. Milne and Eberlein Houses Restoration Town Project (CL), 102 N. Harris Street, PL-2020-0029
Mr. LaChance presented a proposal for historic restoration, building relocation, and site modifications to the Milne and Eberlein house property. The following specific questions were asked of the Commission:

1. Does the Commission consider the Eberlein House to be a primary or secondary structure?
2. Does the Commission agree with not assigning negative points for the relocation of the Eberlein House 8 ft. to the west, due to its 1989 relocation to this site and the proposed structural stabilization and concrete foundation?
3. Does the Commission agree with not assigning negative points for the relocation of the outhouse 42 ft. to the south, as long as it is restored as required with the relocation?
4. Assuming the Commission finds the Eberlein House to be a primary structure, does the Commission find that positive six (+6) points are warranted for the combined scope of on-site historic preservation/restoration effort of above average public benefit on the two primary structures?
5. Does the Commission support a special Finding regarding non-compliance with Policy 22/A and the 5 ft. landscaped area requirement for the alley parking area?
6. Does the Commission agree with staff's policy analysis, and the preliminary point analysis?

Commissioner Questions / Comments:

Ms. Leidal: I was wondering in regards to precedent, I thought we have had parking accessed off of rear of alleys, similar to this. Is there any precedent for parking along alleys? What about the parking off of the back of the barbecue place, the old Moe's? (Ms. Puester: They got a waiver. It was the same at the Montessori which was a project that was never built, they were granted a waiver from Engineering. There are concerns with width of the alley here and plowing for

this project and the alley as a whole from Public Works. Some of this area is used by the alley users for snow stack and there is a lack of where it can go. They have struggled with snow storage and wanted to leave adequate room. We realize it is historic so we are working with engineering at this time to come up with a solution.) Ms. Leidal: Is there a curb cut maximum? Should we make that another finding? (Mr. LaChance: There is a code requirement for driveway widths, but we found that this is not technically a driveway so those code sections would not apply.) (Ms. Puester: It's also privately maintained alley.) Ms. Leidal: I was thinking if we have held other projects to other standards, we should abide by the requirements as well.

Mr. Lamb: Question on whether or not the alley is paved or gravel. I have not walked over to this area in a while, but I think it is paved. (Mr. LaChance: When Engineering went over to the site, they could not see the surface because of snow.)

Mr. Gerard: We confirmed with property owners in the area at today's site visit, it was paved as part of a private assessment.

Mr. Schuman: Why do they need seven parking spaces? (Mr. LaChance: Seven spaces is in excess of the requirements, based on office/museum uses, they would be required six spaces, so there is one extra shown. When engineering is looking at the issues, they would be okay with five spaces here. We are trying to balance a combination of snow storage concerns, parking requirements, and proximity of the spaces are to the buildings.) Mr. Schuman: I can see it becoming skier parking. (Mr. LaChance: The use of the property is changing, so there will be an increased demand.) Mr. Schuman: It seems like a lot for this site. (Mr. LaChance: Parking requirement is six spaces, so they have one extra.)

Mr. Giller: Chapin, could you speak to ADA, and how it applies? (Mr. LaChance: I will try, but may have to defer to the architect. For the Milne house, a doorway is proposed to be widened for ADA access. We have a Design Standard that requires the ratio of the door width to height to be maintained when widening. We don't have any specification for this in the plans, so we will need that prior to the Hearing.) Mr. Giller: Big picture ADA applies to the site, to the doorways, to the parking, and to the creation of an accessible route. (Mr. LaChance: This intensity of the non-residential use is proposed to increase, so I would think ADA requirements do apply but that is technically enforced by the Building Division.) (Mr. Truckey: ADA does apply here, but the Building official has some discretion.) Mr. Giller: Makes sense. Continuing, how would the that apply to the new restroom in the Milne House? Would that need to become accessible? Ms. Sutterley: We know the answer to that.

