



**BRECKENRIDGE TOWN COUNCIL
WORK SESSION
Tuesday, December 8, 2009**

ESTIMATED TIMES: *The times indicated are intended only as a guide. They are at the discretion of the Mayor, depending on the length of the discussion and are subject to change.*

2:00 – 3:00 pm	I. <u>OLD CMC TOUR (MEET AT CMC)</u>	
3:00 – 3:15 pm	II. <u>PLANNING COMMISSION DECISIONS</u>	Page 2
3:15 – 4:00 pm	III. <u>LEGISLATIVE REVIEW</u> *	
	• Theobald Building Landmarking	Page 106
	• Skier Safety Act	Page 110
	• Offenses related to Cannabis	Page 114
	• General Penalty Amendment	Page 119
	• Attorney Contract	Page 124
	• Prosecutor Contract	Page 132
	• Valley Brook Grants (2)	Page 138 & 174
	• CLG Reviewing Entity for Tax Credit Projects	Page 193
4:00 – 5:00 pm	IV. <u>MANAGERS REPORT</u>	
	• Committee Reports	Page 10
	• Public Projects Update/Experimental Parking	Verbal
	• Housing/Childcare Update	Verbal
	• Financials	Page 12
	• Discussion on Biased Motivated Crime	Page 21
5:00 – 7:15 pm	V. <u>PLANNING MATTERS</u>	
	• Arts District Fundraiser	Page 24
	• Gondola Master Plan	Page 28
	• Gondola Lot Development Agreement	Page 32
	• Stan Miller Annexation Agreement Modification	Page 69

***ACTION ITEMS THAT APPEAR ON THE EVENING AGENDA** **Page 99**

NOTE: Public hearings are not held during Town Council Work Sessions. The public is invited to attend the Work Session and listen to the Council's discussion. However, the Council is not required to take public comments during Work Sessions. At the discretion of the Council, public comment may be allowed if time permits and, if allowed, public comment may be limited. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item. The public will be excluded from any portion of the Work Session during which an Executive Session is held.

Report of Town Manager; Report of Mayor and Council members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items.

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: December 2, 2009

Re: Town Council Consent Calendar from the Planning Commission Decisions of the December 1, 2009, meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF November 17, 2009:

CLASS A APPLICATIONS:

1. Gondola Lots Master Plan, PC#2009010, 320 North Park Avenue

Master Plan the north and south parking lots surrounding the town gondola terminal with a condo-hotel, townhomes, commercial uses, mixed use building, new skier service facilities, new transit facilities, and two parking structures. The proposal also includes development on portions Wellington parking lot and the East Sawmill parking lot, plus modifications to the Blue River, all of which are owned by the Town of Breckenridge. Approved.

PLANNING COMMISSION MEETING

THE MEETING WAS CALLED TO ORDER AT 7:00 P.M.

ROLL CALL

Rodney Allen	Leigh Girvin	JB Katz
Dan Schroder	Jim Lamb	Michael Bertaux
Dave Pringle		

APPROVAL OF MINUTES

Mr. Lamb noted that “deconditioned” should be “decommissioned” on page 9 of the packet. With no other changes, the minutes of the November 17, 2009, Planning Commission meeting were approved unanimously (7-0).

APPROVAL OF AGENDA

The Applicants for the PDG at Revett’s Drive project requested removal of their worksession item from the agenda. With no other changes, the Agenda for the December 1, 2009 Planning Commission meeting was approved unanimously (7-0).

WORKSESSIONS:

1. Upper Blue Basin Master Plan (MT)

Mr. Truckey presented. Summit County is currently undertaking an amendment to their Upper Blue Basin Master Plan (UBBMP). The UBBMP (not to be mistaken with the Joint Upper Blue Master Plan) provides land use guidance for development in all unincorporated areas of the Upper Blue Basin. The focus of the UBBMP is a set of land use maps. The amendment is primarily being undertaken because of a recent District Court ruling. Staff is bringing this to the Planning Commission as an update.

In 2010, the County and Town intend to initiate an amendment to the Joint Upper Blue Master Plan. This amendment will be focused on a couple primary topics: revisiting the density reduction target and density reduction strategies of the Plan, and adding additional wording in the Plan to address issues raised by the District Court ruling. The District Court ruling essentially invalidated the portions of the County’s master plan that conflicted with the County’s zoning.

Town staff intends to continue to monitor the progress on the UBBMP and to eventually bring the draft plan to Town Council for their input. We assume that our comments will support the County adopting new land use designations that are most closely aligned with the density reduction goals of the Joint Upper Blue Master Plan.

Mr. John Roberts, Summit County Planning Department, noted that all six of the County’s master plans are being updated due to the District Court result. The County is using the opportunity to streamline all of the master plans. The process is moving along well.

Commissioner Questions/Comments:

Ms. Girvin: In situations where a lot line has been un-vacated, does the property owner have to go back and pay into Local Improvement Districts (LIDs)? (Mr. Roberts: There are legal reasons why we can’t do that.) What is the Town’s review procedure for this? (Mr. Truckey: Town Council will likely hear this in late January. If you have any questions or comments please let me know.) I support the County and Town trying to find the lowest possible density in the Upper Blue Basin. I am not comfortable with the potential for subdivision of another 50-70 lots in the platted subdivisions.

Mr. Bertaux: Why didn’t the County appeal the court’s decision? (Mr. Roberts: Instead of going that route, we are updating our master plans to ensure that in the future it is clear.)

Mr. Lamb: Do you have a number on how many of the 10,500 units built in the basin are affordable housing? (Mr. Truckey: About 650 units.)

Mr. Pringle: The Court determined the master plan could not usurp the zoning. Could people that established additional lot lines in the past come back with this same subdivision request? (Mr. Roberts: Yes. The applications would be carefully examined, and the approval is a technical legal subject now.) Is it understood that if the underlying zoning is R-2, then R-2 is absolutely what you can achieve on the

site or what you can achieve if conditions are met? (Mr. Roberts: The updates to the master plan help to address that R-2 is the “ceiling” and you should expect to move down in density from that.) What about the fact that a property has already gone through the subdivision process for the entire subdivision with the underlying density and shouldn’t be allowed to resubdivide? (Mr. Allen: That was the whole idea behind the County’s platted residential master plan designation, but it was not upheld by Court.) Where have densities exceeded where we thought we could hold the line and why haven’t density reduction strategies worked? (Mr. Truckey: This needs more detailed discussion. One of the density reduction strategies was to purchase backcountry density, and instead of extinguishing the density we moved it from one place to another through our TDR program. Overall the density reduction strategies have not been as successful as we hoped they would.) Maybe our targets in the JUBMP were unrealistic.

Mr. Allen: You mentioned that an additional 179 potential properties could be subdivided. Have you taken a look at the constraints for the lots and if that number is realistic? (Mr. Roberts: There are 31 platted residential subdivisions in the area, and there is subdivision potential per the zoning for 400 units. Realistically in consideration of environmental constraints, access, etc. we determined the 179 lots could potentially be subdivided. We will likely set restrictions in place through the master plan amendment so that only 50-70 of the platted lots could be further subdivided.)

2. PDG at Revett’s Drive (MGT) (*Removed at the request of the Applicant*).

TOWN COUNCIL REPORT:

Mr. Rossi: At our last meeting the Council agreed that we wanted to direct Preservation Development Group (PDG) to solve their issues with the HOA (Vista Point HOA) before coming back to Planning Commission.

Ms. Girvin: I think that the PDG project at Reiling Road would make a perfect place for a round-about.

Mr. Allen: Will Council have determined the process for density for affordable housing projects before we discuss the UBBMP again next year? (Mr. Rossi: Council has determined 2:1 SFE for units that the Town owns.)

CONTINUED HEARINGS:

1. Gondola Lots Master Plan (CN) PC#2009010, 320 North Park Avenue
Mr. Bertaux abstained from the discussion as an employee of Vail Resorts.

Mr. Grosshuesch presented the continued proposal to Master Plan the north and south parking lots surrounding the town gondola terminal with a condo-hotel, townhomes, commercial uses, mixed use building, new skier service facilities, new transit facilities, and two parking structures. The proposal also includes development on portions Wellington parking lot and the East Sawmill parking lot, plus modifications to the Blue River, all of which are owned by the Town of Breckenridge. This proposal includes the transfer of 93 SFEs of density from the Gold Rush parking lot to the north and south gondola parking lots. A reduced parking requirement of 1 space per 1 condo-hotel unit is proposed, per a preliminary approval from Town Council. The final development agreement for this reduced parking ratio will be reviewed by the Town Council, and has been made a condition of approval.

Item History:

May 19, 2009: Introduction to Planning Commission

June 16, 2009: Site Plan, Architecture, Height, Density, Mass

July 7, 2009: Blue River Corridor, Landscaping, Gondola Plaza, Infrastructure, Sustainability

August 18, 2009: Transportation, Traffic, Transit, Parking, and Circulation

November 3, 2009: Final Hearing, continued until December 1, 2009 to allow for minor revisions

At the last meeting, the Planning Commission expressed concern that the application was not ready to be approved. There were concerns raised about the number of conditions placed on the approval and the Commission suggested that some of these conditions be addressed before proceeding to a final hearing. The Commission also suggested that the Applicant and staff continue to work with 1st Bank concerning the access into the south parking structure.

Since the last Planning Commission meeting on this application, staff and the applicants have had a few meetings to discuss transportation and circulation issues, including a meeting with Jeff Campeau from 1st Bank.

Summary of changes:

Density Source: No changes.

Site Plan and Land Use: No changes.

Building Heights: One minor change to indicate that 3 story townhomes would be allowed along North Depot Road, with 2 story elements facing the Blue River.

Architectural Character: Some minor changes are proposed to the language on architecture, to allow the use of false front buildings, prohibit “hipped” roofs on the mixed use building, and clarify some of the design treatments on these buildings. Staff also revised the discussion on the use of brick based on Commissioner comments from the last meeting.

Gondola Roof Structure: No changes.

Amenities: No changes.

Private Vehicle Access and Circulation: The most significant change to the access and circulation plan from the version shown to the Commission at the last hearing includes a few new turn lanes, curbs and an access plan through 1st Bank and Town Hall.

Transit Access: No changes.

Parking: No changes.

Blue River Corridor: No changes.

Infrastructure: No changes.

Sustainability: No changes.

Employee Housing: The Commission supported the provision of employee housing in an amount sufficient to earn positive eight (+8) points for the development. This results in 22,073 square feet of deed-restricted employee housing. Staff has added a condition of approval to this effect.

Phasing: Staff recommends the following items be added to the phasing plan:

Phase 1: Construct round-about at intersection of North French Street and North Park Avenue; Install and stripe turn lanes on North Park Avenue.

Phase 2: Install and stripe turn lanes on French Street; Install pedestrian bridge across Blue River.

Phase 3: Construct expansion of Wellington Road through locomotive train park.

Recommended Point Analysis:

Policy 6 (Building Height) -20 points for buildings up to 5 stories

Policy 16 (Internal Circulation) +3 points for good vehicle and pedestrian circulation

Policy 18 (Parking-View) +4 points for providing parking underground or in a structure

Policy 18 (Parking-Joint Facilities) +1 point for making parking available to the public

Policy 18 (Parking-Shared Access) +1 point for shared driveway access

Policy 24 (Social Community) +8 points for providing 8.51% of density as employee housing

Policy 24 (Social Community) +3 points for Council Goals, including transportation enhancements, economic sustainability and environmental sustainability

This would result in a passing score of zero (0) points.

This is a final hearing continued from the November 3, 2009 meeting. Both that meeting and tonight’s meeting were advertised to property owners within 300’, with public notice on the property (3) and advertised in the newspaper as required by the Development Code. If the Planning Commission is comfortable that all necessary issues have been addressed, and if Planning Commission supports a passing point analysis, then this application can be approved.

There are still several issues that have not been finalized in this application, which have been included as Conditions of Approval. Also, some of the Conditions of Approval that were discussed at the meeting on November 3rd, which could be incorporated into the master plan document, have been completed. These include the phasing plan, notes on the Blue River restoration, and approval of a development agreement with the Town Council for the reduced parking for the condo-hotel.

The meeting to discuss business issues with the Town Council (i.e. property lines, ownership and construction of public amenities, loss of parking, and construction of the river improvements, etc.) has not yet taken place. The Town Council requested that this happen after approval of the master plan.

Mr. Bill Campie, DTJ Design, presented and asked the Commission if they would like the full PowerPoint presentation. The Commission declined and Mr. Allen asked the public, who also declined. We are in agreement with

a majority of the points that Mr. Grosshuesch made. We have worked hard on the traffic circulation and were able to increase parking at 1st Bank and come to some agreements. I still believe that we are improving the transit and should be awarded the positive four (+4) points. The reasons that the transit points should be awarded are:

- 11 buses cannot be accommodated in the current configuration and be visible from the transit center, and the new plan provides this and accommodates a 12th bus
- Accommodate their large buses
- Improve pedestrian circulation
- Improve circulation with a bus-only exit
- Watson ingress and egress improved

We feel that we should be awarded these points now at the master plan level.

Mr. Allen opened the hearing to public comment.

Mr. Blake Davis, Executive VP of 1st Bank: We are in favor of the project. We are still concerned about 500 cars coming into/out of this access, but have been meeting with Vail Resorts the past few weeks and have worked out some agreements. Based on verbal agreements there is conditional approval for this access.

Mr. Dave Garrett, property and business owner 213 North Main Street (Ski Country Resorts): Most of my concern was the use of the East Sawmill parking lot. I spoke with many of our neighbors on North Main Street and gathered about 20 signatures from business owners regarding this parking lot's future use. The difference between South and North Main is that South Main has six parking lots for their employees and visitors to park in and on the north we have three lots, granted the applicant is proposing to build 1,200 spaces in the structures. Six of the businesses in North Main area are property management and we need delivery trucks, housekeepers and CME going in and out of our businesses. I could have as many as 35 employees at the height of the season and need to find parking for them. Benefits of the East Sawmill lot: provides money to the town, great venue for special events. Mr. Garret made several suggestions to the plan regarding reuse of pedestrian bridges and the location of the bike path (west side to east side.) We are losing 21 spaces in the Wellington lot as well as the 28 spaces in the Sawmill lot. When I count the spaces lost I come up with about 34 spaces being lost in Sawmill. There is hope that the train park will help to increase traffic in the North Main area. Also people are parking on Main Street that are skiing for three hours and we are trying to get the town to lower the parking to two hour duration. I don't have any other issues; I would just like this to be considered and the importance of this for the health of our businesses. I am asking Town Council and Planning Commission to reconsider the proposal to remove spaces at the Sawmill lot.

Commissioner Questions/Comments:

Ms. Girvin: One of the potential uses of the old CMC building is to move Town Hall to that location. The Town needs to be protected for the future sale of the existing Town Hall property and its access. How will it be maintained? (Mr. Grosshuesch: We would set up an easement with 1st Bank for this access.) (Mr. Steve West, Attorney for the Applicant: There is a condition about 1st Bank's consent being required.) Should the town also require consent? On the phasing the staff report recommends adding items to each of the 3 phases. Are you okay with adding these things to the phasing? (Mr. Campie: The condition says that we cannot move forward with the development permit unless we have the phasing agreed upon.) (Mr. West: We don't want to lock these in, and phasing isn't really a master plan issue. We could include those items on the list of things that will be addressed, just not in a particular phase at this time.) It does refer to sheet 10, phasing plan, which is part of the master plan. (Mr. Grosshuesch: It is noted as an illustrative and is non-binding.)

Final Comments: I realize that master plans are intended to paint a broader brush and I think the challenges with this project will be in the future with site plans and try to apply these policies. I think we have done a good job so far. Most of my comments are more related to the Council and the business plan. The timing of the Blue River restoration and the cost issues are a concern, but I have faith that the council and developer will come up with some mutually agreeable business decisions. I agree with Mr. Pringle regarding bringing animation to the north half of the project. South parking structure, I am still concerned but know we will work it out in the future. I am still concerned with the loss of employee parking at East Sawmill. Not sure that I want to commit to positive points for transit at this time. Sustainability language agreement to meet the then-current Town sustainability

code is okay, but not okay with vagueness of “exploring” other options. Where are we going to have our fireworks and our parade?

Ms. Katz: How far is the transit building moving? (Mr. Campie: It is moving 50-100’ west.)

Final Comments: I prefer not to make the north parking garage taller and I think we should avoid free density. I understand Mr. Pringle’s point about more activity in this area, but don’t want to lose any more parking; but agree we don’t want the north area to become a ghost town. I appreciate that the employee spaces from East Sawmill will be moved to the parking structure. I agree with Mr. Campie that points should be awarded for transit and I do think it is a significant improvement with the removal of conflict on Watson. I agree with the roundabout and turning lanes on westbound French Street. I would encourage a better functioning ski back. Something along the lines of a magic carpet would be better than stairs, but there could be some better technology in the future. I agree with points on building heights. I agree with Mr. Pringle’s comments regarding “timeless architecture”. I want the town to be proud of the project.

Mr. Lamb: How would circulation work at 1st Bank with the removed planters? (Mr. Grosshuesch: Parking would be relocated about 150’ north and we would remove the planters to allow more ingress and egress options to bank customers. This is how we operate in the winter currently.) Transit points are not being awarded because it is not being improved with this application. (Mr. Grosshuesch: Yes.)

Final Comments: I think that so few public comments shows how far this project has come. I like the access to the south parking structure now that 1st Bank is happy. I like the roundabout. I think we have enough density and I am not comfortable adding density to the north structure. I agree with staff’s comments on the use of brick at the site level review. I am still disappointed that there isn’t more of a commitment to the Blue River restoration, and I trust that staff and council will get this worked out. Loss of parking at East Sawmill sounds like it is in staff and Council’s hands, but we would like this to be addressed. Mr. Campie made some great points about the transit, but I am not sure about awarding the positive points. I think you have something now that will work.

Mr. Schroder: Is there anything more than the curb cut in the Highway 9 application? (Mr. Grosshuesch: Not at the south parking garage location. There will be additional curb cut requests for the property and the roundabout.)

Final Comments: I appreciate giving us the time to review the project. I appreciate the staff report clarity and I am feeling much more comfortable with this project now. I am okay with the north structure. I am in support of awarding positive four (+4) points for transit for the bus complex improvements. My recommendation will be to pass this master plan. I know that in the next stage of the process the details will be worked out.

Mr. Pringle: Is the access arrangement at the bank going to incur a loss of parking in that area? (Mr. Grosshuesch: We open up that access in the winter and we don’t lose parking.) Is the access into the parking structure 4-way? (Mr. Grosshuesch: That is going to be negotiated with CDOT, and we do not know if they will allow this full turning movement.) (Mr. Ream, FHU Traffic: We will apply for a full turning movement and negotiate.) They can apply for brick but would get negative points at time of site plan? (Mr. Grosshuesch: Yes.) (Mr. Alex Iskenderian, Vail Resorts Development Company: We are fine with this approach.)

Final Comments: Thank you to Vail Resorts for working to address our comments. South parking lot access/egress will be a continuing discussion and will be worked out over time. I don’t think we have the final solution now. North parking lot wrap, I still firmly believe that the best way to invigorate that area is to have destination commercial uses, a real reason for people to be there. I understand the concerns about height of the parking structure, cost of putting additional square footage in, but I would like to firmly suggest to the Town Council that they consider the long term ramifications of building only parking and seasonal use townhomes on the north end of the project. Council could potentially find some way to provide density to this structure for this wrapping

commercial uses at this location. Make it easier for people to get to the Gold Rush lot from the ski back. I do not understand why a sidewalk could not be provided on Park Ave. Questioning why there are no points for transit, but positive points three (+3) for 24R? I am questioning why on-street parking counts towards parking requirements for the project. On architecture, we are conceding a number of things with this application in terms of height and materials. I want to instill that we get “timeless elegance” with these buildings that will stand the test of time. What has happened at Peak 7 and Peak 8 and this project will continue to bring together the town and the ski resort.