Larissa O'Neil: Executive Director of Breckenridge Heritage Alliance:

Thank you all for joining the site visit earlier. I wanted to talk about some of the background of the site and project. This is a unique site as it is all town owned. This is a master plan for both the 102 lot and the 104 lot, which is actually the Briggle House and not part of this project. The three houses tell a story about residential development in Breckenridge. For the 1870s, Eberlein is a small cabin and what we consider the original tiny house, and one of the older residences in Town. For the 1880s decade, we have the Milne House. The Briggle house represents the turn of the century architecture. So, there's a story of the evolution of housing in early Breckenridge. We went through an extensive public process for more than three years now, including public forums, surveys, and data collection. We landed at this plan because we do not have anything original of the families except the houses and their stories. We do not have their artifacts, shoes, or clothing. Their stories are important to the history of Breckenridge. We saw several community needs that could be accommodated on this site and came up with the elegant solution that you see today. We desperately need collections storage. Currently we have the community center for papers and other two dimensional documents but we need a place for textiles, shoes, and other artifacts. We saw the basement as a solution for collections storage. During the process, we also saw a need for a community space. The Eberlein house will provide a space for meetings, book clubs, or social gatherings with an ADA bathroom. We also wanted to activate Milne park, but we know there is a problem in across town with maintaining staff. This is not planned as a place for glamourous BHA offices,

but we want to move our administrative offices to this site to activate it. The BHA offices will be within the Milne House. That being said, these structures need help. We started by looking just at restoring Eberlein, but took a step back and looked at this park as a whole instead. In terms of the staff report, there are important items for the Commission to consider. Milne and Eberlein are both primary structures in our opinion. Eberlein was a main residence. In regards to the points, we are happy that we are landing with positive points, but we would like the positive six points for each structure. We could break up the project, do a separate point analysis for each structure, and probably get positive six for each. We do intend to do full restoration for both structures. We would like Commission to consider this. For those of you on the site visit, the vertical siding on Eberlein can be reused. For Milne, the siding on the east and north elevations is not historic and we can reuse the siding or replace it with new. We are fine with negative three for removing fabric for the opening on Eberlein house since it is a requirement. For snow storage, we could approach it from an operating point, because it is a concern. We contract for snow storage now at our current site. We can remove snow as it becomes deep to maintain the number of spaces shown on the site plan. We would like to have this as an active park, but we think there is a need to have extra parking to accommodate both staff and guests as the site becomes more of a hub for BHA. There was a question about ADA access. We have met with the Chief Building Official several times on this topic. We are only proposing the one restroom in the Eberlein House. The two in Milne will not be ADA because it will primarily be used by the BHA staff in the office.

Mr. Giller: Could you explain the metal roof replacing the shingle roof on the Milne House? Is it the slope? (Ms. Sutterley: The wood shake roof does not shed water well because of the 2:12 pitch.) Mr. Giller: Do you know when it was replaced? (Ms. Sutterley: 1990s sometime.)

Mr. Gerard opened the work session for public comment, noting that it was not a requirement but there were several people wanting to comment.

John Rynes, 111 North High Street: I am very proud of the people who have been working to improve this site. It will be a wonderful project. I have concerns on the alley because it is not maintained by the town. We residents of Wellington Square pay to have our parking area cleaned but we also pay to clean the alley. We would like to have you consider that the Town maintain the alley. (Mr. Gerard: Do you know when the alley was hard surfaced?) Mr. Rynes: Many years ago. The parking that is along the alley now for Milne is not paved.

Lee Edwards, 103 North High Street: Larry Crispell developed Wellington Square and could tell you when the alley was paved. I will ask you some pointed questions. That is my job. What Land Use District is this in? It is in Land Use District number 19. [Staff notes this is incorrect] What do those Guidelines for District 19 stipulate? Residential. This museum is there because the owner gave it to the town when they passed away. The museum can show how property could benefit the Town. You are moving office use right in the middle of a residential neighborhood. I get it, I would rather be here than on Main Street because of traffic. On parking, we have a perfectly fine parking area diagonally across from the project at the Community Center. Introducing that amount of traffic on this alley seems counterintuitive, especially when the Town owns the parking. It needs to be examined further. One ADA parking space and maybe one more space make sense but we do not have to pave the entire site. We need to be more true to the site itself. With the additional office use on this site, the Town Attorney needs to look at it. You cannot add a bunch of office uses and combine them with residential uses. The privately maintained alley also needs to be addressed by the Town. It would be great for the Town to go ahead and take care of it now. Are these contributing structures? (Ms. Puester: Yes-They are locally landmarked.) Mr. Edwards: Has anyone checked with the State Historic Preservation Office on when you gut the interior of a historic structure that has its original interior walls? You lose the designation. That is my understanding. You could lose the contributing designation of yet another historic structure in the town. Someone should really check on that and see how incorrect I might be.

Public comment was closed.

Commissioner Questions / Comments:

Ms. Leidal: Is this a public or private alley? (Mr. LaChance: It is a public ROW. There are several alleys like this in Town that the town does not maintain.)

Mr. Giller: I have many ADA concerns. I think you cannot rehab Eberlein and not expand the doorway or provide a restroom. I think you are asking for trouble with ADA. I think you need to run this by the SHPO because these are contributing structures. It is an adverse effect on Eberlein.

Mr. Lamb:

1. Eberlein is a primary structure.
2. I do not think it is eligible for negative points because it is not in its original location.
3. Same goes for the outhouse.
4. Positive six points is fair for restoration.
5. On the alley, I understand we are moving office into residential, but office is a light use and there is overflow parking at library. (Mr. LaChance: Do you support special finding regarding landscaping?) Mr. Lamb: Yes.
6. I agree with point analysis. (Mr. LaChance: Do you support negative three points for the removal of historic fabric?) Mr. Lamb: I personally don't agree with it but I support it, it's in the Code.

For ADA, bringing something into compliance should not get negative points, but it is in the Development Code so I will go with it. I think you do have to have an ADA bathroom. Town does not maintain the alley I live on, but perhaps my alley will be better maintained as a result of this project. It is a major issue because they only plow 3 times a winter. My alley is a mess and there are cars parked everywhere. That being said, I am not very concerned with converting this to office space. If you are required five or six spaces, and you have seven, the seventh could be snow stacking. So you end up with what is required.

Mr. Schuman:

1. Eberlein is primary structure.
2. Undecided. I am not convinced there are not some negative points there. It has been moved once but we are moving it again to increase the intensity of the site. There is some more property there so we may at some point try to move it again. There should be some sort of consequences for moving it. I tend to think there should be some negative points for moving it again.
3. Undecided. Same as above.
4. I agree on positive six points, providing the Town does due diligence confirming with SHPO about the loss of interior does not downgrade the structure.
5. I am not sure on this one. I am concerned with this increased intensity and more activity to this site. I think it is a bit misguided. If you continue to add to the site, you need extra parking. At one point, you need six spaces then suddenly you need seven, and so on. I am not convinced on this.
6. Staff analysis is good but this point in time we are missing the review from the State as to the quantity and quality of this work possibly degrading a structure. I agree with the ADA negative three points because it is in the code. I am struggling with the amount of intensity being added to this site.

Ms. Leidal: A lot for us to consider. This is an exciting project. On the questions:

1. Eberlein and Milne are both primary.
2. I agree with staff's analysis.
3. I agree with staff's analysis.
4. I agree with staff's analysis.
5. I agree with staff's analysis.
6. Before I weigh in on points, can we get more info for next hearing on the use of this site? Are the offices a secondary use to the museum or are there so many offices that they are becoming a primary use? Please talk to Town Attorney. I have concerns about speaking

to SHPO. Our guidelines do not speak to the interiors of structures, but I defer to someone who knows more about modifying interiors. With more info, I can give more feedback on the points. I agree with staff, but I am concerned with the use and SHPO.

Mr. Moore: Looks like a fun project. Thanks Larissa and Janet.

1. I consider Eberlein primary.
2. I agree with staff that moving the Eberlein house 8 feet is appropriate.
3. I would not assign any negative points for relocation outhouse.
4. I think the way the project is going positive six points are warranted under the code.
5. We come up with this landscaping issue in Policy 22A frequently and we have always been pretty pragmatic about finding ways to allow when there is not enough space to provide the required five feet.
6. I agree with staff's policy and preliminary points analysis.

Going back to what Mr. Edwards said, we need to understand what SHPO would say about this remodeling. I thought we were primarily concerned with exterior, character of neighborhood, and Historic District. I would more consider this more of an office of the museum rather than a commercial site. I think it is appropriate. For Jim's comment about negative three points for having to conform to ADA, I agree with him, but I don't know what to do about that.