Mr. Allen: It was explained to me that if commercial was added to the north parking garage then that commercial needs its own parking, takes away parking space from the garage, etc. (Mr. Grosshuesch: Yes that is correct, and the program here is already very extensive.) Could you please elaborate on the replacement of the 28 spaces in the Sawmill parking area for employees? (Mr. Grosshuesch: Currently employees pay the Town \$25 for an annual permit to park in that lot. Relocation will be into the parking structure. Parking plan for the Town gets reviewed annually and we cannot lock this in until we know the business plan for the parking structure.) The spaces will be made available to the Town? (Mr. Iskenderian: Yes the 28 spaces will be replaced in the structure. The Town will determine the price.) On the intersection of French and North Park Ave, how does pedestrian crossing work? Is the master plan the time to decide exactly where these pedestrian crossing locations are? (Mr. Grosshuesch: Pedestrian safety at this location is a priority to the ski resort, and there are pros and cons to roundabouts and pedestrian safety. There are fewer conflict points for roundabouts, and traffic is running slower.) (Mr. Jeff Ream, Traffic Engineer from Felsberg, Holt and Ullevig: The pedestrian crossings are a CDOT issue that will be determined in the future, not at the master plan level.) Can you please explain what happens if we pass with positive four (+4) points now, how it will affect the future? (Mr. Grosshuesch: You can’t pass forward points from the master plan to the site plan. The only way it will affect them they would have to do something now.) (Mr. West: We would reduce the square footage of employee housing to get those four points back. We can’t get the transit points back, but we can get the housing back to make up points in future site plans. If you approve the additional four points we would like to reduce the points for housing now.) (Mr. Pringle: What if we take away the three points for 24R, Council Goals?) (Mr. Campie: We are meeting the town goals, which gets positive three (+3) points.) If a motion passes to grant them positive four (+4) points under 25R-Transit, do we need to get that adjusted employee housing formula into the motion? (Mr. West: Yes, we can provide the formula and how much employee housing would be needed.) (Mr. Grosshuesch: There is a transit building that is getting torn down, that does have quite a few more useful years in it.) (Ms. Katz: We have to make room to make the transit improvements.) (Mr. Pringle: Is there a way to relocate the building and locate it on Airport Road?)

Final Comments: I want to ensure that every parking spot that is taken away gets replaced. I want to thank Vail Resorts for working with us. For 25R-Transit I think that positive four (+4) points should be awarded since the public benefit improvements are tremendous. Please consider some type of sidewalk or ski back to the Gold Rush lot. I’d love to see the ski back tunnel a lot more user friendly. On brick, I think it is appropriate what staff suggests regarding points, and I think brick is an appropriate material. Please work with CDOT on the pedestrian conflicts. I agree that the idea of activity on the north side is great, but I am not convinced that the structure should be taller. If you consider this in the future I will be open to it. In my mind this is ready for approval.

Mr. Pringle made a motion to change the final hearing point analysis for the Gondola Lots Master Plan, PC#2009010, 320 North Park Avenue, for 25R-Transit from zero (0) points to positive four (+4) points. Ms. Katz seconded, and the motion was carried (5-1).

Mr. Pringle made a motion to change the final hearing point analysis for the Gondola Lots Master Plan, PC#2009010, 320 North Park Avenue, for 24R-Employee Housing from positive eight (+8) points to positive four (+4) points and reduce the amount of employee housing from 8.51% to 6.51% of the density of the project. Ms. Katz seconded, and the motion was carried (5-1).

Mr. Pringle made a motion to approve the Gondola Lots Master Plan, PC#2009010, 320 North Park Avenue, together with the revised final hearing point analysis and a change in Condition #15: *“Prior to recordation of the master plan, Applicant shall apply for approval from the Colorado Department of Transportation (CDOT) for such site access permit(s) to and from State Highway 9 (North Park Avenue) as may be required. After such application to CDOT has been submitted, Applicant will diligently pursue approval, and such approval must be obtained from CDOT prior to issuance of any Class A, B or C development permit by the Town for development within the master planning area. If the access plan is not approved by CDOT, revisions to the master plan may be required, which may require re-review of the master plan by the Town of Breckenridge Planning Commission and/or Town Council.”* Mr. Schroder seconded, and the motion was carried unanimously (6-0).

OTHER ITEMS:

None.

ADJOURNMENT

The meeting was adjourned at 9:15 p.m.

Rodney Allen, Chair

MEMO

TO: Mayor & Town Council
FROM: Tim Gagen
DATE: November 19, 2009
RE: Committee Reports

Police Advisory Committee Rick Holman November 5, 2009

- **District Attorney - Overview:** District Attorney Mark Hurlbert attended the meeting and provided an overview of his district operations. He explained that the fifth district encompassed four (4) counties, and the annual caseload averages 14,000 – 15,000, with approximately 1,200 of those felonies. Most felonies are drug or property related, but he is seeing more assaults, particularly sex assaults, including rising numbers in “acquaintance rape” cases.
- **Marijuana:** The DA and the Chief provided a brief overview of penalties related to drug possession, as well as how such charges are written into court and prosecuted. It was noted that the recent election results would result in few changes in enforcement by Breckenridge PD, as they have historically employed broad discretion regarding private use. Last year, only ten (10) cases were written into Municipal Court.

Further discussion at the end of the meeting resulted in a PAC consensus that there were numerous concerns regarding location of the medical marijuana establishments, the manner in which they would be regulated, how licenses would be granted, the potential for criminal activity given the amount of cash involved, etc.

- **Parking Update:** The Chief introduced Sgt. Shannon Haynes, who has been assigned as the Parking Sergeant. Potential “diagonal” parking on a portion of Main Street has been discussed, and will be taken up by Council. The PAC expressed some concern regarding this option, as it may make pulling out of a space very difficult during times of peak traffic volume. PD has also been meeting with Vail to craft strategies for the gondola lots to improve traffic flow. Parking at gondola lots will be \$5 Mon -Thurs; and \$10 Fri – Sun. Free parking Mon-Thurs to carpooling vehicles carrying 4 or more passengers.
- **Safe Bar Campaign:** Two PAC members commented that the Safe Bar Campaign appeared to be working, and that the training and outreach by Sgt. Hughes has been helpful.
- **Trash Ordinance:** The PAC provided feedback and recommendations to the Chief regarding the need for a trash ordinance that includes significant penalties, including a mandate for securing trash can lids. It was noted that the Town did not have the trash problem that some communities were having, yet that it would eventually be as bad, and the Town should be proactive in an ordinance.

Other Meetings

CML	Tim Gagen	No Meeting
Summit Leadership Forum	Tim Gagen	No Meeting
SCHA	Laurie Best	No Meeting
CAST	Tim Gagen	No Meeting

I-70 Coalition	Tim Gagen	No Meeting
CAST	Tim Gagen	No Meeting
Wildfire Council	Matt Thompson	No Meeting
Summit Stage	James Phelps	No Meeting
CDOT	Tim Gagen	No Meeting
Public Art Commission	Jen Cram	No Meeting
Fire Wise task Force	Jen Cram	No Meeting
LLA	MJ Loufek	No Meeting

**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

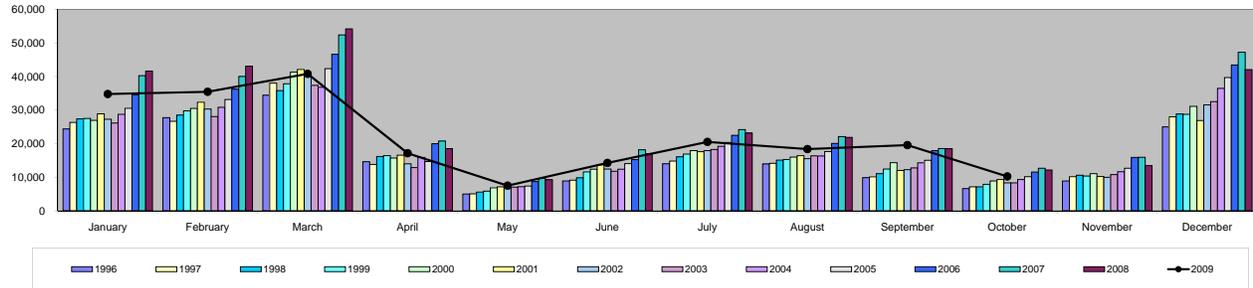
(in Thousands of Dollars)

Total - All Categories*

* excluding Undefined and Utilities categories

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly 08-09	YTD 2008	YTD 2009	YTD % Change 08-09
January	24,356	26,315	27,355	27,490	26,938	28,887	27,264	26,117	28,764	30,549	34,589	40,283	41,665	34,774	-16.5%	41,665	34,774	-16.5%
February	27,767	26,667	28,510	29,777	30,510	32,350	30,295	28,093	30,808	33,171	36,236	40,034	43,052	35,441	-17.7%	84,717	70,215	-17.1%
March	34,438	38,037	35,824	37,843	41,307	42,120	40,962	37,377	36,807	42,370	46,603	52,390	54,237	40,805	-24.8%	138,954	111,020	-20.1%
April	14,619	13,809	16,196	16,407	15,702	16,565	13,982	12,868	15,894	14,635	19,963	20,758	18,483	17,158	-7.2%	157,437	128,178	-18.6%
May	4,994	5,024	5,530	5,822	6,816	7,107	6,914	7,028	7,179	7,355	8,661	9,629	9,251	7,458	-19.4%	166,688	135,636	-18.6%
June	8,856	9,093	9,826	11,561	12,400	13,676	12,426	11,774	12,395	14,043	15,209	18,166	16,988	14,236	-16.2%	183,676	149,872	-18.4%
July	13,979	14,791	16,080	16,899	17,949	17,575	17,909	18,273	19,208	20,366	22,498	24,168	23,160	20,510	-11.4%	206,836	170,382	-17.6%
August	13,940	14,145	15,077	15,253	15,994	16,389	15,508	16,362	16,326	17,625	20,071	22,125	21,845	18,372	-15.9%	228,681	188,754	-17.5%
September	9,865	10,099	11,033	12,427	14,310	12,002	12,224	12,778	14,261	15,020	17,912	18,560	18,481	19,561	5.8%	247,162	208,315	-15.7%
October	6,598	7,120	7,132	7,880	8,876	9,289	8,323	8,311	9,306	10,170	11,544	12,687	12,120	10,238	-15.5%	259,282	218,553	-15.7%
November	8,847	10,173	10,588	10,340	11,069	10,211	9,942	10,780	11,604	12,647	15,877	15,943	13,487	0	n/a	272,769	218,553	n/a
December	24,975	27,965	28,845	28,736	31,107	26,870	31,564	32,525	36,482	39,687	43,431	47,258	42,076	0	n/a	314,845	218,553	n/a
Totals	193,234	203,238	211,996	220,435	232,978	233,041	227,313	222,286	239,034	257,638	292,594	322,001	314,845	218,553				

2009 Monthly Sales Tax Activity (in thousands of dollars)



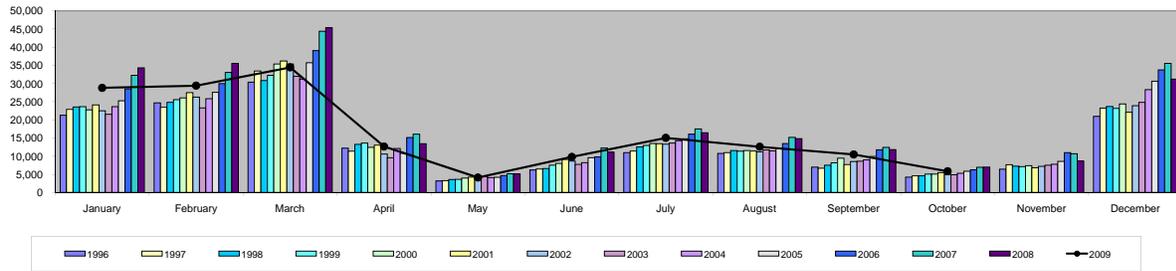
**TOWN OF BRECKENRIDGE
TAXABLE SALES ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail-Restaurant-Lodging Summary

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly 08-09	YTD 2008	YTD 2009	YTD % Change 08-09
January	21,263	22,893	23,523	23,629	22,723	24,118	22,465	21,509	23,620	25,240	28,528	32,258	34,290	28,793	-16.0%	34,290	28,793	-16.0%
February	24,673	23,443	24,805	25,532	26,044	27,464	26,258	23,253	25,826	27,553	29,972	33,039	35,511	29,389	-17.2%	69,801	58,182	-16.6%
March	30,343	33,414	30,809	32,254	35,348	36,196	35,344	31,988	31,209	35,705	39,051	44,390	45,338	34,423	-24.1%	115,139	92,605	-19.6%
April	12,182	11,347	13,256	13,579	12,426	13,029	10,587	9,562	12,102	10,773	15,134	16,025	13,410	12,640	-5.7%	128,549	105,245	-18.1%
May	3,167	3,264	3,565	3,610	3,949	4,203	3,950	4,331	4,095	4,179	4,647	5,146	5,111	4,108	-19.6%	133,660	109,353	-18.2%
June	6,174	6,451	6,588	7,513	8,001	9,058	8,619	7,724	8,217	9,568	9,789	12,225	11,112	9,790	-11.9%	144,772	119,143	-17.7%
July	10,950	11,405	12,527	12,944	13,464	13,406	13,292	13,590	14,248	14,766	16,038	17,499	16,446	15,027	-8.6%	161,218	134,170	-16.8%
August	10,738	10,981	11,517	11,352	11,542	11,407	11,174	11,717	11,429	12,122	13,446	15,167	14,815	12,575	-15.1%	176,033	146,745	-16.6%
September	6,966	6,687	7,492	8,160	9,443	7,666	8,513	8,599	8,940	9,897	11,761	12,418	11,794	10,460	-11.3%	187,827	157,205	-16.3%
October	4,232	4,560	4,578	5,049	5,054	5,425	4,991	4,855	5,257	5,824	6,248	6,934	6,977	5,822	-16.6%	194,804	163,027	-16.3%
November	6,426	7,617	7,255	7,122	7,352	6,816	7,174	7,511	7,771	8,557	10,963	10,650	8,641	0	n/a	203,445	163,027	n/a
December	20,928	23,219	23,650	23,124	24,361	22,090	23,901	24,818	28,314	30,619	33,736	35,517	31,211	0	n/a	234,656	163,027	n/a
Totals	158,042	165,281	169,565	173,868	179,707	180,878	176,268	169,457	181,028	194,803	219,313	241,268	234,656	163,027				

2009 Monthly Sales Tax Activity (in thousands of dollars)



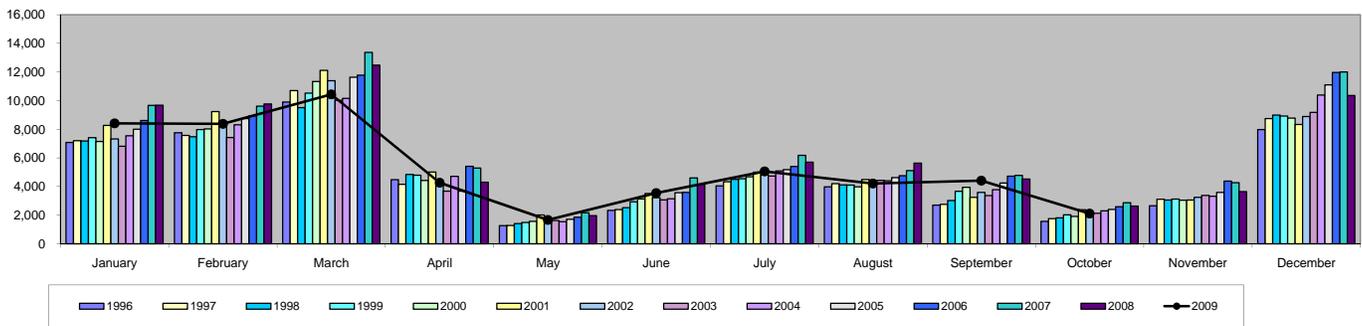
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Retail Sales

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	7,079	7,205	7,173	7,411	7,149	8,271	7,320	6,807	7,545	8,001	8,607	9,665	9,684	8,407	-13.2%	9,684	8,407	-13.2%
February	7,753	7,568	7,474	7,983	8,024	9,231	8,549	7,418	8,312	8,744	8,942	9,607	9,763	8,383	-14.1%	19,447	16,790	-13.7%
March	9,902	10,702	9,507	10,525	11,337	12,116	11,390	10,028	10,162	11,632	11,774	13,373	12,479	10,435	-16.4%	31,926	27,225	-14.7%
April	4,481	4,156	4,841	4,789	4,423	5,008	4,105	3,679	4,714	3,678	5,406	5,287	4,301	4,262	-0.9%	36,227	31,487	-13.1%
May	1,263	1,272	1,408	1,492	1,569	2,014	1,583	1,626	1,549	1,708	1,858	2,165	1,965	1,667	-15.2%	38,192	33,154	-13.2%
June	2,335	2,391	2,521	2,931	3,135	3,514	3,227	3,062	3,140	3,565	3,589	4,597	4,153	3,549	-14.5%	42,345	36,703	-13.3%
July	4,040	4,336	4,499	4,543	4,678	4,998	4,838	4,732	5,087	5,174	5,403	6,176	5,700	5,052	-11.4%	48,045	41,755	-13.1%
August	3,981	4,199	4,109	4,100	3,973	4,492	4,269	4,429	4,397	4,620	4,757	5,110	5,631	4,215	-25.1%	53,676	45,970	-14.4%
September	2,698	2,753	3,021	3,671	3,944	3,242	3,587	3,370	3,781	4,249	4,726	4,783	4,527	4,413	-2.5%	58,203	50,383	-13.4%
October	1,563	1,759	1,815	2,024	1,908	2,374	2,132	2,127	2,298	2,404	2,591	2,866	2,635	2,113	-19.8%	60,838	52,496	-13.7%
November	2,650	3,108	3,060	3,124	3,041	3,057	3,249	3,378	3,326	3,586	4,376	4,267	3,645	0	n/a	64,483	52,496	n/a
December	7,978	8,746	8,985	8,919	8,782	8,338	8,893	9,184	10,388	11,099	11,971	12,000	10,358	0	n/a	74,841	52,496	n/a
Totals	55,723	58,195	58,413	61,512	61,963	66,655	63,142	59,840	64,699	68,460	74,000	79,896	74,841	52,496				

2009 Monthly Sales Tax Activity (in thousands of dollars)



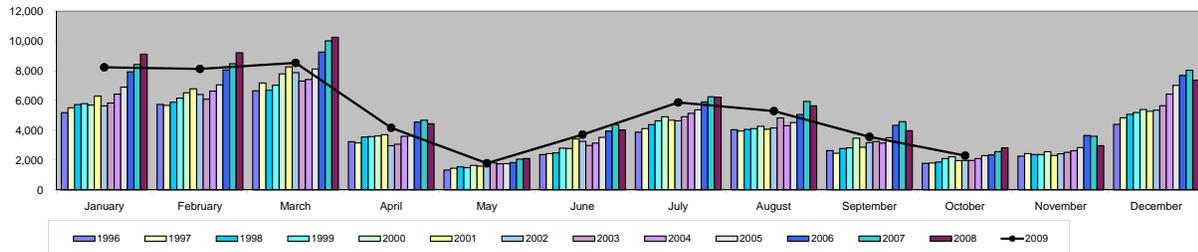
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Restaurants/Bars

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	5,180	5,515	5,723	5,784	5,697	6,300	5,644	5,835	6,425	6,897	7,924	8,414	9,117	8,229	-9.7%	9,117	8,229	-9.7%
February	5,735	5,667	5,880	6,162	6,519	6,783	6,412	6,092	6,637	7,047	8,058	8,467	9,208	8,127	-11.7%	18,325	16,356	-10.7%
March	6,651	7,180	6,688	7,031	7,792	8,258	7,870	7,307	7,413	8,117	9,256	10,015	10,240	8,527	-16.7%	28,565	24,883	-12.9%
April	3,238	3,149	3,548	3,576	3,624	3,706	2,967	3,068	3,595	3,609	4,552	4,678	4,440	4,173	-6.0%	33,005	29,056	-12.0%
May	1,329	1,454	1,541	1,492	1,641	1,590	1,561	1,808	1,746	1,760	1,832	2,058	2,107	1,783	-15.4%	35,112	30,839	-12.2%
June	2,364	2,437	2,488	2,796	2,779	3,413	3,257	2,982	3,136	3,525	3,938	4,370	4,030	3,712	-7.9%	39,142	34,551	-11.7%
July	3,877	4,113	4,380	4,639	4,910	4,675	4,632	4,913	5,138	5,375	5,905	6,249	6,218	5,873	-5.5%	45,360	40,424	-10.9%
August	4,032	3,953	4,056	4,106	4,270	4,068	4,156	4,832	4,302	4,521	5,067	5,933	5,639	5,293	-6.1%	50,999	45,717	-10.4%
September	2,641	2,452	2,770	2,814	3,468	2,860	3,169	3,249	3,138	3,498	4,340	4,585	3,971	3,560	-10.4%	54,970	49,277	-10.4%
October	1,779	1,807	1,870	2,097	2,220	1,959	1,977	1,978	2,100	2,290	2,352	2,564	2,818	2,304	-18.2%	57,788	51,581	-10.7%
November	2,261	2,428	2,364	2,367	2,558	2,307	2,425	2,520	2,624	2,841	3,651	3,593	2,972	0	n/a	60,760	51,581	n/a
December	4,402	4,834	5,076	5,191	5,393	5,275	5,354	5,646	6,428	7,017	7,681	8,028	7,371	0	n/a	68,131	51,581	n/a
Totals	43,489	44,989	46,384	48,055	50,871	51,194	49,424	50,230	52,682	56,497	64,556	68,954	68,131	51,581				

2009 Monthly Sales Tax Activity (in thousands of dollars)



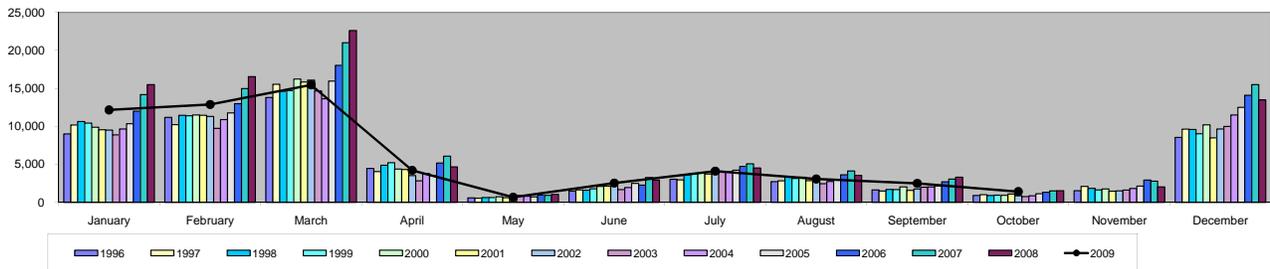
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Short-Term Lodging

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	9,004	10,173	10,627	10,434	9,877	9,547	9,501	8,867	9,650	10,342	11,997	14,179	15,489	12,157	-21.5%	15,489	12,157	-21.5%
February	11,185	10,208	11,451	11,387	11,501	11,450	11,297	9,743	10,877	11,762	12,972	14,965	16,540	12,879	-22.1%	32,029	25,036	-21.8%
March	13,790	15,532	14,614	14,698	16,219	15,822	16,084	14,653	13,634	15,956	18,021	21,002	22,619	15,461	-31.6%	54,648	40,497	-25.9%
April	4,463	4,042	4,867	5,214	4,379	4,315	3,515	2,815	3,793	3,486	5,176	6,060	4,669	4,205	-9.9%	59,317	44,702	-24.6%
May	575	538	616	626	739	599	806	897	800	711	957	923	1,039	658	-36.7%	60,356	45,360	-24.8%
June	1,475	1,623	1,579	1,786	2,087	2,131	2,135	1,680	1,941	2,478	2,262	3,258	2,929	2,529	-13.7%	63,285	47,889	-24.3%
July	3,033	2,956	3,648	3,762	3,876	3,733	3,822	3,945	4,023	4,217	4,730	5,074	4,528	4,102	-9.4%	67,813	51,991	-23.3%
August	2,725	2,829	3,352	3,146	3,299	2,847	2,749	2,456	2,730	2,981	3,622	4,124	3,545	3,067	-13.5%	71,358	55,058	-22.8%
September	1,627	1,482	1,701	1,675	2,031	1,564	1,757	1,980	2,021	2,150	2,695	3,050	3,296	2,487	-24.5%	74,654	57,545	-22.9%
October	890	994	893	928	926	1,092	882	750	859	1,130	1,305	1,504	1,524	1,405	-7.8%	76,178	58,950	-22.6%
November	1,515	2,081	1,831	1,631	1,753	1,452	1,500	1,613	1,821	2,130	2,936	2,790	2,024	0	n/a	78,202	58,950	n/a
December	8,548	9,639	9,589	9,014	10,186	8,477	9,654	9,988	11,498	12,503	14,084	15,489	13,482	0	n/a	91,684	58,950	n/a
Totals	58,830	62,097	64,768	64,301	66,873	63,029	63,702	59,387	63,647	69,846	80,757	92,418	91,684	58,950				

2009 Monthly Sales Tax Activity (in thousands of dollars)



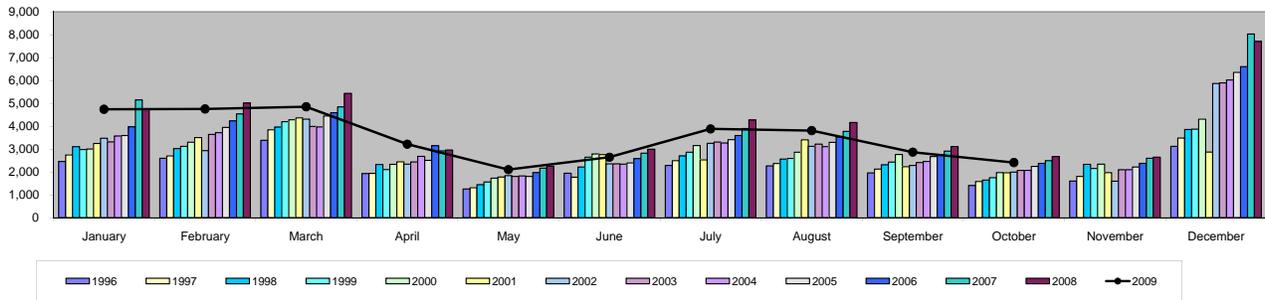
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Grocery/Liquor Stores

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	2,458	2,746	3,104	2,977	2,999	3,242	3,472	3,314	3,570	3,589	3,977	5,149	4,744	4,741	-0.1%	4,744	4,741	-0.1%
February	2,595	2,702	3,020	3,119	3,296	3,501	2,931	3,643	3,714	3,949	4,233	4,536	5,009	4,755	-5.1%	9,753	9,496	-2.6%
March	3,383	3,839	3,960	4,199	4,282	4,366	4,311	3,988	3,968	4,449	4,585	4,844	5,436	4,852	-10.7%	15,189	14,348	-5.5%
April	1,928	1,937	2,325	2,105	2,330	2,441	2,336	2,437	2,682	2,503	3,149	2,920	2,959	3,213	8.6%	18,148	17,561	-3.2%
May	1,256	1,309	1,440	1,558	1,728	1,779	1,836	1,801	1,823	1,806	1,969	2,169	2,246	2,100	-6.5%	20,394	19,661	-3.6%
June	1,940	1,772	2,214	2,648	2,784	2,760	2,352	2,354	2,341	2,392	2,584	2,822	2,990	2,643	-11.6%	23,384	22,304	-4.6%
July	2,283	2,494	2,701	2,862	3,152	2,527	3,253	3,303	3,266	3,414	3,588	3,899	4,264	3,881	-9.0%	27,648	26,185	-5.3%
August	2,266	2,364	2,559	2,587	2,861	3,404	3,117	3,216	3,103	3,292	3,529	3,771	4,161	3,807	-8.5%	31,809	29,992	-5.7%
September	1,959	2,122	2,311	2,430	2,765	2,231	2,284	2,409	2,456	2,671	2,757	2,908	3,113	2,864	-8.0%	34,922	32,856	-5.9%
October	1,407	1,584	1,644	1,748	1,969	1,965	1,990	2,066	2,069	2,239	2,372	2,494	2,673	2,408	-9.9%	37,595	35,264	-6.2%
November	1,602	1,804	2,330	2,152	2,339	1,970	1,597	2,096	2,096	2,214	2,377	2,600	2,647	0	n/a	40,242	35,264	n/a
December	3,115	3,477	3,858	3,869	4,305	2,865	5,868	5,897	6,017	6,356	6,604	8,028	7,705	0	n/a	47,947	35,264	n/a
Totals	26,192	28,150	31,466	32,254	34,810	33,051	35,347	36,524	37,105	38,874	41,724	46,140	47,947	35,264				

2009 Monthly Sales Tax Activity (in thousands of dollars)



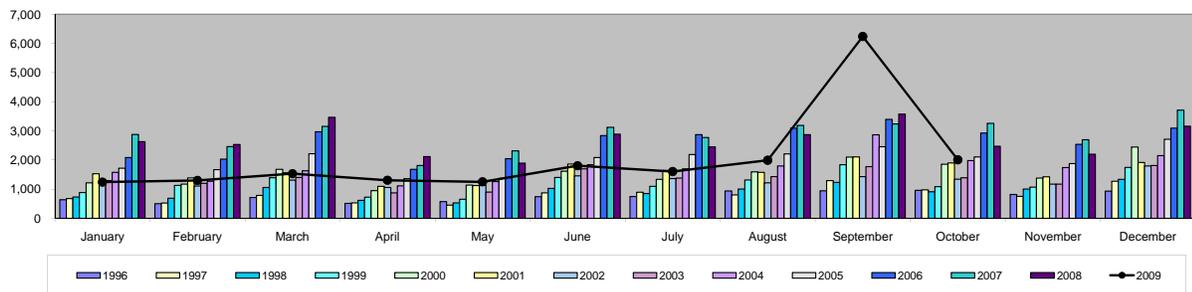
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Supplies

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	635	676	728	884	1,216	1,527	1,327	1,294	1,574	1,720	2,084	2,876	2,631	1,240	-52.9%	2,631	1,240	-52.9%
February	499	522	685	1,126	1,170	1,385	1,106	1,197	1,268	1,669	2,031	2,459	2,532	1,297	-48.8%	5,163	2,537	-50.9%
March	712	784	1,055	1,390	1,677	1,558	1,307	1,401	1,630	2,216	2,967	3,156	3,463	1,530	-55.8%	8,626	4,067	-52.9%
April	509	525	615	723	946	1,095	1,059	869	1,110	1,359	1,680	1,813	2,114	1,305	-38.3%	10,740	5,372	-50.0%
May	571	451	525	654	1,139	1,125	1,128	896	1,261	1,370	2,045	2,314	1,894	1,250	-34.0%	12,634	6,622	-47.6%
June	742	870	1,024	1,400	1,615	1,858	1,455	1,696	1,837	2,083	2,836	3,119	2,886	1,803	-37.5%	15,520	8,425	-45.7%
July	746	892	852	1,093	1,333	1,642	1,364	1,380	1,694	2,186	2,872	2,770	2,450	1,602	-34.6%	17,970	10,027	-44.2%
August	936	800	1,001	1,314	1,591	1,578	1,217	1,429	1,794	2,211	3,096	3,187	2,869	1,990	-30.6%	20,839	12,017	-42.3%
September	940	1,290	1,230	1,837	2,102	2,105	1,427	1,770	2,865	2,452	3,394	3,234	3,574	6,237	74.5%	24,413	18,254	-25.2%
October	959	976	910	1,083	1,853	1,899	1,342	1,390	1,980	2,107	2,924	3,259	2,470	2,008	-18.7%	26,883	20,262	-24.6%
November	819	752	1,003	1,066	1,378	1,425	1,171	1,173	1,737	1,876	2,537	2,693	2,199	0	n/a	29,082	20,262	n/a
December	932	1,269	1,337	1,743	2,441	1,915	1,795	1,810	2,151	2,712	3,091	3,713	3,160	0	n/a	32,242	20,262	n/a
Totals	9,000	9,807	10,965	14,313	18,461	19,112	15,698	16,305	20,901	23,961	31,557	34,593	32,242	20,262				

2009 Monthly Sales Tax Activity (in thousands of dollars)



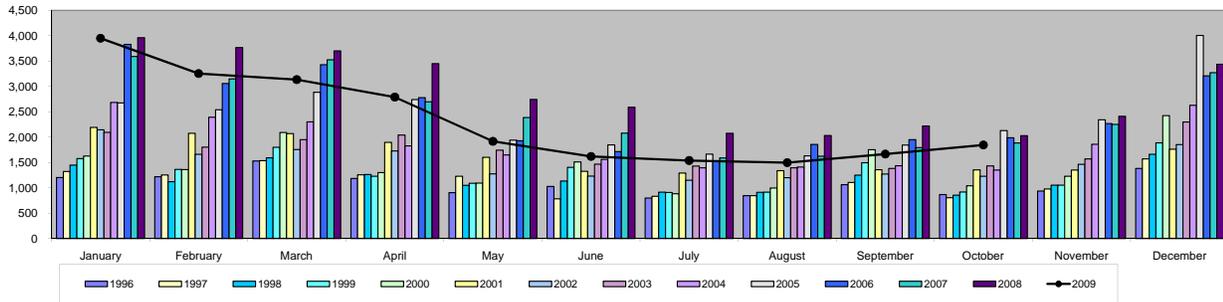
**TOWN OF BRECKENRIDGE
TAXABLE REVENUE ANALYSIS BY BUSINESS SECTOR**

(in Thousands of Dollars)

Utilities

	Actual 1996	Actual 1997	Actual 1998	Actual 1999	Actual 2000	Actual 2001	Actual 2002	Actual 2003	Actual 2004	Actual 2005	Actual 2006	Actual 2007	Actual 2008	Actual 2009	Monthly % CHG	Actual 2008	Actual 2009	YTD % CHG
January	1,201	1,320	1,446	1,575	1,625	2,191	2,144	2,093	2,684	2,675	3,829	3,591	3,961	3,949	-0.3%	3,961	3,949	-0.3%
February	1,218	1,250	1,121	1,360	1,359	2,075	1,659	1,800	2,391	2,540	3,056	3,149	3,765	3,252	-13.6%	7,726	7,201	-6.8%
March	1,529	1,533	1,591	1,799	2,090	2,067	1,754	1,947	2,299	2,883	3,428	3,525	3,699	3,133	-15.3%	11,425	10,334	-9.5%
April	1,181	1,255	1,262	1,227	1,299	1,894	1,724	2,040	1,827	2,741	2,778	2,694	3,448	2,789	-19.1%	14,873	13,123	-11.8%
May	904	1,226	1,047	1,089	1,091	1,599	1,272	1,740	1,647	1,939	1,926	2,386	2,742	1,915	-30.2%	17,615	15,038	-14.6%
June	1,027	780	1,133	1,402	1,510	1,325	1,228	1,466	1,558	1,846	1,713	2,078	2,588	1,618	-37.5%	20,203	16,656	-17.6%
July	796	830	913	907	880	1,289	1,147	1,427	1,394	1,663	1,529	1,588	2,075	1,537	-25.9%	22,278	18,193	-18.3%
August	844	844	910	913	994	1,336	1,198	1,393	1,408	1,629	1,854	1,621	2,031	1,495	-26.4%	24,309	19,688	-19.0%
September	1,059	1,103	1,249	1,494	1,752	1,354	1,271	1,381	1,435	1,843	1,949	1,792	2,219	1,665	-25.0%	26,528	21,353	-19.5%
October	866	804	854	917	1,039	1,353	1,227	1,429	1,348	2,127	1,987	1,883	2,026	1,843	-9.0%	28,554	23,196	-18.8%
November	935	974	1,049	1,052	1,225	1,348	1,461	1,569	1,856	2,340	2,264	2,251	2,411	0	n/a	30,965	23,196	n/a
December	1,381	1,570	1,661	1,885	2,423	1,760	1,852	2,297	2,627	4,005	3,206	3,271	3,435	0	n/a	34,400	23,196	n/a
Totals	12,941	13,489	14,236	15,620	17,287	19,591	17,937	20,582	22,474	28,231	29,519	29,829	34,400	23,196				

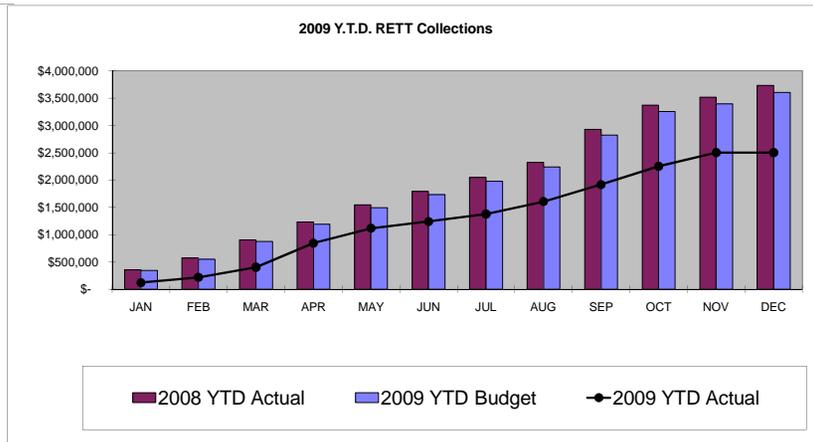
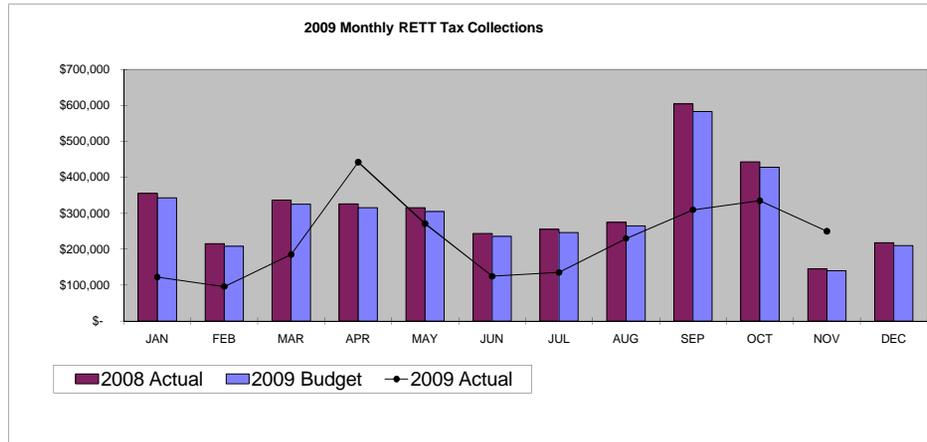
2009 Monthly Sales Tax Activity (in thousands of dollars)



**TOWN OF BRECKENRIDGE
REAL ESTATE TRANSFER TAX COLLECTIONS
REPORTED IN THE PERIOD EARNED**

Sales Period	2007 Collections			2008 Collections			2009 Budget			2009 Monthly				2009 Year to Date			
	Tax Collected	Year To Date	Percent of Total	Tax Collected	Year To Date	Percent of Total	Tax Budgeted	Year To Date	Percent of Total	Actual	% of Budget	% Change from 2007	% Change from 2008	Actual	% of Budget	% Change from 2007	% Change from 2008
JAN	\$ 352,958	\$ 352,958	6.2%	\$ 355,179	\$ 355,179	9.5%	\$ 342,940	\$ 342,940	9.51%	\$ 122,238	35.6%	-65.4%	-65.6%	\$ 122,238	3.4%	-65.4%	-65.6%
FEB	342,995	695,953	12.3%	215,566	570,745	15.3%	208,138	551,078	15.29%	96,379	46.3%	-71.9%	-55.3%	218,617	6.1%	-68.6%	-61.7%
MAR	271,817	967,770	17.1%	336,956	907,701	24.3%	325,345	876,423	24.31%	185,714	57.1%	-31.7%	-44.9%	404,331	11.2%	-58.2%	-55.5%
APR	564,624	1,532,394	27.0%	326,521	1,234,222	33.1%	315,270	1,191,693	33.06%	442,039	140.2%	-21.7%	35.4%	846,370	23.5%	-44.8%	-31.4%
MAY	533,680	2,066,074	36.4%	315,494	1,549,716	41.5%	304,623	1,496,317	41.51%	271,393	89.1%	-49.1%	-14.0%	1,117,763	31.0%	-45.9%	-27.9%
JUN	522,999	2,589,073	45.6%	243,969	1,793,685	48.0%	235,562	1,731,879	48.04%	124,822	53.0%	-76.1%	-48.8%	1,242,584	34.5%	-52.0%	-30.7%
JUL	343,610	2,932,683	51.7%	255,305	2,048,990	54.9%	246,508	1,978,387	54.88%	135,393	54.9%	-60.6%	-47.0%	1,377,977	38.2%	-53.0%	-32.7%
AUG	594,349	3,527,032	62.1%	274,442	2,323,432	62.2%	264,985	2,243,372	62.23%	230,014	86.8%	-61.3%	-16.2%	1,607,991	44.6%	-54.4%	-30.8%
SEP	711,996	4,239,028	74.7%	604,037	2,927,469	78.4%	583,223	2,826,596	78.40%	309,701	53.1%	-56.5%	-48.7%	1,917,692	53.2%	-54.8%	-34.5%
OCT	392,752	4,631,779	81.6%	442,830	3,370,299	90.3%	427,571	3,254,167	90.26%	334,899	78.3%	-14.7%	-24.4%	2,252,591	62.5%	-51.4%	-33.2%
NOV	459,147	5,090,926	89.7%	145,549	3,515,848	94.2%	140,534	3,394,701	94.16%	250,106	178.0%	-45.5%	71.8%	2,502,697	69.4%	-50.8%	-28.8%
DEC	\$ 584,308	\$ 5,675,235	100.0%	\$ 217,937	\$ 3,733,785	100.0%	\$ 210,427	\$ 3,605,128	100.00%	\$ -	0.0%	n/a	n/a	\$ 2,502,697	69.4%	-55.9%	-33.0%

November #s are as of 11/30/09



MEMO

TO: Town Council
FROM: Town Attorney
RE: Hate Crimes
DATE: November 30, 2009 (for December 8th meeting)

I want to follow up the discussion that occurred at the last Council meeting concerning “hate crimes” in Colorado.