Mr. Gerard: I am happy to see this project come before the Commission. It will be a gem of conservation and historic preservation. There are some concerns that everyone has and we need to do it the right way. We should look at the zoning and use. In the end, it seems that the offices are part of the museum and the museum operations. It's not like we are renting this out to an insurance agency or something. I think it is going to pass but would not hurt for the Town Attorney to give his opinion. I think we need to fully consider ADA requirements. It will not hurt for SHPO to look at this so they do not take away two more contributing structures. Interior integrity is not our job, and never has been, but they may want to look at it. For the questions:

1. Yes, this is a primary structure. It never operated as a secondary structure. Will be rehabbed as a primary.
2. I agree with not assigning negative points for relocating the structure. We can relocate it yet again as long as it is stabilized.
3. Same rules apply to the outhouse. No negative points as long as it is stabilized in new location.
4. Since it is a primary structure, you could make the argument for giving positive six for both. It meets the criteria for above average benefit to the community.
5. I am not sure about how I feel about providing parking.
6. If we are going to have parking there, I don't think we want to move the houses further forwards and would support special finding to waive 5' landscape requirement to avoid moving houses even further. I agree with policy and preliminary point analysis.

Mr. Giller: I am very supportive of the project. I support the BHA and mission. We need to think about the cultural landscape collectively. Changing the wooden walks to concrete and adding the bike rack will change the overall setting and affect the seven aspects of integrity.

1. Eberlein is primary structure.
2. I agree that negative points should not be assessed for moving the structure. It actually improves the settlement pattern, because historically houses were located closer to the front of the lot.
3. Same for points on the outhouse. Agree.
4. For gutting Eberlein, I would speak to the SHPO.
5. Its fine, although I would like to see fewer parking spots with better screening.
6. I agree with the policy and points analysis. This is a workshop and we are getting comments to make the project better. Thank you to Chapin, and thank you to BHA.

COMBINED HEARINGS:

1. Village at Breckenridge Large Vendor Cart, 555 S. Park Avenue, PL-2020-0011

Mr. LaChance presented a proposal to replace a large vendor cart on the Village at Breckenridge Plaza, which is proposed to be the second active vendor cart in the plaza.

Commissioner Questions / Comments:

Mr. Schuman: So the other carts are not on site currently? (Mr. LaChance: There are two that have been approved that are gone. Only one other remains and we have not had any issues with it.)

Ms. Leidal: I think it is a standard condition that propane tank be screened. Is there a propane tank? (Mr. LaChance: No.)

Antonio Miller, owner of the proposed cart:

I have lived in Summit County the last 3 years. I am a Caribbean native from Jamaica and I think we need some food diversity here. This will be Caribbean and Jamaican cuisine. I like to take a combination of other countries and merge the culture to try to be creative in terms of dining. It will be different since we have no Jamaican or Caribbean restaurants in the county. (Mr. Gerard: Is the cart going to be identical to the previous cart?) Mr. Miller: The only difference is going to be the color.

The hearing was opened for public comment. There were none and public comment was closed.

Commissioner Questions / Comments:

Mr. Lamb: Straightforward application, No issue. This is a textbook location. I will be the first to eat at this location.

Mr. Schuman: I couldn't agree more.

Mr. Giller: I support project and staff analysis.

Ms. Leidal: I do too.

Mr. Moore: I do too.

Mr. Gerard: Great project. I appreciate staff's analysis.

Mr. Schuman made a motion to approve the Village at Breckenridge Large Vendor Cart, seconded by Mr. Lamb. The motion passed 6-0.

OTHER MATTERS:

1. Town Council Summary

Mr. Truckey provided a summary of Town Council meeting. St. John's second reading for the Development Agreement had several requests about points. The project is essentially allowing a landmarked basement as well as another small area of density underground. The Town is going to provide the density. Council is generally supportive but they are still discussing point waivers and not wanting to allow positive points for benefits provided in the Development Agreement. To follow up, we are bringing a change to the code that if you are doing something for public benefit in a Development Agreement, you cannot get positive points during the development review process. Dennis Kuhn's Development Agreement is going to second reading as well. This is on Briar Rose Lane, north of Father Dyer Church. The request is regarding a waiver of dimensional requirements in order to subdivide the lot and the benefits include an accessory apartment that is deed restricted, along with a workforce housing deed restriction on a unit at Gold Camp. Council received update on Upper Blue Basin forest health. The Forest Service talked about overall strategy for forest management near the Wellington Neighborhood and on Peak Seven. There was a worksession on the sustainable energy code to require homes to be zero energy ready. This is a collaborative effort with all the jurisdictions in county. Houses will be required to be solar ready, but don't have to install panels yet. If you add solar, you should be able to attain net zero, producing as much energy as you use. Accessory Dwelling Units are going for first reading. There are a few changes since Commission saw it, which are stricter. The Council does not want to see family

use of ADUs unless that family member meets the work requirements. The Council also discussed childcare funding. We will run out of money in 2024, so we are looking for a more sustainable long term source. Currently, the fund revenues are coming from the marijuana fund but it is not enough to sustain the childcare fund long-term.