Colorado has had a hate crimes statute on the books since 1988. The are now referred to as “bias-motivated crimes” by the state law. In adopting the law the Colorado legislature made the following declaration:

The general assembly hereby finds and declares that it is the right of every person, regardless of race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation to be secure and protected from fear, intimidation, harassment, and physical harm caused by the activities of individuals and groups. The general assembly further finds that the advocacy of unlawful acts against persons or groups because of a person's or group's race, color, ancestry, religion, national origin, physical or mental disability, or sexual orientation for the purpose of inciting and provoking bodily injury or damage to property poses a threat to public order and safety and should be subject to criminal sanctions.

The hate crime statute criminalizes three distinct acts. They are described in the law as follows:

A person commits a bias-motivated crime if, with the intent to intimidate or harass another person because of that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability, or sexual orientation, he or she:

- (a) knowingly causes bodily injury to another person; or
- (b) by words or conduct, knowingly places another person in fear of imminent lawless action directed at that person or that person's property and such words or conduct are likely to produce bodily injury to that person or damage to that person's property; or
- (c) knowingly causes damage to or destruction of the property of another person.

The bias-motivated crimes described in subsections (b) and (c) above (placing a person in fear of imminent lawless action and knowingly causing property damage) are classified in the statute as misdemeanors; the bias-motivated crime described in subsection (a) involving knowingly causing bodily injury is classified by the statute as a felony.

As I have mentioned to you before, Colorado law allows a municipality to make it a municipal violation for a person to commit an offense that is classified as a misdemeanor under state law. As a result, I think the Town Council could properly adopt an ordinance to make it a Town offense to commit the two bias-motivated crimes that are classified as misdemeanors under state law (that is, placing a person in fear of imminent lawless action and knowingly causing property damage if done with intent to intimidate or harass another person because that person's actual or perceived race, color, religion, ancestry, national origin, physical or mental disability or sexual orientation).

Under the state law, the sentence of a first-time offender convicted of a bias-motivate crime could include community service or required participation in an alternative dispute resolution (ADR) program established by the local judicial district. These two sentencing options are in addition to, and not lieu of, the normal criminal penalties provided by state law. You should note, however, that the Town's Municipal Court is not equipped to monitor compliance with either community service or ADR programs the way the state court system is. As a result, I would not suggest that any local hate crime ordinance incorporate either community service or ADR programs as possible sentencing options.

If a local bias-motivated crime ordinance is to be considered you will need to give some thought to the punishment to be imposed for a violation of the ordinance. Unless you provide differently in the Town ordinance, a violation of the ordinance would be punishable under the Town's "General Penalty Ordinance" (a fine of up to \$999; imprisonment in the county jail for one day less than a year; or by both fine and imprisonment). The actual sentence to be imposed would normally be decided by the Municipal Judge based upon the facts of the particular case.

However, you need to recognize that the Town's current harassment and disorderly conduct ordinances already prohibit the same general type of bad conduct that could be dealt with in a local bias-motivated crime ordinance (the only real difference is proof of a bias-motivation for the commission of the crime under the bias-motivated crime ordinance). If a defendant could receive the same punishment for violating a local bias-motivated crime ordinance as he or she could receive for violating the harassment and disorderly conduct ordinances, I would have to question the real usefulness of the bias-motivated crime ordinance.

If the Council wants to adopt a bias-motivated crime ordinance I think you should consider providing for a substantial minimum fine and/or a minimum mandatory jail sentence in the new ordinance. I know that the Police Department, Town Prosecutor, and Municipal Judge are aware of the substantial costs incurred by the Town in imprisoning someone in the county jail.¹ However, it would seem that a substantial minimum fine and/or a minimum mandatory jail

¹ It costs the Town \$50 per day to imprison a defendant in the Summit County jail. The Municipal Judge always orders the defendant to repay the daily fee to the Town. However, the Town is not always successful in recouping these costs (i.e., the defendant may have fled the state).

sentence would be an effective way to let it be known that the Town simply will not tolerate the commission of bias-motivated crimes in our jurisdiction. A minimum fine and/or minimum mandatory jail sentence would have to fall within the sentencing parameters established by the Town's General Penalty Ordinance (as described above).

I will be happy to discuss this matter with you next Tuesday.



To: Mayor and Town Council Members
From: Kim DiLallo and Jenn Cram
Cc: Janis Bunchman %Friends of the Arts District
Date: December 2, 2009 (*for 12.8.09 meeting*)
RE: A fundraising opportunity for 7/4 to support the Arts District/Tin Shop reopening

History:

Beginning in 2001, the Town rented the Wellington and East Sawmill lots to the Breckenridge Art Fairs (organized by Mountain Art Festivals - MAF) for the July 4th and Labor Day weekends. In September 2006, after various research and public input from 2003 to 2006, the Town excluded rental of the Wellington and East Sawmill lots during the July 4th weekend due to the loss of parking on a holiday weekend. The organizers continued the July 4th art fair on private property (Main Street Station - MSS), and moved the art fair that had been at MSS to Wellington and East Sawmill lots on the last weekend of July. The Town continues to rent the lots for the end-of-July and Labor Day weekends to MAF, and has agreements in place for 2010.

Current Situation/Opportunity:

Town staff has been brainstorming and thinking outside the box for ways to sustain the Arts District. The outcome has been the formation of the “Friends of the Arts District”, as you learned about at the last Council work session. The MAF organizers approached the “Friends” with an opportunity that speaks directly to the Town’s new business model, as well as strengthens the branding of, and visitation to, the Arts District.

The MAF is interested in supporting the Arts District by holding the July 4th art fair in the Arts District campus and would make a **minimum** donation of \$5,000. This creates an opportunity for the Arts District Grand Celebration to expand to three days of showcasing the Arts District as well as providing significant financial support. In the past the MAF has donated funds from the annual Art Fair to support the Arts District in the amount of \$8,000 to \$10,000. The “Friends” sees this opportunity to have a positive impact on the continuation of programming, and sustainability of the Arts District. The “Friends” would work closely with the MAF to see that all community concerns are addressed in a positive manner.

The overall umbrella for this ‘street party’ would be the Arts District Grand Celebration with the art fair as the anchor component of the weekend. Other elements would include the Arts District studios featuring demonstrations and hands-on activities, as well as the sidewalk chalk art contest. The celebration would also showcase the local galleries by inviting them to have displays and/or interaction with their artists. Additional opportunities for fundraising include beer/wine and snack food sales (estimated at \$3,000) as well as future sales of art donations from the show’s exhibitors (estimated at \$2,500). Expenses (total estimated at \$11,500) would be shared with MAF, for a total estimated fundraising opportunity of \$7,000 (minimum).

The 'street party' layout would be somewhat similar to the Breck150 Grand Celebration this past August, with an 'L' street closure (on East Washington and the 100 block of South Ridge) from Friday, July 2 – Sunday, July 4. Staff has had preliminary discussions with Engineering, Police and Public Works departments to discuss a partial street closure. The initial concept is to close the upper Exchange lot and the west side of South Ridge Street (between Lincoln and Washington). One-way circulation on Ridge would allow parking on the east side to remain open and to provide vehicular circulation through the three days; including July 4th when Main Street will be closed for a portion of the day. East Washington (between Main and Ridge) would remain fully closed for the three days.

The "Friends" and staff understand the negativity surrounding the Art Fairs in the past; however, the energy of various new galleries has shifted and this opportunity has received positive support; a letter of support is included with this memo, as well as a letter from MAF. There have been collaborative efforts with the galleries during Second Saturday Art walks which have resulted in positive relationships. Town events staff is canvassing the Ridge Street merchants regarding this opportunity and will provide a report at the work session.

This will be the 27th year of the Breckenridge July 4th Art Fair. In the RRC survey conducted over the July 4th weekend in 2005, 22% of out-of-area visitors stated that the Art Fair was 'critical' or 'very important' in their decision to come to Breckenridge over the July 4th weekend. Further, these visitors spent more per person per day (\$222 on average) than visitors that stated the Arts Festival was 'somewhat important' or 'not important' in their decision to visit (\$142 average). And, 27% of all visitors that reported spending money on art in local shops/galleries stated that the Arts Festival was "critical/very important" in their decision to visit Breckenridge. If you would like to review the full survey, please contact Kim and I'll email it to you.

The "Friends" as well as staff believe there is merit to working with a local art fair organizer that has a proven track record, has donated to a variety of local organizations in the past including the Arts District, and is also a Breckenridge merchant. As with any 'new' event, an evaluation would be conducted by the "Friends" and staff to improve upon for future events.

Council Action Requested:

- Is Council supportive of moving forward with a three-day Arts District Grand Celebration 'street party' over the July 4th weekend with an Art Fair component with Mountain Art Festival organizers?
- Is Council supportive of the initial 'partial' street closure plan?

Thank you.

10/4/09

To Whom It May Concern:

I am writing as an art gallery owner in Breckenridge in regards to the Mountain Art Festivals run by Mark Beling. In particular, I would like to address the July 4th Art Show.

It has come to my attention that there has been some vocal opposition to hosting Art Festivals in Breckenridge. As such, I find it necessary to add my voice and support for the festivals to the discussion. Having owned my gallery now for a couple of years, I find the weekends on which there is an Art Festival in town to bring a boost to my business. Simply put, the festivals bring the right type of customer to our town.

We rely on an affluent, cultured demographic to keep us in business. It is this exact type of person that the festivals attract. For years the festivals have brought people to Breckenridge for the sole purpose of looking at art. Unlike what I have learned through conversations with other gallery owners in town, my gallery made the decision to really use the festivals draw to our advantage. Mark Beling allows my gallery, along with any other galleries who would like to participate, to hold a free booth at the festivals to promote our businesses. At the Main Street and Labor Day festivals we had five galleries marketing themselves, for free, to a highly targeted demographic. As a result, our sales on those weekends were significantly higher than the sales we saw in 2008. In addition, we have taken the extra step of sponsoring the festivals for a very good price. Again, the festivals allow us to market our Breckenridge business to a highly targeted audience.

I travel extensively throughout the country to visit other Art Festivals in order to keep current on my industry and find new artists to represent in my gallery. The majority of festivals throughout the country are not run by people who are local to and contributors to their community. I see the Mountain Art Festivals as one more local business, one that is a great asset to mine and all other art galleries in our town. It is a real privilege to have such a high-end, cultured event in our town. The quality of the Mountain Art Festivals is consistently higher than festivals I have been to in other towns, both in and out of Colorado.

The festivals are something we can really leverage to put Breckenridge on the map as an arts destination. In a meeting I recently had with John McMahon, Executive Director of the BRC, we listed making Breckenridge a premier destination for the arts as a major goal to achieve. I find the Mountain Art Festivals to be a huge supplement to the 15+ galleries we have in town, the 2nd Saturday Gallery Walks, the Arts District and more. The festivals bring the type of people to town who share a passion for all of our other arts assets. As such, I find them to be great for both our town's economy and reputation.

Sincerely,

Brian Raitman
Art on a Whim



December 1, 2009

Friends of the Arts District
Breckenridge Town Council

Dear Friends of the Arts District and Town Council,

As you are aware we have been in discussions with Friends of the Arts District regarding the idea of producing the 27th Annual Breckenridge July Art Festival in the Breckenridge Arts District July 2,3,4, 2010. We are thrilled at the possibility of collaborating with the Friends of the Arts District to enliven and expose the Arts District to the July Art Festival attendees. To assist in your discussion we wanted to provide some background on us and our events.

For the past 16 years we have been producing high quality art festivals in Colorado, primarily in Breckenridge and Summit County. Additionally we have owned and operated J&M Jewelry (a designer jewelry gallery) in Breckenridge for 19 years, as well as exhibiting our own jewelry designs at fine art/craft shows throughout the U.S. from 1976-2001.

We have always been very committed to the Arts in the Summit County community. We have provided Summit High School scholarships for students pursuing the arts in higher education; as well as donations to nonprofit organizations such as Team Summit, Breckenridge Music Institute, Arts District of Breckenridge (we assisted to fund the moving of the Quandary Antiques Cabin and furniture for all of the facilities), and several others. Over the past eight years Mountain Art Festivals has donated over \$130,000 in cash and over \$150,000 in kind to area non profits.

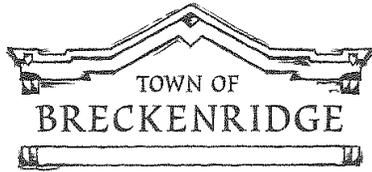
In 2010 it is our plan is to produce four Summit County Art Festivals - **27th Annual Breckenridge July Art Festival, July 2,3,4** (tentatively scheduled to be held at Main Street Station); **4th Annual Dillon Art Festival, July 16,17,18**; **9th Annual Breckenridge Main Street Art Festival, July 23,24,25**; and **35th Annual Gathering at the Great Divide Art Festival September 4,5,6** (both held at Main St. and Wellington). All of our Festivals are high quality and professional. We do not allow imports, or sales reps, and all the artists must represent their own work at the shows. We choose our artists through a juried process beginning in early December. The July Art Festival has been ranked as high as the 23rd best art show in the United States by *Art Sourcebook*.

We understand that the Art Festival will be just one piece of an overall fundraising event on the July 4 weekend, as part of our commitment to the success of this collaboration we are willing to make a minimum \$5000 donation to the Arts District in 2010. We look forward to further discussions regarding this exciting opportunity for both Mountain Art Festivals and the Arts District of Breckenridge.

Warm Regards,

Mark Beling
Director

Judith Pollock
Director



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker, Current Planning Manager

DATE: December 2, 2009

SUBJECT: Gondola Lot Master Plan: Issues Raised by Planning Commission

The Planning Commission reviewed the Gondola Lots Redevelopment Master Plan over the past year, and on December 1, 2009 the application was approved by the Commission. The Town Council indicated earlier this year that upon approval of the Master Plan by the Planning Commission, the Council would like a list of issues identified by the Planning Commission. Below is a list of issues, along with a response to how the issue was addressed, or if it is still an outstanding issue.

OVERVIEW OF ISSUES

Access to South Parking Structure: There were two possible access designs proposed for the south structure. One design kept the location the same as the current access into the 1st Bank/Town Hall parking lots, with expanded lanes. The second design relocates this access to the north by about 100', opposite from Sawmill Road. This new location is preferred by the Applicant, staff and CDOT, and was approved by the Commission. The final access plan has not yet been approved by CDOT. Alternatives considered included: swapping the structure location with the hotel (but this compromised desirability of the hotel, and moved the structure further from town); it also would likely result in increased traffic on Watson Street, resulting in more conflicts with pedestrians and buses; taking access from Watson, under the hotel, but keeping the structure in the same location; using the new North Dept Road for access, but this would also put more cars on Watson Avenue and on Main Street.

Use of Brick on Condo-hotel: The use of brick on large civic structures in town is proposed to be emulated in the condo-hotel building. However, the use of brick is discouraged in Policy 5 (Relative) Architectural Compatibility of the Development Code. The application of negative points is warranted if the material is used in amounts greater than an "accent" during the individual site plan review of each building, but the points have not been assigned during the master plan. The Commission was generally in support of allowing brick, and determining the points for its use during individual site plan review for each building.

Timeless Architecture: The Commission wanted to ensure that the buildings within this master plan, and particularly the condo-hotel building, include a timeless elegance with classical architectural design. The Commission is concerned that such a large project in a prominent location should not appear to be of any particular era and rather should have a high quality, timeless look. Staff feels that the language on architectural compatibility helps to achieve this goal and that reference to the Old Summit County Courthouse and the Old Colorado Mountain College, as well as western downtown hotels, help to set the tone for the quality of design expected. The real challenge will come during site plan review for these individual buildings when staff will need to implement the language in the plan to ensure that the design meets these goals.

Roof over Gondola Terminal: When the gondola was approved, there was a roof structure over the town terminal. This was added at the end of the gondola review process and was important at the time to get the gondola approved. During construction it was difficult to get the roof built and still have the gondola open for the 2006/2007 season. The plan was to return at a later date to construct the roof. The Commission recently indicated that the roof is not necessary, and a note to such effect has been included in the master plan.

Skier Drop-Off: During one of the first meetings on the master plan, the location and size of the skier drop-off was mentioned as a concern. The drop-off is proposed to the north of the gondola, with access from North Depot Road. The reason for this location is to maintain Watson Street as a pedestrian friendly area, and to discourage drivers from using this area for skier drop-off. A looped road is proposed that allows spaces for up to 15 cars immediately next to the gondola. Furthermore, about 16 short term parking spaces are proposed in this area. Staff feels that it is important to keep Watson Street pedestrian friendly, and to prevent this area from becoming congested with cars and buses. In addition to this area, there is currently skier drop-off allowed at Peak 7, and there will be skier drop-off allowed at Peak 8 upon buildout. One issue that is not addressed in this plan is drop-off for large buses. Parking for these larger buses is also not identified in this plan.

Expansion of Skiback to Gold Rush Lot: The desire to keep skiers from walking across Park Avenue led to a discussion on the expansion of the Skiback to the Gold Rush Lot. Several years ago, this idea was presented to the Planning Commission and Town Council. The application was denied at that time based on the wetlands and wildlife in the area to the south of the Gold Rush Lot. There have been discussions of alternate routes, including a Skiback closer to The Woods neighborhood, which would not bisect the wildlife habitat. Other discussions included a sidewalk along Park Avenue. The sidewalk is a concern to the Public Works and Engineering Department due to snow removal and the increased likelihood of pedestrians walking and across Park Avenue if the sidewalk is built. A recently built fence near the Skiback tunnel should help to direct people into the tunnel and discourage walking across Park Avenue. Finding was to make the Skiback tunnel more user-friendly was requested by the Commission, but specific designs are not included in the master plan.

Design of Transit Bays: The number and design of the transit bays was a concern raised by the Transit Division early on in the review process. The bus bays have since been expanded to accommodate their request, and the number of bays has increased from 11 to 12. Transit had requested up to 15 spaces, but the plan does not make such accommodation. The Transit Division had also requested ways to get buses out of the bays without delays from existing traffic. An original proposal to route the buses around the north parking structure to a possible traffic signal was scrapped when the round-about was added. The round-about should allow buses that can not turn left (southbound on Park Avenue) due to traffic volume, to turn north and use the round-about to make a u-turn. New bus-only acceleration lanes should also help to improve merging into traffic.

Points for Transit: The development code encourages projects that add to or provide for a non-auto transit system. Points can be assigned for projects that include or facilitate these systems. The existing transit building would be removed a rebuilt within this plan. Also, the bus bays would be relocated (and one new bus bay added), with new curb cuts to allow a dedicated area for buses to exit. Staff did not recommend assigning points for these changes, since the changes are necessary to accommodate the development. Also, staff did not believe that the changes would result in a significant improvement to transit service. The Commission disagreed, however, also citing improved pedestrian experience, and +4 points were assigned under policy 25/R-Transit during the final point analysis.

Sustainability Language: The Planning Commission was originally in support of having strong language on sustainability written into the master plan. However, during the discussion on sustainability the Commission was concerned that the language was too specific, since it mentioned specific techniques and certification programs to measure progress. The master plan language has since been revised to indicate that the highest levels of sustainability will be sought with this development, but it does not mention specific designs and does not list a specific standard by which “sustainability” will be measured. This will leave some flexibility to future commissions to determine how well development proposals meet the written language of the master plan on sustainability.