ADJOURNMENT:
The meeting was adjourned at 6:59 pm.

Steve Gerard, Chair

TOWN OF BRECKENRIDGE
TOWN COUNCIL

Scheduled Meetings

Shading indicates Council required attendance – others are optional

The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

February 2020

Tuesday, February 25, 2020	**3:00 pm / 7:00 pm**	**Town Hall Chambers**	**Second Meeting of the Month**
February 25th, 2020	4:00pm - 10:00pm	Main Street / Riverwalk Center	Mardi Gras
February 27th & 28th, 2020	6:00pm - 10:00pm	Riverwalk Center	Banff Mtn Film Festival

March 2020

March 6th, 2020	6:00pm - 10:00pm	DoubleTree Hilton	Party for the Planet
Tuesday, March 10, 2020	**3:00 pm / 7:00 pm**	**Town Hall Chambers**	**First Meeting of the Month**
March 18th, 2020	8:00am - 9:00am	Rec Center - Multi-Purpose Rm	Coffee Talk with the Mayor
Tuesday, March 24, 2020	**3:00 pm / 7:00 pm**	**Town Hall Chambers**	**Second Meeting of the Month**

Other Meetings

February 21st, 2020	Water Task Force Meeting	8:00am
February 24th, 2020	Breckenridge Creative Arts	4:00pm
	Open Space & Trails Meeting	5:30pm
February 25th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
February 26th, 2020	Summit Stage Transit Board Meeting	8:15am
	Summit Combined Housing Authority	9:00am
February 27th, 2020	Breckenridge Tourism Office Board Meeting	8:30am
	Northwest CO Council of Governments	10:00am
	RW&B Board Meeting	3:00pm
March 2nd, 2020	Art Installation Meeting	2:00pm
	Breckenridge Creative Arts	3:30pm
March 3rd, 2020	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
March 5th, 2020	Police Advisory Committee	7:30am
	Breckenridge Events Committee	9:00am
	MT2030 Meeting	12:30pm
	Childcare Advisory Committee	3:00pm
March 10th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	1:30pm
March 11th, 2020	Breckenridge Heritage Alliance	Noon
March 12th, 2020	Upper Blue Sanitation District	5:30pm
March 13th, 2020	QQ - Quality and Quantity - Water District	10:00am
March 17th, 2020	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm

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Scheduled Meetings

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The Council has been invited to the following meetings and events. A quorum may be in attendance at any or all of them.

March 19th, 2020	Transit Advisory Council Meeting	8:00am
March 23rd, 2020	Open Space & Trails Meeting	5:30pm
March 24th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
March 25th, 2020	Summit Stage Transit Board Meeting	8:15am
	Summit Combined Housing Authority	9:00am
March 26th, 2020	Breckenridge Tourism Office Board Meeting	8:30am
	Northwest CO Council of Governments	10:00am
	RW&B Board Meeting	3:00pm
April 1st, 2020	Breckenridge Events Committee	9:00am
	Childcare Advisory Committee	3:00pm
April 7th, 2020	Board of County Commissioners Meeting	9:00am
	Planning Commission Meeting	5:30pm
April 8th, 2020	Breckenridge Heritage Alliance	Noon
April 9th, 2020	Upper Blue Sanitation District	5:30pm
April 11th, 2020	I-70 Coalition	10:00am
April 14th, 2020	Board of County Commissioners Meeting	9:00am / 1:30pm
	Workforce Housing Committee	1:30pm
April 16th, 2020	Transit Advisory Council Meeting	8:00am
April 21st, 2020	Board of County Commissioners Meeting	9:00am
	Liquor & Marijuana Licensing Authority	9:00am
	Planning Commission Meeting	5:30pm