Intersection of French Street and North Park Avenue: This intersection was originally identified as a concern. The original proposal was to install a traffic signal, but the Town Engineering Department recommended a round-

about, which would facilitate u-turns on Park Avenue, and is safer for pedestrians, and results in fewer accidents with fewer fatalities. This option also does not stop traffic, which is especially helpful during the off season when there is very little traffic coming from the existing skier parking lots and/or parking structures.

Turn Lanes on Westbound French Street: As part of this development, cars heading westbound on French Street may be turning left onto North Depot Road. In order to prevent these cars from backing up traffic onto French Street, a turn lane is proposed, which would allow these vehicles to stay out of the way of cars going through or turning right into the Parkway Center development.

Pedestrian Safety on Watson: The current setup in this area forces many cars and buses onto Watson Avenue. Since this area is right in front of the new Gondola Plaza, it is a serious conflict with pedestrians. In an effort to make this area pedestrian friendly, vehicles entering the south parking structure will remain on Park Avenue. Also, buses will primarily come from Park Avenue, but would turn into the bus bays before getting near the plaza. This should result in making the area between the Gondola Plaza and the condo-hotel more pedestrian friendly and safer.

Skier Circulation from Skiback: It was suggested that the current skiback tunnel and stairs are not user friendly, and that use of a ramp or “magic carpet” could make the use of this tunnel easier and more popular. The final design of the tunnel has not been determined at this time, though it is likely that the tunnel itself would remain. There is nothing to preclude a redesign of the tunnel exit. The tunnel exit is planned to be revised to bring guest to the east (instead of north as currently designed) into the pedestrian area south of the hotel pool. The final design of the tunnel will be considered when the hotel and pedestrian circulation is designed for this area.

Parking Structure on Gold Rush Lot: The plan includes two parking structures east of Park Avenue with a surface lot on the Gold Rush property. The parking structures were not proposed on the Gold Rush lot due to a desire to maintain parking close to the downtown core and to keep this area vibrant. By pushing one of the parking structures to the Gold Rush lot, the parking would be farther from the core of town, making it less likely that people would spend time and money in town after skiing. This does not preclude a structure in the Gold Rush lot in the future, but it has not been included as part of this plan.

Water Quality Features: Protection of the water quality of the Blue River was raised as an early concern by the Planning Commission and staff. Detention facilities are not usually part of a master plan, but staff has been working with the applicant to show that detention facilities and water quality features have been planned into the project. There is sufficient space to provide these features, and detailed designs and locations will be required during the subdivision and site plan review for individual buildings. Staff will ensure that all water quality features meet Town Engineering standards.

Lighting from Parking Structures: A citizen identified the parking structures, particularly the top level of the structures, as potential sources of light pollution. Since the parking structures have not yet been designed, we do not yet know how they will be lit. However, the Town has a Dark Sky Lighting policy to which all development must adhere. This will be reviewed in greater detail during the site plan and architectural review of the parking structures and is not a detail normally addressed in a master plan.

Include Gold Rush in Master Plan: The Gold Rush lot was not originally included in the master plan. However, the lot is a sending area for density, and has been included in this version of the master plan. There are no current development plans for the Gold Rush lot. The site will have no density assigned in the master plan; in fact, all density will be removed from this lot and transferred to the other parts of the master plan. If any development happens in the future, it would have to be development that does not require density, and the master plan would need to be amended to allow such development.

Business Issues:

The following are other issues that were raised by the Commission, but which needs to be decided by the Town Council. While the Commission was frustrated that these were issues that were not in their purview, they accepted this fact, but still wanted to pass along their concerns to the Council.

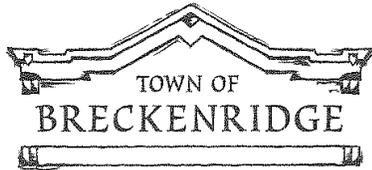
Phasing Plan: Many Commissioners were concerned about the phasing of the development. In particular, the timing of the Blue River restoration was a concern to some Commissioners, and there were concerns about who would be responsible to make sure that the river restoration gets done. Staff indicated that the Blue River is on Town property, and that no points were recommended for restoration of the river, particularly because Vail Resorts would not commit to doing the river improvements. We indicated to the Commission that restoration of the river, funding and timing would be a discussion topic between the Town Council and the applicant.

North Parking Structure Wrap: There has been a request to provide employee housing, civic and other community uses in the north parking structure, to provide more vitality at this end of the project, especially during the non-winter season. No such uses are included in the approved plan. The applicant has chosen to use their density in other ways within the development, but they are open to discussing these uses with the Town Council. If the Town Council is willing to provide density for these uses, then the master plan could be amended in the future. One concern with this proposal is the potential impact to the size of the parking structure, which may get taller, to accommodate the loss of parking, and/or the need to provide parking for these new uses. Uses that were suggested in this “wrap” might include BRC or other non-profit offices, other civic uses, post office, and potentially Vail Resorts administrative functions.

Timing of Blue River Restoration: The Blue River is primarily on Town of Breckenridge property. As a partner in the visioning for the future of this area, the Town requested that the future expansion of the Riverwalk and restoration of the river be considered. The applicant will be having a series of discussions with the Town Council on business issues, including land ownership, relocation of lot lines, and restoration of the river. At this time the master plan identifies how the river could be restored and made a greater community asset. But the master plan does not identify when the river would be restored, or who will pay for the work. This is a detail that needs to be discussed with the Town Council.

Loss of Parking at East Sawmill Lot: The proposed development includes the loss of about 28 parking spaces in the East Sawmill Lot to accommodate the relocated Blue River and Riverwalk improvements. The loss of these spaces is an issue to be reviewed by the Town Council. The proposed parking structures can accommodate the loss of these 28 parking spaces. Whether or not these new spaces in the parking structure are free or paid is also up to the Town Council to determine during the business issues discussion. However, the structure could be designed to separate these 28 spaces from the rest of the structure, and their cost and management will be for discussion between the Town Council and Vail Resorts.

Reduced Parking in Condo-Hotel: Some Commissioners were concerned that the Council had not yet approved the Development Agreement allowing reduced parking at the condo-hotel building. Similar concerns were also raised over the loss of parking from the East Sawmill Lot and Wellington Lot, and the Commission wanted to know that the Council supported these changes before approving the plan. Staff indicated that Council preferred to wait until the plan was approved before having discussions on the business issues, since the business issues are moot if the plan is not approved. Also, it would be inappropriate for Council to review the plan prior to its approval, due to potential “ex-parte contact” issues.



MEMORANDUM

TO: Town Council

FROM: Chris Neubecker

DATE: December 2, 2009

SUBJECT: Vail Resorts Development Agreement for 1:1 Parking in Condo-Hotel

Vail Summit Resorts, Inc. has proposed a development agreement to allow parking at a ratio of 1 space per 1 residential unit in the condo-hotel of the Gondola Lots Redevelopment Master Plan. The Off-Street Parking Regulations for the Town of Breckenridge identify the required parking spaces for all uses. Section 9-3-8 B of this code also allows Mixed Use Developments of greater than 100,000 square feet to base the parking requirements on a qualified parking study, rather than the prescribed rate identified in the policy:

“D. Mixed Use Developments: The requirements of this Section may be increased or decreased for a mixed use development containing not less than one hundred thousand (100,000) square feet. Such change shall be accomplished by a development agreement in connection with the approval or amendment of a master plan. Any request to vary the requirements of this Section shall be supported by a written analysis paid for by the applicant and prepared by a qualified parking consultant. Once approved, the development agreement and master plan shall establish the off-street parking requirement in lieu of that set forth in this Section and shall serve as one of the controlling development policies for a site plan level development of the property which is the subject of the master plan as provided in subsection H of policy 39 "(Absolute) Master Plan", section 9-1-19 of this title. (Ord. 3, Series 1999)”

As part of the review of this proposal, the Town Council has requested the Staff’s analysis of the parking study.

Two new parking structures are proposed for day-skier parking. These two structures would replace the surface parking lots. The two structures combined would accommodate approximately 1,200 vehicles (535 in the south structure and 735 in the north structure.) The current surface lots each hold slightly less than 600 cars each. The current parking agreement between the Town and Vail Summit Resorts requires a minimum of 1,560 day skier parking spaces between the gondola north, gondola south, and Gold Rush parking lots. The most cars that have been counted by the Town in the Gold Rush lot were 362 cars on Saturday March 8, 2008. In April 2000, the applicants received approval to construct a 479 space parking lot at Gold Rush. The current lot has not been expanded to its full potential, and some spaces have been lost due to the bus loading area and parking attendant booth. Expansion of the Gold Rush lot per the original approval may be warranted at this time. With the construction of the two parking structures, the required day skier parking of 1,560 spaces between the three lots (per the Preliminary Agreement in May 2002) will be met, albeit in a different configuration from the agreement.

A parking study from Felsburg, Holt & Ullevig transportation consultants is attached for your review. The study attempts to justify why the reduced parking is sufficient for this development. The study makes several assumptions about the guest arrival mode split (transit and shuttle usage by guests and employees vs. private

vehicles) and varying peak demand times based on land use.

The mode split percentage was originally applied to the Town of Breckenridge Parking Standards, which already accounts for a mode split due to the operation of a free transit system within the town. In other words, the Town's Parking Standards already assume that some guests will arrive by private shuttle without a car, and further applying a discount to this project may assume an artificially low parking demand. For this reason, staff suggested using actual local data from local lodging properties such as The Village at Breckenridge, Mountain Thunder Lodge and Main Street Station, which are close to the core of town, and likely attract similar guests and mode split as the proposed condo-hotel. This revision to the local data has been included in the revised version of the parking study, provided to the Town Council. (See Table 2 and 3), but its seemingly high mode split for shuttle users (72% per Table 3) raises questions about the accuracy of this data. This is questioned because it reflects only one year's worth of data, only includes shuttle or car rentals booked through Breckenridge Hospitality, and seems unusually high (especially for summer visitors).

Essentially, these tables indicate that 78% of the guests at Vail Resorts properties fly to Colorado, and of those guests, 72% ride a shuttle to Breckenridge, not bringing a car. This means that about 56% (.78 x .42 = .56) of the guests would arrive without a car. To be conservative, however, the study assumes that only 30% arrive without a car. (This assumption itself questions whether or not the numbers in Table 2 and Table 3 are accurate. If they are accurate, why are these numbers not used? That being said, Staff would rather assume 30% arrive by shuttle, than 72%. And so we support this formula.) Under the current parking code, a condo-hotel with 162 rooms would require 243 parking spaces. Based on actual data of the fly/drive split, it appears that on average only 106.9 of the rental units would bring a car (162 rooms x 1.5 spaces per room = 243 cars x 0.44 = 106.9). Of course, some may bring more than one car, and this assumption does not account for employees. (Another study, performed for the Peaks 7 & 8 Master Plan in 2001, shows that on average 1.04 cars are parked per occupied room. This study looked at vehicles parked and occupancy rates from December 27 – 30, 2000, which was a Wednesday – Saturday, and January 13, 2001 which was a Saturday.)

In addition to some of these assumptions, the parking study indicates that because certain uses peak at different times, there is some benefit to the shared use of parking spaces. While this may be the case in some parts of the plan (for example, overnight hotel guests and day skiers), it only applies if these two uses also share parking spaces. In other words, if the hotel parking is made available to day skiers during the day, and the parking structure is made available to the hotel guests at night. But the applicant has already indicated that parking under the hotel will be made available only to hotel guests. However, it is fair to assume that there is a significant overlap between various users already parked (for example, day skiers) with the skier services customers and some of the other commercial uses in the plan. The study assumes that a majority of the customers at the skier services building have either already parked at the hotel or in one of the two parking structures. Therefore, it is valid to assume that there is very little additional parking demand created by the skier services building, other than employees or a few customers who may not be staying at the hotel or parking in a structure to ride the gondola.

Below are the parking estimates for employees per the parking study:

Land Use	Size	Total Employees	Working Employees	Total Vehicles
Hotel	162 rooms	82	58	27
Hotel restaurant	5,000 sq. ft.	21	15	7
Hotel retail	4,000 sq. ft.	12	9	5
Residential	42 Units	6	4	2
Multi-use restaurant	2,000 sq. ft.	8	6	3
Multi-use retail	10,000 sq. ft.	30	22	10
	TOTALS	159	114	54

The study assumes that vehicle occupancy would be 1.55 employees per vehicle. (This number was used based on a study at Teton Village, which averaged 1.55 people per car for employees driving to work from 2000-2003, before paid parking was implemented. There was no local data provided to confirm this number.) The study also assumes that 30% of employees would arrive by transit or walking. (Part of the attached report includes a study from Teton Village between 2000-2003, which averaged about 29.5% of employees taking transit or other non-

auto forms of transportation. These numbers increased significantly after 2003 when all paid-parking was implemented at the ski resort. Whether or not Teton Village employee commuting patterns is analogous to Breckenridge may be up for debate.) The report also makes assumptions of the number of employees that would be needed for various uses, based on employee generation studies at Keystone and other mountain resort communities. We also compared this data with the 2006 Nexus Report by RRC Associates, which survey over 1,800 employers in 18 mountain resort communities, from 1990-2004. While these numbers are a bit old, they did result in similar employee generation rates. Based on these assumptions, VRDC and FHU estimate that 54 vehicles would need to be accommodated within the parking plan.

The proposed plan counts the on-street parking on South Depot Street and North Depot Street toward the parking supply for the project, and would primarily provide parking for the mixed use building and on a short-term, drop-off basis. Considering that the applicant is constructing the street and will own and maintain the private streets, staff believes that these parking spaces should be considered like private parking lots, and that these newly created spaces should count toward the parking supply.

Some shortcomings of the study include the use of the “supply” of parking in the parking structures as the assumed “demand”. This is because the demand for parking far exceeds the supply, and some guests will be required to park off-site. However, this parking does meet the requirement of the agreement with the Town to supply 1,560 parking spaces between the three lots near the gondola. The study also does not account for employees already using these lots. This includes employees working at the gondola, parking lot attendants, lift ticket sales, and employees parking in these lots and riding the gondola or bus to the mountain. However, if they are currently parking in these lots, they could be considered as part of the existing parking “demand”, although their use of these lots would further diminish the availability of in-town parking to guests. Staff believes this is an issue for Vail Resorts to manage. Other shortcomings include the use of Teton Village as an example to make assumptions about the commuting patterns of employees in Breckenridge. However, if more accurate data is not available locally, and can not be easily obtained (a short survey of Vail Resort’s own employees could rectify this) then this information from Teton Village may be the best available. Furthermore, using only one year’s worth of data from Breckenridge Hospitality to determine the number of shuttles and rental car bookings does not seem sufficient, considering how easy it is through the internet to reserve rental cars and book transportation. Assuming that people would book transportation at the same time that they reserve lodging may be taking a leap of faith.)

Another concern is the reduction of parking elsewhere within the town. For example, this plan would reduce the parking supply within the Town owned East Sawmill Parking Lot by 28 spaces, although the Master Plan indicates that the loss of these spaces could be accommodated within the parking structures while still meeting the demand of the site and the requirement to provide the 1,560 spaces for day skiers. Replacing these essentially free spaces (\$25/year for an employee parking pass) with parking in the parking structure may not be desirable for the Town, unless there is some type of agreement ensuring that those 28 spaces are not charged at the same rate as day skiers.

Overall, Staff supports the idea of shared parking among complimentary uses. It is logical to assume that day skiers parked in the parking structures are also a majority of the customers at the skier services building. It is also logical to assume that the parking structures will be far below capacity during the evening hours, thereby opening up parking spaces for dinner guests and employees at the restaurants. However, we have some concerns with some of the assumptions made about travel mode split, number of employees per vehicle, and the number of employees generated for some of the commercial spaces. However, it is important to keep in mind that the proposed Development Agreement is for a reduction of parking only at the condo-hotel. All other uses will need to meet their parking requirements on site, or otherwise within the two “public” parking structures.

Overall, Staff supports the reduction of parking for the condo-hotel. If any location in Breckenridge is primed to take advantage of walkability and transit, this is it.

1
2
3 APPROVAL OF THIS DEVELOPMENT AGREEMENT CONSTITUTES A VESTED
4 PROPERTY RIGHT PURSUANT TO ARTICLE 68 OF TITLE 24, COLORADO REVISED
5 STATUTES, AS AMENDED
6

7 DEVELOPMENT AGREEMENT
8 FOR ONE TO ONE PARKING
9 FOR CONDOMINIUM/HOTEL
10

11 This Development Agreement (“Agreement”) is made and entered into this _____
12 day of _____, 2009 by and between the TOWN OF BRECKENRIDGE, a
13 Colorado municipal corporation (“Town”) and VAIL SUMMIT RESORTS, INC., a Colorado
14 corporation (“Developer”).
15

16 RECITALS
17

18 A. Developer is the owner of the properties described in Exhibit A hereto
19 (“Properties”).

20 B. The Developer and the Town together developed a preliminary plan for the future
21 potential development of the Properties.

22 C. Consistent with the preliminary plan selected by the Town and Developer as the
23 best alternative for the future potential development of the Properties, Developer has applied for
24 a master plan for the Properties pursuant to the Breckenridge Development Code.

25 D. In order for all of the components of the preliminary plan to be included on the
26 Properties and to make development of the Properties feasible, a decrease in the off-street
27 parking that would be required under Section 9-3-8 of the Town of Breckenridge Off-Street
28 Parking Ordinance for the residential units in the proposed hotel building to be developed as a
29 condominium/hotel is required.
30

31 E. The preliminary plan and the proposed master plan reflect a phased development
32 of a mixed use development containing not less than one hundred thousand (100,000) square
33 feet, as provided for in Subsection 9-3-8:D of the Breckenridge Town Code, and, accordingly,
34 Developer has submitted a written evaluation of the parking supply for the Properties prepared
35 by Felsburg, Holt & Ullevig, a qualified parking consultant, dated October 2 , 2009 supporting a
36 reduction in the required parking for the residential units in the proposed hotel building to be
37 developed as a condominium/hotel.
38

39 F. Developer’s commitments encouraged to be made in connection with an
40 application for a development agreement in accordance with Section 9-9-4 of the Breckenridge
41 Town Code is the processing of the proposed master plan in advance of Developer’s need for a
42 master plan for the Properties and during a period when economic conditions are not favorable
43 for development of the Properties in order to provide the Town with some certainty as to how the
44 Properties will be developed. Developer’s agreement to proceed with the master plan at this time
45 will enable the Town to plan and potentially improve its adjacent properties along the Blue River
46 consistent with an approved master plan for the Properties.

1
2 G. The Town Council has received a completed application and all required
3 submittals for a development agreement, had a preliminary discussion of the application and this
4 Agreement, and determined that it should commence proceedings for the approval of this
5 Agreement, and, in accordance with the procedures set forth in Subsection 9-9-10:E of the
6 Breckenridge Town Code, has approved this Agreement by non-emergency ordinance.

7
8 AGREEMENT
9

- 10 1. The requirements of Section 9-3-8 of the Breckenridge Town Code for parking spaces to
11 be provided in connection with development of the building identified in the proposed
12 master plan as the hotel, which is planned to be developed as a condominium/hotel under
13 the Breckenridge Town Code shall be decreased to one (1) space for each residential unit
14 including one (1) bedroom or more, with all such spaces to be available in a pool (not
15 assigned to particular units) and generally available on a first come, first served basis.
16 The Planning Commission is hereby authorized to review and approve a master plan
17 providing for parking in accordance with the foregoing, which will be less than required
18 by Section 9.3.8:B of the Breckenridge Town Code.
19
- 20 2. Except as provided in Section 24-68-105, C.R.S. and except as specifically provided for
21 herein, the execution of this Agreement shall not preclude the current or future
22 application of municipal, state or federal ordinances, laws, rules or regulations to the
23 Properties (collectively, “laws”), including, but not limited to, building, fire, plumbing,
24 engineering, electrical and mechanical codes, and the Town’s Development Code,
25 Subdivision Ordinance and other land use laws, as the same may be in effect from time to
26 time throughout the term of this Agreement. Except to the extent the Town otherwise
27 specifically agrees, any development of the Properties which is the subject of this
28 Agreement shall be done in compliance with the then-current laws of the Town.
29
- 30 3. Nothing in this Agreement shall preclude or otherwise limit the lawful authority of the
31 Town to adopt or amend any Town law, including, but not limited to the Development
32 Code, Guidelines, Master Plan and Subdivision Standards of the Town.
33
- 34 4. This Agreement shall run with the title to the Properties and be binding upon the owners,
35 heirs, successors and assigns, including specifically, but not limited to, such entity or
36 entities affiliated with Developer as actually take title to any of the Properties.
37
- 38 5. Prior to any action against the Town for breach of this Agreement, Developer shall give
39 the Town a sixty (60) day written notice of any claim by the Developer of a breach or
40 default by the Town, and the Town shall have the opportunity to cure such alleged default
41 within such time period.
42
- 43 6. The Town shall not be responsible for and the Developer shall have no remedy against
44 the Town if development of the Properties is prevented or delayed for reasons beyond the
45 control of the Town.
46

- 1 7. Actual development of the Properties shall require the issuance of such other and further
2 permits and approvals by the Town as may be required from time to time by applicable
3 Town ordinances.
4
- 5 8. No official or employee of the Town shall be personally responsible for any actual or
6 alleged breach of this Agreement by the Town.
7
- 8 9. The Developer agrees to indemnify and hold the Town, its officers, employees, insurers,
9 and self-insurance pool, harmless from and against all liability, claims, and demands, on
10 account of injury, loss, or damage, including without limitation claims arising from
11 bodily injury, personal injury, sickness, disease, death, property loss or damage, or any
12 other loss of any kind whatsoever, which arise out of or are in any manner connected
13 with this Agreement, if such injury, loss, or damage is caused in whole or in part by, or is
14 claimed to be caused in whole or in part by, the negligence or intentional act or omission
15 of Developer; any subcontractor of Developer, or any officer, employee, representative,
16 or agent of Developer or of any subcontractor of Developer, or which arise out of any
17 worker's compensation claim of any employee of Developer, or of any employee of any
18 subcontractor of Developer; except to the extent such liability, claim or demand arises
19 through the negligence or intentional act or omission of Town, its officers, employees, or
20 agents. Developer agrees to investigate, handle, respond to, and to provide defense for
21 and defend against, any such liability, claims, or demands at the sole expense of the
22 Developer. Developer also agrees to bear all other costs and expenses related thereto,
23 including court costs and attorney's fees.
24
- 25 10. If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not
26 affect or impair the validity, legality or enforceability of the remaining provisions of the
27 Agreement.
28
- 29 11. This Agreement constitutes a vested property right pursuant to Article 68 of Title 24,
30 Colorado Revised Statutes, as amended, provided, however, that, because the terms of
31 this Agreement are preliminary in nature and provide authorization for approval of a
32 master plan consistent with the terms hereof and do not constitute a site specific
33 development plan, the vested property right hereby created shall remain vested for a
34 period of three (3) years.
35
- 36 12. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of
37 any other provision, nor shall it be deemed to constitute a continuing waiver unless
38 expressly provided for by a written amendment to this Agreement signed by both Town
39 and Developer; nor shall the waiver of any default under this Agreement be deemed a
40 waiver of any subsequent default or defaults of the same type. The Town's failure to
41 exercise any right under this Agreement shall not constitute the approval of any wrongful
42 act by the Developer or the acceptance of any improvements.
43
- 44 13. Nothing contained in this Agreement shall constitute a waiver of the Town's sovereign
45 immunity under any applicable state or federal law.
46

1 14. Personal jurisdiction and venue for any civil action commenced by either party to this
2 Agreement shall be deemed to be proper only if such action is commenced in District
3 Court of Summit County, Colorado. The Developer expressly waives its right to bring
4 such action in or to remove such action to any other court, whether state or federal.
5

6 15. Any notice required or permitted hereunder shall be in writing and shall be sufficient if
7 personally delivered or mailed by certified mail, return receipt requested, addressed as
8 follows:
9

10
11
12
13 If To The Town: Timothy J. Gagen, Town Manager
14 Town of Breckenridge
15 P.O. Box 168
16 Breckenridge, CO 80424
17

18 With A Copy (which
19 shall not constitute
20 notice to the Town) to: Timothy H. Berry, Esq.
21 Town Attorney
22 P.O. Box 2
23 Leadville, CO 80461
24

25 If To The Developer: Alex Iskanderian, Vice President
26 Vail Summit Resorts, Inc.
27 P.O. Box 1058 (BK22)
28 Breckenridge, CO 80424
29

30 With A Copy (which
31 shall not constitute
32 notice) to: Stephen C. West, Esq.
33 West, Brown, Huntley & Thompson, P.C.
34 P.O. Box 588
35 Breckenridge, CO 80424
36

37 With A Copy (which
38 shall not constitute
39 notice) to: Vail Resorts Management Company
40 Attn: Legal Department
41 Box I-88 390 Interlocken Crescent, Suite 1000
42 Broomfield, CO 80021
43

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

1 16. This Agreement constitutes the entire agreement and understanding between the parties
2 relating to the subject matter of this Agreement and supersedes any prior agreement or
3 understanding relating to such subject matter.
4

5 17. This Agreement shall be interpreted in accordance with the laws of the State of Colorado.
6

7 IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first
8 above set forth.
9

10 VAIL SUMMIT RESORTS, INC. TOWN OF BRECKENRIDGE

11
12 By Vail Resorts Development Company,
13 a Colorado corporation, it's authorized agent
14

15
16
17 By: _____ By: _____
18 Alex Iskanderian, Vice President Timothy J. Gagen, Town Manager
19

20
21
22
23 ATTEST:
24
25
26
27
28 _____
29 Town Clerk
30

31 STATE OF COLORADO)
32) ss:
33 COUNTY OF SUMMIT)
34

35 The foregoing instrument was acknowledged before me this ____ day of _____,
36 2009 by Timothy J. Gagen as Town Manager and Mary Jean Loufek as Town Clerk of the Town
37 of Breckenridge.
38

39 Witness my hand and official seal.
40

41 My commission expires: _____
42
43
44

45 _____
46 Notary Public
47

EXHIBIT A
TO
DEVELOPMENT AGREEMENT

Legal Description of the Properties

PARCEL A:

LOT 1, BLOCK 3, PARKWAY CENTER, ACCORDING TO THE PLAT RECORDED JULY 26, 1985 UNDER RECEPTION NO. 300636, COUNTY OF SUMMIT, STATE OF COLORADO.

PARCEL B:

LOTS 1A, 3-A, 3-B AND 4, SAWMILL STATION SQUARE, FILING NO. 3, AMENDMENT NO. 2, ACCORDING TO THE PLAT THEREOF FILED JANUARY 21, 1986 AT RECEPTION NO. 311104, COUNTY OF SUMMIT, STATE OF COLORADO;

AND

LOTS 1-B AND 1-C, A REPLAT OF LOTS 1-B AND 1-C, SAWMILL STATION SQUARE FILING NO. 3, AMENDMENT NO. 2, AND LOT 1, SAWMILL STATION SQUARE, FILING NO. 3, ACCORDING TO THE PLAT THEREOF FILED DECEMBER 14, 1990 AT RECEPTION NO. 397221, COUNTY OF SUMMIT, STATE OF COLORADO.



FELSBERG
HOLT &
ULLEVIG

25 years of engineering paths to transportation solutions

November 19, 2009

MEMORANDUM

TO: Ross Holbrook, Vail Resort Development Company

FROM: Jeff Ream, PE, PTOE
Jeremy Hahn, PE, PTOE

SUBJECT: Gondola Redevelopment – Updated Shared Parking Analysis
FHU Reference No. 07-234

This memo updates the results of the parking analysis conducted for the Gondola Lot project, located east of Park Avenue and south of French Street in Breckenridge, Colorado. This update incorporates comments provided by the Town on the August 11, 2009 parking memo.

The proposed development would include a 162-room resort hotel, 42 condo/townhomes and 12,000 square feet of neighborhood commercial uses. As part of the project, a 162-space parking garage would be provided below the resort hotel, 34 spaces would be provided below the commercial building, 66 spaces would be provided below the residential uses, 15 on-street spaces would be provided along South Depot Street between the hotel and the mixed use building, and 11 on-street spaces would be provided along North Depot Street between the north parking structure and the townhomes (276 total parking spaces). All of these spaces are in addition to the 735-space north parking garage and the 535-space south parking garage that would be constructed on the site to replace the existing day skier surface lots, for a total site supply of 1,558 parking spaces. It should also be noted that 30 drop-off spaces for day skiers would be provided near the gondola (16 along the north parking garage and 14 in the drop-off turnaround), but they have been excluded from this analysis because of their short-term nature.

The purpose of this analysis is to determine whether the planned parking supply for the site is sufficient to accommodate the demand generated by the hotel, commercial, residential and day skiers and, if that is not the case, to quantify the number of additional on-site spaces needed to meet the excess demand and/or identify potential mitigation measures that may reduce demand at the site.

BASELINE PARKING DEMAND

Parking demand for the site was determined for each of the various elements included in the project (hotel rooms, neighborhood retail, residential) using the Town of Breckenridge's parking standards. **Table 1** shows the site's parking requirements based on the Town's standards. As the table indicates, the site would generate an unadjusted peak demand of 1,455 spaces.

Note that the Town’s parking ratio of 1.0 spaces per room for lodging/hotel/motel was used for the site because that ratio is supported by a parking study of 11 mountain town condominium hotel properties conducted by DMJM Harris in 2001. That study (attached) indicated a peak period, peak occupancy rate of 1.04 spaces per unit.

Table 1. Baseline Parking Demand Based on Town of Breckenridge Standards

Land Use	Off-Street Parking Section	Rate	Size	Total
Lodging / Hotel / Motel	9-3-8 B.	1.0/room	162 rooms	162
Retail Sale / Commercial / Office	9-3-8 B.	1/400 SF	12,000 SF	30
Housing Two Bedroom	9-3-8 B.	1.5/unit	42 Units	63
Day Skier Garages	N/A	N/A	N/A	1,200
Total Unadjusted Parking Demand				1,455

ADJUSTED PARKING DEMAND

Since the Town’s transit center is located within the site and the site includes multiple land uses that will generate peak demands at different times of the day and/or year, it is appropriate to apply several adjustments to the Town of Breckenridge’s baseline parking demand forecast that reflect reduced vehicle usage by guests and patrons, as well as the sharing of some parking spaces on the site. This section summarizes the adjustment process.

Guest Arrival Mode Split

Given the developments location adjacent to the downtown area and the availability of transit, it is reasonable to assume that some hotel and residential guests and commercial patrons would arrive and depart from the development using some means other than personal vehicle, and therefore would not generate parking demand. Skier arrival data provided by Vail Resorts Management Company in **Table 2** indicates that approximately 78 percent of the lodging guests staying in Breckenridge fly in as opposed to driving. **Table 3** shows information on the number of round trip shuttles and vehicles booked through Breckenridge Hospitality by guests staying at one of their properties. It would be reasonable to assume that primarily fly in guests would book transportation through Breckenridge Hospitality (since drive in guests already have a vehicle), so the data in Table 3 suggests that approximately 72 percent of fly in guests would not have a vehicle. Thus, combining the information in Tables 2 and 3 suggests that around 56 percent of the hotel guests in the winter (78 percent * 72 percent) would not have a vehicle and therefore would not require a parking space. To present a more conservative parking scenario where a higher number of vehicles are forecast, however, it would appear reasonable to assume that 30 percent of winter users would arrive via alternate modes and therefore not require parking. This is the equivalent of assuming around 40 percent of the fly in guests would not have a vehicle.

No local summer mode split data was available, but the Breckenridge winter data appears to be consistent with the multi-modal estimates contained in the *Teton Village Area Transportation Demand Management Report 2005 and 2006 Winter and Summer Seasons*, FHU, 2007. That study indicated the winter non-driving mode share was 70 percent and the summer non-driving share was 34 percent, or about half of the winter rate. Using the same winter to summer ratio for Breckenridge would yield a non-driving mode share in summer of around 30 percent, but the present a more conservative parking scenario, a summer non-driving share of 20 percent was used for the Gondola lots.

Table 2. Guest Arrival Mode Split for Breckenridge Properties

Ski Season	Mode Split	
	Fly	Drive
2007-08	76%	24%
2008-09	80%	20%
Average	78%	22%

Source: Vail Resorts Management Company

Table 3. 2008-09 Breckenridge Lodging Guests Shuttle and Rental Car Bookings

Month	Shuttles ¹	Percent	Vehicles	Percent
August 2008	28	74%	10	26%
September 2008	7	50%	7	50%
October 2008	2	40%	3	60%
November 2008	21	55%	17	45%
December 2008	244	75%	82	25%
January 2009	281	74%	100	26%
February 2009	241	62%	146	38%
March 2009	334	77%	101	23%
April 2009	75	59%	52	41%
May 2009	6	75%	2	25%
June 2009	7	70%	3	30%
July 2009	81	93%	6	7%
Total	1,327	71%	529	29%
Winter (Dec-March)	1,100	72%	429	28%

1. round trip shuttles

Source: Breckenridge Hospitality

Monthly Variation

Demand for each of the land uses that are part of the development will fluctuate from month to month and have an effect on the overall demand for the site. **Table 4** shows the monthly variation information; ULI's *Shared Parking*, 2nd Edition was used to generate the monthly parking forecasts for the commercial and hotel, while the day skier demand was generated based on projected occupancy for the two garages derived from day skier information provided by the ski resort.

Table 4. Monthly Parking Demand Variation by Land Use

Month	Percent of Total Demand			
	Weekday Day Skiers	Weekend/Holiday Day Skiers ¹	Commercial	Hotel
January	75%	100%	56%	90%
February	100%	100%	57%	100%
March	100%	100%	64%	100%
April	40%	60%	63%	100%
May	0%	0%	66%	90%
June	0%	0%	67%	90%
July	0%	0%	64%	100%
August	0%	0%	69%	100%
September	0%	0%	64%	75%
October	0%	0%	66%	75%
November	30%	75%	72%	75%
December	30%	100%	100%	100%

1. Weekend/Holiday conditions include the two-week Christmas Break period, Martin Luther King Day and President's Day

Source: Shared Parking 2nd Edition, Urban Land Institute, 2005

Table 5 applies the guest arrival mode split adjustment and the monthly factors in Table 4 to the parking demand forecasts in Table 1 for weekend/holiday conditions, while **Table 6** shows monthly demand for weekday conditions. As the tables indicate, the application of monthly variation and mode split factors reduces the weekend/holiday demand at the site during the winter peak season from 1,455 spaces to 1,407 spaces (Christmas Break) and the weekday demand to 1,397 (March). Outside of the ski season, the site demand is reduced from 255 spaces to 214 spaces (August).

Table 5. Monthly Parking Demand for the Gondola Lot Development – Weekends and Holidays

Month	Mode Split	Weekend Day Skiers	Commercial	Residential	Hotel	Total	Total with Day Skiers
		1,200	30	63	162	255	1455
January	30%	1,200	17	63	103	183	1383
February	30%	1,200	18	63	114	195	1395
March	30%	1,200	20	63	114	197	1397
April	30%	720	19	63	114	196	916
May	15%	0	20	63	124	207	207
June	20%	0	21	63	117	201	201
July	20%	0	20	63	130	213	213
August	20%	0	21	63	130	214	214
September	20%	0	20	63	98	181	181
October	5%	0	20	63	116	199	199
November	5%	900	22	63	116	201	1101
December	30%	1,200	30	63	114	207	1407

Table 6. Monthly Parking Demand for the Gondola Lot Development – Weekdays

Month	Mode Split	Weekday Day Skiers	Commercial	Residential	Hotel	Total	Total with Day Skiers
		1,200	30	63	162	255	1455
January	30%	900	17	63	103	183	1083
February	30%	1,200	18	63	114	195	1395
March	30%	1,200	20	63	114	197	1397
April	30%	480	19	63	114	196	676
May	15%	0	20	63	124	207	207
June	20%	0	21	63	117	201	201
July	20%	0	20	63	130	213	213
August	20%	0	21	63	130	214	214
September	20%	0	20	63	98	181	181
October	5%	0	20	63	116	199	199
November	5%	360	22	63	116	201	561
December	30%	360	30	63	114	207	567

Hourly Variation

In addition to monthly fluctuation, parking demand will also vary throughout the day, with each land use generating a peak demand at different times. As a result of this variation, the maximum parking demand at a site with mixed uses is often considerably less than the sum of the maximum parking demand of the individual land uses that comprise it. **Tables 7 and 8** show weekday and weekend hourly variation information from ULI’s *Shared Parking, 2nd* edition, and confirm that while parking demand peaks in the evening for the hotel rooms and residential units, the commercial land uses peak during the middle of the day, so it would be expected that the total demand for the site would be somewhat less than the monthly peak values reported in Tables 5 and 6.

Figures 1 and 2 show the parking demand conditions throughout the day based on the hourly fluctuation information in Tables 7 and 8 and the peak month demand in Tables 3 and 4. As indicated, the peak parking demand for the site would occur in the middle of the day, at 1,331 spaces on March weekdays and 1,355 spaces during Christmas Break.

Table 5. Weekday Hourly Parking Demand Variation by Land Use

Time of Day	Percent of Peak Parking Demand			
	Day Skiers	Commercial	Housing	Hotel
6:00 AM	0%	1%	100%	95%
7:00 AM	10%	5%	90%	90%
8:00 AM	25%	15%	85%	80%
9:00 AM	60%	35%	80%	70%
10:00 AM	90%	65%	75%	60%
11:00 AM	100%	85%	70%	60%
12:00 PM	100%	95%	65%	55%
1:00 PM	100%	100%	70%	55%
2:00 PM	95%	95%	70%	60%
3:00 PM	75%	90%	70%	60%
4:00 PM	35%	90%	75%	65%
5:00 PM	10%	95%	85%	70%
6:00 PM	5%	95%	90%	75%
7:00 PM	0%	95%	97%	75%
8:00 PM	0%	80%	98%	80%
9:00 PM	0%	50%	99%	85%
10:00 PM	0%	30%	100%	95%
11:00 PM	0%	10%	100%	100%
12:00 AM	0%	0%	100%	100%
1:00 AM	0%	0%	100%	100%

Source: Shared Parking 2nd Edition, Urban Land Institute, 2005

Table 6. Weekend Hourly Parking Demand Variation by Land Use

Time of Day	Percent of Peak Parking Demand			
	Day Skiers	Commercial	100%	Hotel
6:00 AM	0%	1%	90%	95%
7:00 AM	5%	5%	85%	95%
8:00 AM	25%	10%	80%	90%
9:00 AM	60%	30%	75%	80%
10:00 AM	85%	50%	70%	70%
11:00 AM	100%	65%	65%	70%
12:00 PM	100%	80%	70%	65%
1:00 PM	100%	90%	70%	65%
2:00 PM	100%	100%	70%	70%
3:00 PM	95%	100%	75%	70%
4:00 PM	65%	95%	85%	75%
5:00 PM	35%	90%	90%	80%
6:00 PM	15%	80%	97%	85%
7:00 PM	10%	75%	98%	85%
8:00 PM	5%	65%	99%	90%
9:00 PM	5%	50%	100%	95%
10:00 PM	0%	35%	100%	95%
11:00 PM	0%	15%	100%	100%
12:00 AM	0%	0%	100%	100%
1:00 AM	0%	0%	100%	100%

Source: Shared Parking 2nd Edition, Urban Land Institute, 2005

Figure 1. Weekday Hourly Parking Demand During the Peak Month (March)

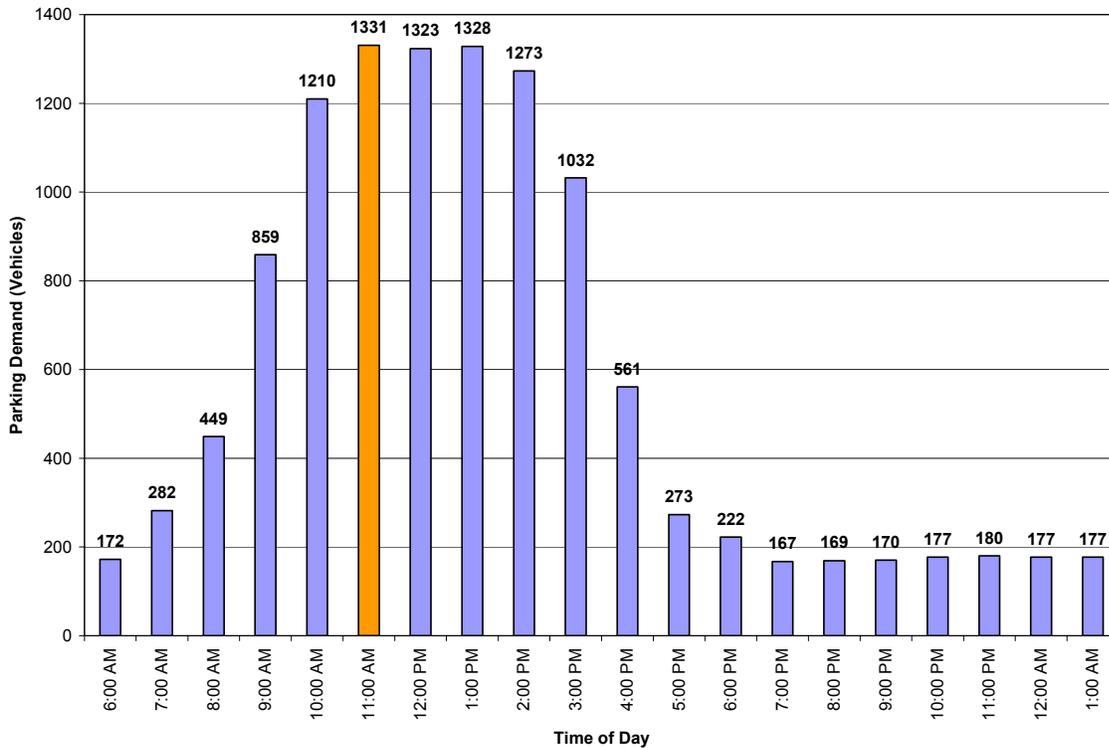
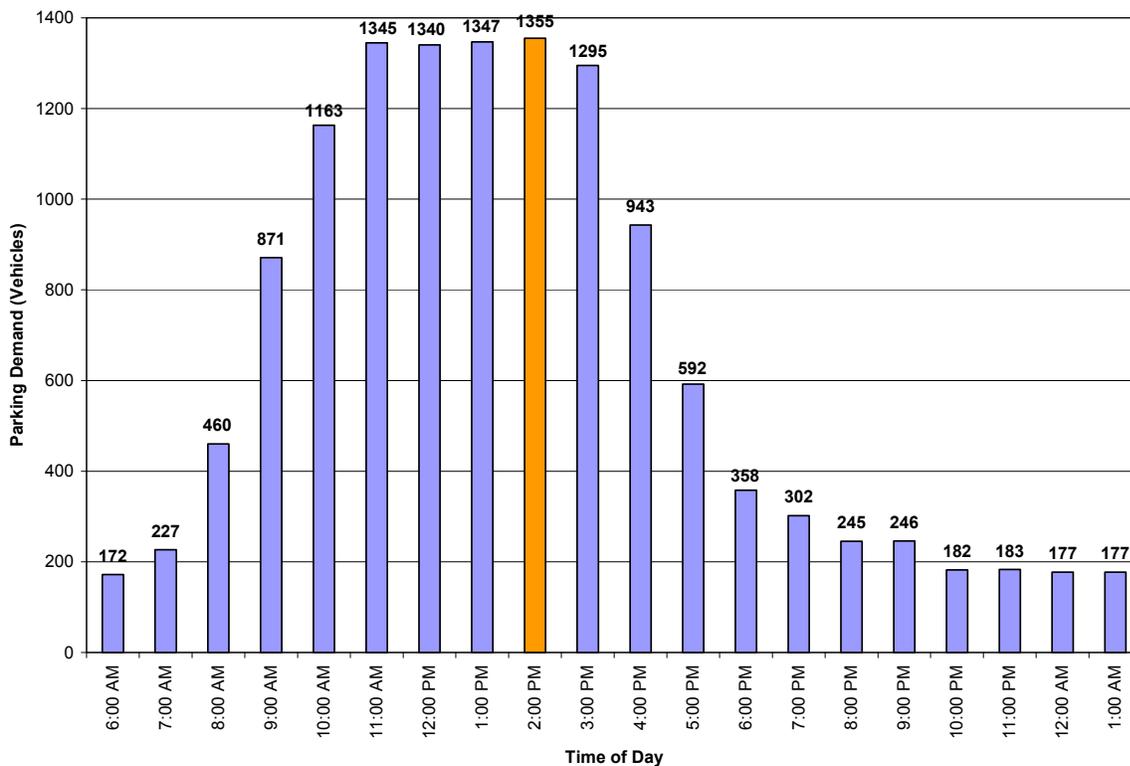


Figure 2. Weekend Hourly Parking Demand During the Peak Month (December)



PARKING SUPPLY ANALYSIS

As noted previously, in addition to the 735-space north garage and 535-space south garage for day skiers, the project would include a 162-space parking garage for the resort hotel, 34 spaces below the commercial building, 66 spaces for the residential uses, 15 on-street spaces along South Depot Street and 11 spaces along North Depot Street, for a total of 1,558 spaces on the site.

As **Figure 1** and **Figure 2** indicate, the 1,558 spaces would be sufficient to meet peak demands on both weekdays and weekends. It is worth noting, however, that those peak demand periods occur during the middle of the day when day skiers are using the two day skier garages, so any spill-over demand from the commercial uses on the site should not rely on spaces being available there. That being said, it is also worth noting that the commercial uses are intended to provide services such as a coffee shop or ski rental operation that would be geared toward hotel visitors, users of the transit center, and day skiers who are either using transit or have already parked in one of the three on-site garages, which would reduce the parking demand for the commercial properties to 30 spaces during the peak. These vehicles can park in the 26 spaces along North or South Depot Street and the 34 spaces under the building (a portion of which are likely to be reserved for residential use only, but some would be available for customers). Placing one-hour time restrictions on those spaces would ensure that they would be used by commercial customers and not day skiers. There would also be additional parking available in the hotel garage during the day (approximately 59 unused spaces) that could be used by the commercial demand, although additional signage would be needed to direct customers to available garage parking during peak demand.

EMPLOYEE PARKING ANALYSIS

An analysis was completed to determine the impact employee parking may have on the proposed supply during the peak periods. The maximum number of employees working during a typical day in both the hotel and retail uses were based on employee generation rates from the Keystone Study of Employee Generation Rates (RRC Associates, February 2009), adjusted upward by five percent to reflect Breckenridge conditions, then multiplied by 0.71 to reflect the number that would be working at one time, since employees typically work 5 out of 7 days. **Table 9** summarizes the analysis results. For the analysis, it was assumed that employee vehicle occupancy was 1.55 persons per vehicle and a 30 percent multi-modal reduction was taken to account for the proximity of transit uses on site (no local data was available, so the occupancy and transit use data was based on similar employee information compiled for Teton Village from 2000-2003. The 2000-2003 data sets were used because all free parking for employees was eliminated at Teton Village starting in 2004, which significantly changed vehicle occupancy and transit ridership). A summary of the employee parking estimates are shown in **Table 10**.

Table 9. Keystone Employee Generation Rates

Keystone Employee Rates	Base Total Employees	Adjusted Total For Breckenridge (+5%)	Employees Working at One Time ¹
Hotel/Lodge (per room)	0.48	0.50	0.36
Residential	0.13	0.14	0.10
Retail (per 1,000 SF)	2.90	3.05	2.18
Restaurant (per 1,000 SF)	4.00	4.20	3.00

1. Adjusted Total Employee rate * 5 days / 7 days
 Source: RRC Associates

Table 10. Employee Parking Estimates

Land Use	Size	Total Employees	Working Employees	Total Vehicles
Hotel	162 Rooms	82	58	27
Hotel Restaurant	5,000 SF	21	15	7
Hotel Retail	4,000 SF	12	9	5
Residential	42 Units	6	4	2
Multi-Use Restaurant	2,000 SF	8	6	3
Multi-Use Retail	10,000 SF	30	22	10
Totals		159	114	54

Based on the analysis, as many as 54 parking spaces would be required on a daily basis to meet employee demand. Thus, together with the demand from hotel guests, residents, skiers and commercial patrons, the site would generate a peak parking demand of 1,409 spaces. As stated previously, the proposed property would provide approximately 1,558 parking spaces, more than enough to cover employee, resident and customer demand.

CONCLUSIONS AND RECOMMENDATIONS

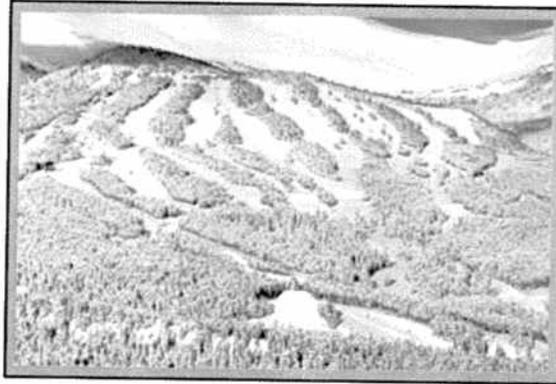
The proposed development would include a 162-room resort hotel, 42 condo/townhomes and 12,000 square feet of neighborhood commercial uses. As part of the project, a 162-space parking garage would be provided below the resort hotel, 34 spaces would be provided below the commercial building, 66 spaces would be provided below the residential uses, 15 on-street spaces would be provided along South Depot Street between the hotel and the mixed use building, and 11 on-street spaces would be provided along North Depot Street between the north parking structure and the townhomes (276 total parking spaces). All of these spaces are in addition to the 735-space north parking garage and the 535-space south parking garage that would replace the existing day skier surface lots, for a total site supply of 1,558 parking spaces.

Based on a parking analysis that considered arrival mode split, time of year and time of day demand fluctuation for each of the land uses included in the project, the proposed uses would generate a peak parking demand of 1,409 spaces, including 54 spaces for employees. The proposed 1,558 total parking spaces would be adequate to serve the anticipated demand.

The resort hotel is anticipated to generate a peak parking demand of 0.80 spaces per room. This rate is based on a study of 11 other mountain town condominium hotel properties, which indicated a base peak period, peak occupancy rate of 1.04 spaces per unit; the reduced rate here reflects this site’s location within the downtown area, the proximity of the hotel to the gondola, and the current mode split in Breckenridge of overnight hotel guests arriving via some mode other than private vehicle. Based on this, the hotel garage parking supply of 1 space per room appears to be adequate for the project.

I trust the above information is sufficient for you to make an informed decision on the parking impacts associated with the project. If you have any further questions or need any additional information, please give me a call at (303) 721-1440.

*Parking Study For Breckenridge Ski Resort
Amended Peaks 7 and 8 Master Plan*



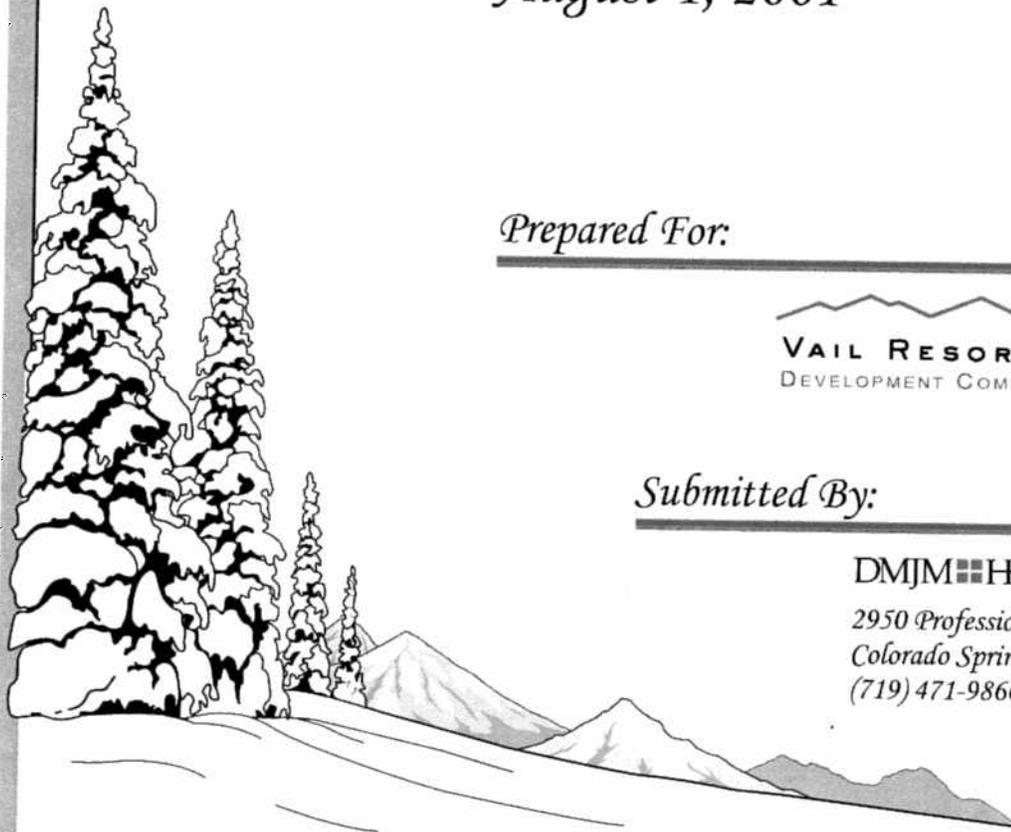
August 1, 2001

Prepared For:



Submitted By:

DMJM HARRIS
2950 Professional Place
Colorado Springs, Colorado 80904
(719) 471-9866



**Parking Study for Breckenridge Ski Resort
Amended Peaks 7&8 Master Plan
August 2001**

Summary of Data Analysis Phase

SUMMARY	GUEST PARKING SPACES	TOTAL # UNITS	SPACES PER UNIT	PARKED VEHICLES		GUEST OCCUPANCY RATE		VEHICLES PER OCCUPIED UNIT
				12/27-30/2000	1/13/01	12/27-30/00	1/13/01	
Breckenridge								
Beaver Run Resort & Conference Center	513	426	1.2	348	375	0.93	0.87	0.88
River Mountain Lodge	160	120	1.3	120	120	0.97	0.97	1.03
Keystone Resort								
River Run (6 buildings)	392	392	1.0	321	368	0.98	0.86	0.84
Steamboat Springs								
Steamboat Grand Resort Hotel & Conf	211	185	1.1	127	na	0.92	na	0.75
Sheraton Steamboat Resort	308	317	1.0	216	na	0.70	na	0.97
Winter Park								
Iron Horse Resort (mixed surface/garage)	121	130	0.9	109	na	0.84	na	1.00
Silverado II (mixed surface/garage)	72	72	1.0	72	na	0.75	na	1.33
Park City								
Silver King (mixed surface/garage)	61	62	1.0	52	na	0.90	na	0.93
Shadow Ridge	80	150	0.5	38	na	0.92	na	0.28
Yarrow Resort	145	181	0.8	41	na	0.40	na	0.57
The Lodges at Deer Valley	134	87	1.5	62	na	0.82	na	0.87
MEAN	199.73	192.91	1.04	136.91	287.67	0.83	0.90	0.86
MEDIAN	145.00	150.00	1.00	109.00	368.00	0.90	0.87	0.88

March 17, 2009

TO: Kristin Dean, Summit County Planning Department
FROM: Tim Baker, Vail Resorts Development Company
RE: Update to the Study of Employee Generation Rates

Dear Kristin,

As set forth in the Keystone PUD ("PUD"), VRDC has recently completed a report to update the Study of Employee Generation Rates ("Report") as described in Section B.6.C.(iii). Please find enclosed the Report for your consideration.

As dictated in the PUD, VRDC contracted with an independent consultant, RRC Associates, Inc. ("RRC") to prepare the Report using similar methodology as the initial Study of Employee Generation Rates.

Per the County's direction following its initial review of the draft report, the following is a list of significant revisions made in the attached Report as compared to the initial draft report:

1. The report has been re-organized and streamlined for better clarity.
2. The language in the report has been revised to more closely mirror that in the PUD.
3. Employees allocated to F&B outlets within lodging facilities have been pulled out and taken into account within the overall F&B employment numbers.
4. The multiple job ratio of 1.31 as provided in the 2000 Housing Needs Assessment is being used in the base calculation of the generation rates. (see additional discussion below)
5. The last section in the report outlines specific recommendations by RRC as to the data upon which the generation rates should be based and updates the Multiple Job Holding ratio.

As discussed in the Report and also in our meeting dated February 2, 2009, there are a number of recommendations set forth in the Report with which VRDC agrees. The Report includes discussion on each.

1. Multiple Job Holding Ratio Update
 - It is recommended that the ratio be updated on the same timeframe as the overall generation rates based on Keystone specific data.
2. Merged Data Base vs. Keystone Specific Data
 - It is recommended that Keystone specific data be used in this and future updates to the Generation Rates.

Based on these recommendations, we believe the updated generation rates should be as follows:

Classification One		Current	Merged Data Base	Keystone Specific
Land Use	Unit	PUD	(Current Methodology)	(Proposed)
Hotel / Lodge	Room	0.6	0.62	0.48
Multi-family Dwelling	Unit	0.3	0.27	0.13
Retail Establishment	1,000 sf	2.77	3.1	2.9
Food / Beverage	1,000 sf	5.15	4.2	4.0

Classification Two

<u>Land Use</u>	<u>Unit</u>	<u>Current PUD</u>	<u>Merged Data Base (Current Methodology)</u>	<u>Keystone Specific (Proposed)</u>
Hotel / Lodge	Room	0.6	0.62	0.48
Multi-family Dwelling	Unit	0.3	0.27	0.13
Retail / F&B	1,000 sf	3.46	3.7	3.6

We believe these updated generation rates are based upon the most appropriate data and represent a reasonable representation of the current and future employment base of the Keystone PUD. We also believe the manner in which the data was collected is consistent with the intent of the applicable section in the PUD and would entail a minor PUD amendment as provided in Section B.6.C(iii)(c).

For your convenience, we have provided further discussion below as to the variance of the data:

1. Why such a variance between the proposed rates generated from the “Keystone Specific” data from the “Merged Database”?
 - **Hotel / Lodging:** Keystone Hospitality manages both lodging properties in the Keystone PUD and thus is able to operate in a much more efficient manner than the majority of those surveyed in the merged data base.
 - **Multi-family Dwelling:** as above, Keystone Property Management manages 93% of the MF dwellings in the PUD and thus can operate in a much more efficient manner compared to a 3rd party property management operator.
 - **Food / Beverage:** F&B rates have gone down primarily due to the inclusion of employees who work in F&B outlets that are within Lodging properties. Previous updates included these employees as Lodging employees. Further, the F&B facilities within Lodging require a much smaller employment base than stand alone facilities. Staffing these facilities is determined by factors which stand alone facilities do not have the benefit such as hotel occupancy.

We appreciate your consideration for this update to the Study of Employee Generation Rates.

Please contact me with any questions.

Sincerely,

Tim Baker

Tim Baker
Sr. Project Manager, VRDC

CC: Alex Iskenderian
Tracy Kinsella

STUDY OF EMPLOYEE GENERATION RATES

February 2009

Prepared by:

*RRC Associates, Inc
4950 Pearl East Cir., # 103
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INTRODUCTION

This report is organized into two sections. The first section is the study of employee generation rates of retail and food and beverage establishments leasing space at River Run and Lakeside Village. The second section is a study of employee generation rates for hotel/lodge and multi-family dwellings at Keystone.

SECTION 1 – RETAIL AND FOOD AND BEVERAGE EMPLOYEE GENERATION

As part of the Keystone PUD, owner/developer is required to update the Study of Employee Generation Rates every three years until build-out. This section of the report compares job generation rates calculated using the same methodology in 2001 and 2006 to the updated 2008 figures.

Vail Resorts Development Company contracted with RRC Associates, Inc., of Boulder to perform these calculations. RRC Associates, Inc., in cooperation with Rees Consulting, Inc., calculated the job generation figures in 2001 and 2006 as part of a larger evaluation of the Keystone PUD and recommendations.

Methodology

The calculation of employee generation rates requires knowledge of full-time and part-time peak season employees for businesses at River Run and Lakeside Village. As a result, these businesses were surveyed and were asked how many full-time and part-time employees they employ during the ski season (November 1st through April 30th) and how many of those employees work more than 6 months per year. The survey defines full- and part-time employees as those that work over 20 hours per week and those that work 20 hours or less per week, respectively. Surveys were conducted by RRC Associates, Inc. A copy of the survey is attached to this report (Appendix A). Additional phone surveys were conducted of hotel/lodge properties and multi-family properties at River Run and Lakeside Village between December 2008 and February 2009. Restaurants located within the hotel/lodge properties are included in the generation rates.

A total of 29 retail and food and beverage establishments responded to the survey of about 30 total retail and food and beverage establishments at River Run and Lakeside Village.

Calculations

Adjustment for Multiple Job Holding

There is a distinction between the number of jobs and the number of employees since many employees hold more than one job. According to the 2000 Housing Needs Assessment sponsored by the Summit County Housing Authority, employees living in the Keystone/Summit Cove area hold an average of 1.31 jobs during the ski season and 1.25 on average year round. This average is not based on full-time equivalents, however, but is rather a measure of total jobs held, whether they are full time or part time.

Average Number of Jobs Held by Season

Season	Average # Jobs Held (2000 Needs Assessment)
Summer	1.22
Ski	1.31
Average	1.25

Source: Summit County Housing Needs Assessment, 2000

The surveys of employers in leased space confirm that employees tend to hold more than one job. Businesses surveyed in 2008 indicate that about 31 percent of employees hold another job at Keystone.

Employee Generation Rates

The Job Generation Rates were calculated by dividing the ‘total number of jobs’ for each business category (retail and food and beverage) by the ‘total square footage’ of all businesses in each business category, then multiplying by 1,000 to generate jobs per 1,000 square feet. Based on the definitions of FTE in the Keystone PUD regulations, the ‘total number of jobs’ was calculated as the sum of the full-time jobs during the peak winter season (November 1st through April 30th) plus one-half of the part-time jobs held during this period. This was the same methodology used in 2001 and 2006. More specifically:

- 1- Businesses were grouped according to their ‘type of business’.
- 2- The number of employees reported working over 20 hours per week plus one-half of the employees reported working 20 or fewer hours per week during the peak winter season was used for ‘total number of employees’.
- 3- The fields ‘total number of employees’ and ‘square feet of leased space’ were summed within each business category (i.e., food and beverage).

- 4- The Job Generation Rate, in terms of Jobs per 1,000 square feet, equals the 'sum of all employees' divided by the 'total square footage' of all businesses within each category, multiplied by 1,000.
- 5- The Employee Generation Rate, in terms of FTE Employees per 1,000 square feet, equals the Job Generation Rate for each category divided by 1.31 to adjust for multiple job holding, described above.

Results

2008 Update

The following FTE Employee Generation Rates for establishments at River Run and Lakeside Village were calculated from survey responses (in units of employees per 1,000 square feet of business):

**FTE Employee Generation Rates Calculated From 2008 Surveys of
Businesses at River Run and Lakeside Village**

	Retail Establishments	Food/Bev. Establishments¹	Retail/F&B Establishments
Number of businesses in calculation	16	13	29
Job Generation Rate (jobs per 1,000 square feet)	4.0	5.5	4.9
Jobs per employee	1.31	1.31	1.31
FTE Employee Generation Rates (FTE per 1,000 square feet)	3.1	4.2	3.7

Source: July 2008 surveys (calculations by RRC Associates, Inc.)

As reported in the above table, a total of 29 retail and food and beverage establishments returned surveys. Thirteen of these are classified as "food and beverage" and 16 as "retail."

2008 Job Generation Compared to 2001 and 2006 Figures

As shown in the following table, results indicate that food and beverage employers had less jobs per 1,000 square feet of business space in 2008 (4.9 average) than in 2006 (7.1 average). This is largely attributed to the inclusion of food and beverage establishments located in the lodging properties. Calculations excluding these four businesses result in a generation rate of 7.8 jobs/1,000 square feet.

¹ The Bighorn Steakhouse and the Lodge Kitchen share space. It was assumed that each uses 50% of the square footage.

Retail employers had 14 percent more jobs per 1,000 square feet of business space in 2008 (4.0 average) than in 2006 (3.5 average). This is largely attributed to a high employee generation rate for a ski rental location, which was not included in the 2001 or 2006 surveys. Calculations excluding the ski rental location result in a generation rate of 3.2 jobs/1,000 square feet.

Comparison of Job Generation Rates, 2001, 2006, 2008			
	2001	2006	2008
Retail			
# of cases	23	15	16
Job Generation Rate	3.6 jobs/1,000 square feet	3.5 jobs/1,000 square feet	4.0 jobs/1,000 square feet
Food and Beverage			
# of cases	7	6	13
Job Generation Rate	6.7 jobs/1,000 square feet	7.1 jobs/1,000 square feet	4.9 jobs/1,000 square feet

Source: 2001, 2006 and 2008 Keystone Business Surveys

The following table compares total employment and square footage reported for the same reporting businesses in 2001, 2006 and 2008 to evaluate the apparent shift in 2008 employment. There were 7 retail businesses and 3 food and beverage establishments that responded to surveys in 2001, 2006 and 2008. Of interest is that survey results indicate that year-round employment at these businesses remained fairly consistent between 2008, 2006 and 2001 for retail, whereas year round employment was reported to be higher over the 2005/06 and the 2000/2001 season for food and beverage establishments.

Comparison of Peak Season Employment for Business Responding all Three Years²
(Nov. 1st – Apr. 30th in 2007/2008, 2005/06 and 2000/01)

	Total Square Footage	Total Employment	# Year-round Employees	# Seasonal Employees
All comparable businesses				
Year 2001	24,871	148	55	93
Year 2006	24,548	156	54	102
Year 2008	26,508	168	95	73
Food and Beverage				
Year 2001	7,371	76	25	51
Year 2006	7,462	74	24	50
Year 2008	7,462	93	67	26
Retail				
Year 2001	17,500	72	30	42
Year 2006	17,086	82	30	52
Year 2008	19,046	75	28	47

Source: 2008 Keystone Business Surveys; 2006 Keystone Area Business Surveys;
2001 Keystone Area Business Surveys; RRC Associates, Inc.

SECTION 2 – HOTEL/LODGE AND MULTI-FAMILY EMPLOYEE GENERATION

This section of the report compares and updates job generation rates for hotel/lodge and multi-family dwellings. Vail Resorts Development Company contracted with RRC Associates, Inc., of Boulder to perform these calculations. RRC Associates, Inc., in cooperation with Rees Consulting, Inc., calculated the job generation figures for hotel/lodge and multi-family dwellings in 2001 as part of a larger evaluation of the Keystone PUD and recommendations.

Methodology

The 2001 report titled “Analysis of Keystone PUD Employee Housing Requirements” (Rees Consulting and RRC Associates) used data from a merged dataset of over 2,400 employers in communities across mountain resort areas of the state. The job generation rates for hotel/lodge and multi-family dwellings were calculated using this merged database. To the extent possible, part time jobs (typically <30 hrs/week) were counted as 0.5 employees in the 2001 calculation. The 2001 report established a hotel/lodge

² Note, this table does not represent all responding businesses, only those businesses who responded all three years, thus making them comparable across that time period.

generation rate of 0.5/room and a multi-family dwelling generation rate of 0.3/unit. A further explanation of the data set based on 2008 information is provided below.

Calculations

Merged Database

RRC Associates and Rees Consulting, Inc., both members of The Housing Collaborative, LLC, have been conducting housing needs assessments in mountain resort communities throughout Colorado and in neighboring states since 1990. As part of these studies, public and private sector employers were surveyed concerning the number of jobs they offer and the amount of space they occupy. The study area includes both core resort areas as well as nearby communities, which are listed below, with survey dates ranging between 1990 and 2008.

- Blaine County, ID: 1990, 1996
- Chaffee County: 1994
- Copper: 2001
- Eagle County: 1990, 1999, 2001, 2007
- Estes Park: 1991, 1999, 2007
- Frisco: 1998
- Grand County: 1992, 2001, 2007
- Gunnison County: 1992, 1998
- Composite of Pitkin, Eagle, and Garfield Counties (from Healthy Mountain Communities surveys of 1997/98 season)
- Keystone: 2001, 2008
- Snowmass Village: 1999, 2008
- Routt County: 1990
- San Miguel County: 2000
- Summit County: 1990, 2001
- Telluride: 1993, 1996, 2001
- Teton County: 2006
- Aspen 2002
- Garfield County 2004
- Pitkin County 1991, 2004
- Aspen 2008

In total, the 2008 merged database includes 159 hotel/lodge properties and 35 property management companies. As in the 2001 report, to the extent possible, part time jobs (typically <30 hrs/week) were counted as 0.5 employees in the 2008 calculation. The job generation rates below reflect all employment associated with the property, including restaurants, spas, maintenance etc.

2008 Job Generation Rates from the Merged Database

	Property Management	Hotel/Lodge
Total responses	35	159
Total employment	1,725	7,376
Total room/units	6,359	11,882
Employee Generation	0.27/Unit	0.62/Room

Discussion of Merged Database in Relation to Keystone PUD

The merged database is a large data set that has been collected over time. It is representative of resort employment across the mountain west. However, in relation to the Keystone PUD, it provides some inconsistencies.

1. Total employment provided instead of FT/PT. As was noted in the report titled “Analysis of Keystone PUD Employee Housing Requirements”, employer surveys in the merged database do not consistently ask full time and part time employment. Additionally, many respondents simply fill in total employment and leave the FT/PT distinction blank. In these cases, all employees are counted as full time employees. In total, 24% of property management respondents and 6% of hotel/lodge respondents did not provide full time and part time employment distinctions.
2. Consistency of FT/PT definition. The surveys in the merged database primarily define PT employment as <30hrs/week, which is not consistent with Keystone’s PUD definition of <20 hrs/week.
3. Inclusion of all hotel related employment. The data in the merged database for hotel/lodge employee generation includes all employees associated with all hotel related activities. It does not separately define employment related to bar/restaurant facilities.

Keystone Hotel/Lodge and Property Management Job Generation 2008

Employer surveys of the Lodge, the Inn at Keystone and Keystone Resort Property Management were administered in October of 2008. The surveys asked for peak winter employment during the 2007/2008 season. Per the Keystone PUD, full time employment was defined as someone working more than 20 hours per week. Follow up surveys asked for each hotel to define the number of employees working in each food and beverage establishment. The employment numbers represented below exclude food and beverage employees.

Keystone Hotel/Lodge Job Generation

	FTE Employees	Units Managed	Employees/room
The Lodge	132	152	0.87
The Inn at Keystone	21	103	0.20
Total Hotel/Lodge	153	255	0.60

Source: RRC Associates Interviews 2008

Keystone Multi-family Job Generation

	FTE Employees	Units Managed	Employees/room
Keystone Property Management	300	2,410	0.13

Source: RRC Associates Interviews 2008

RECOMMENDATIONS

Multiple Job Holding

Multiple job holding is, in large part, a function of the relationship between wages and the cost of living in an area and it varies by location. While multiple job holding does not change significantly over time, it does vary by community and region. As shown below, multiple job holding among communities within Summit County varies between 1.29 jobs/employee and 1.39 jobs/employee.

Multiple Job Holding

Summit County Demand Study Data 2007	Jobs/Employee Winter Season
Breckenridge	1.35
Frisco	1.39
Keystone	1.38
Silverthorne	1.29
Summit County Overall	1.31
Other Studies*	
Snowmass Village 2008	1.35
Routt County 2003	1.28
Estes Park 2008	1.27
Eagle County 2007	1.20

*Studies conducted by RRC Associates and/or Rees Consulting

Community specific data on multiple job holding was not available from the 2000 Summit County Housing Needs Assessment, so a county average was used. However, community specific data is now available and we suggest that Keystone Resort and Summit County consider updating the standardized multiple job holding

ratio to reflect Keystone specific employment. The table below compares the resulting FTE employee generation rates using the Summit County ratio of 1.31 jobs per employee and the Keystone ratio of 1.38 jobs per employee.

Comparison of FTE Job Generation Rates Applying County Wide and Local Multiple Job Holding Ratios

	Retail Establishments FTE/1000 sqft	Food/Bev. Establishments FTE/1000 sqft	Retail/F&B Establishments FTE/1000 sqft
Summit County 1.31 jobs/employee	3.1	4.2	3.7
Keystone 1.38 jobs/employee	2.9	4.0	3.6

Hotel/lodge and Multi-family Job Generation

We suggest that Keystone Resort and Summit County consider updating the job generation rates for hotel/lodge and property management companies in the Keystone PUD with Keystone specific data (hotel/lodge generation rate of 0.48/room and a property management generation rate of 0.13/unit). Thus, the results will accurately reflect the FTE calculation requirements of the PUD. Additionally, we suggest including hotel/lodge and multi-family properties in the update to the Study of Employee Generation Rates occurring every three years.

If the merged database is to continue to be used as defined in the current PUD, to be consistent with the data collection method, the application of the hotel/lodge generation rate should apply to the hotel in its' entirety. Separate generation rates should not additionally be applied to restaurant/bar facilities within the hotel. Within the merged database, the employee generation for hotel/lodge properties varies significantly by property type. For example, a luxury/upscale resort hotel with a spa, restaurant, room service etc. might have a job generation rate of between 2 and 3/room. A small hotel with only front desk service might have a generation rate between 0.01 and 0.4. Some communities have recognized the large variance in hotel generation rates and have provided the option for an independent calculation of the number of employees to be generated by the proposed development.

**TETON VILLAGE AREA
TRANSPORTATION DEMAND
MANAGEMENT REPORT**

**2007 and 2008
WINTER SEASONS**

Prepared for:

Teton Village Association
P.O. Box 866
Teton Village, Wyoming 83025

and

Jackson Hole Mountain Resort
P.O. Box 290
Teton Village, Wyoming 83025

Prepared by:

Felsburg Holt & Ullevig
6300 South Syracuse Way, Suite 600
Centennial, CO 80111
303/721-1440

Project Manager: Jeff Ream, P.E., PTOE

FHU Reference No. 09-017
March 2009

What is your anticipated length of stay in Teton Village?

	2003	2006	2008
1 or more nights ¹	22%	19%	13%
Full day	60%	58%	68%
Half day	14%	18%	13%
0 - 3 hours	4%	5%	6%

1. Includes patrons who live in Teton Village.

In addition to the above questions, patrons also provided information on their pickup location and comments on the START system. Due to the large variety of responses, the information is not included here, but has been included in Appendix C.

B.4. Employee Surveys

Travel habits of employees working at Teton Village were surveyed every year between 2000 and 2004, but due to complaints about the frequency, were scaled back to every other year beginning in 2006. To ensure that a significant number of employees were queried, since 2003 surveys have been handed out to JHMR employees in their paycheck envelope and given to managers of other various properties in the Village to be distributed to their employees. Employees were asked about their specific travel habits on the Wednesday of peak week and the Saturday of peak week, with the results reported representing the average of the two days. 724 responses were received in 2008 and 736 in 2006.

The following is the summary of the survey results. Where relevant, comparisons were made to data collected in 2000 – 2002, but because the survey was revised in 2003 to better capture the reasons behind employee travel habits, in some cases no comparisons were possible.

Purpose of trip to Teton Village:

Trip Purpose	2003	2004	2006	2008
Work	71%	72%	74%	77%
Alpine skiing/snowboarding	23%	21%	25%	22%
Living in TV	5%	0%	0%	1%
Nordic skiing	1%	1%	1%	1%
Other	1%	0%	0%	0%

How do you get to work on most days (mode of travel to Teton Village)?

Mode	2000	2001	2002	2003	2004	2006	2008
Car ¹	73%	53%	82%	74%	55%	42%	40%
Bus	24%	41%	18%	26%	45%	55%	59%
Other	3%	6%	0%	0%	0%	4%	1%

1. Includes employees who arrive via both single occupancy vehicles and carpooling vehicles

If you drive a car, what is the total vehicle occupancy?

	2000	2001	2002	2003	2004	2006	2008
Average Occupancy	1.57	1.52	1.66	1.56	2.20	1.84	1.91

Where do you park if you drive?

Lot	2003	2004	2006	2008
Ranch	41%	66%	53%	48%
Village	28%	10%	16%	16%
Cody	5%	2%	9%	14%
Crystal Springs	4%	13%	1%	6%
Other	22%	14%	21%	15%

Where do you live?

Location	2003	2004	2006	2008
In Town	52%	54%	49%	55%
Teton Village Road	14%	14%	13%	12%
Wilson	9%	9%	11%	1%
Idaho	7%	7%	9%	7%
Hoback	1%	2%	3%	9%
South Park	6%	6%	3%	2%
Teton Village	3%	3%	4%	4%
Other	8%	5%	8%	5%

What kind of pass do you have?

Pass Type	2003	2004	2006	2008
Season lift pass	75%	79%	27%	29%
START pass	25%	21%	20%	22%
Employer ID with START Privileges	--	--	52%	49%
Seasons Pass with No START Pass	--	--	1%	0%

If public transportation served your origin/destination better would you use it for trips to Teton Village?

	2003	2004	2006	2008
Yes	71%	79%	76%	85%
No	29%	21%	24%	15%

In addition to the above questions, employees that did not use transit or carpool were asked to list the reasons why they chose to drive alone to Teton Village. The most frequent responses this past season were that they either worked too early or too late to use the bus system. Due to a large number of reasons in both years, the complete list of responses is not included here, but is presented in Appendix C.

MEMO

TO: Town Council

FROM: Laurie Best
Michael Mosher

RE: Proposed Modification to Stan Miller Annexation Agreement

DATE: December 1, 2009 (for December 8th meeting)

In January of 2008, the Town entered into an annexation agreement (reception number 88622) with Joseph Miller and Braddock Holdings, LLC concerning the terms and conditions for annexation of approximately 40 acres that is located at the north end of Town west of the Breckenridge Building Center.

Braddock Holdings, LLC is now requesting a modification to the annexation agreement to allow some changes to the unit type and count. These changes are to occur on the property owned by Braddock Holdings and identified as Tract F on the approved Master Plan.

According to the owner, this is in response to changing market conditions and would allow Braddock Holdings, LLC to build additional smaller units (duplexes) as opposed to the larger single family homes as originally planned. It also would convert some of the restricted units from townhouse to duplex allowing the construction as demand occurs and eliminating risk. The changes would require a modification to the annexation agreement and to the previously approved master plan. Before formally submitting the annexation agreement modifications, staff and the owner wanted to discuss the changes with the Council to determine if there is support for this modification.

On November 17, 2009 the Planning Commission reviewed this proposal during worksession to evaluate the fit and supported staff's preliminary point analysis. It should be noted that the point analysis includes 10 positive points for Policy 24R (housing) and 9 negative points for Policy 9R (setbacks). The proposed density is 4.43 UPA which meets the Land Use District 33 density limit of 4.5 UPA.

Annexation Agreement Background

According to the 2008 agreement, the 40 acre annexed property along with a 2.29 acre adjacent parcel would be developed into 100 deed restricted units and 55 market units. The density for the deed restricted units would be provided by the Town either by transfer or by exemption and the density for the market units, including 7 TDRs, would be provided by the property owner. The owner subsequently obtained a development agreement for extended vesting (18 years) and a master plan for the property.

The owner is requesting five additional deed restricted units for a total of 105 deed restricted units and two additional market units for a total of 57 market units. If approved, they intend to substitute twenty deed restricted duplexes and two deed restricted single family homes for eleven deed restricted townhomes and six deed restricted single family homes that were originally planned. In addition they intend to substitute eighteen market duplexes and six market single

family homes for twenty-two market single family homes that were originally planned. The owner has indicated they intend to partner with Habitat for Humanity to construct the deed restricted units. The modification will result in more units priced at lower AMIs (under 125%) and fewer units priced at higher AMIs (150% and 180%) and a revised release rate for the market units in Phase 1. Instead of a release rate of one Unrestricted market Unit for each deed Restricted Unit the owner is requesting twelve market units to be released after ownership of the first duplex lot is transferred to Habitat for Humanity. Thereafter, the release rate for Phase 1 is proposed at one Unrestricted Unit for each Restricted Unit that is sold within the affordable purchase price. The release rate for Phase 2 will not change (one Unrestricted Unit for every 3 Restricted Units sold within the affordable purchase price).

The specific changes to the annexation agreement are highlighted in red on a copy of the annexation agreement attached. There are no changes proposed to the public trails, the four pocket parks, public open space, and eight public parking. The owner has completed the right of way and river restoration public improvements that were required as part of the annexation agreement. If the proposed changes are acceptable, Braddock Holdings will have an amendment to the annexation agreement prepared for your approval by resolution at your next meeting.

Recommendation

Staff and the Planning Commission endorse the modifications because it adds additional deed restricted units in a location that can accommodate the density and is already planned for development. If the Council is supportive of the modification staff will prepare a resolution for your consideration.

Anticipated Changes shown in RED-December 1, 2009
For Council Worksession December 8, 2009
ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is dated _____, 2008 and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town"), JOSEPH S. MILLER ("Miller")-note: owner changed to SMI Land LLC, Kermit Miller, owner, and BRADDOCK HOLDINGS, LLC, a Colorado limited liability company ("Braddock"). Miller and Braddock are collectively referred to in this Agreement as ("Owner").

WHEREAS, Miller owns the real property described in **Exhibit "A"** ("Annexation Property"); and

WHEREAS, Braddock owns the 2.29 Acre Parcel (as hereafter defined) and is acquiring the Sale Parcel (as hereafter defined); and

WHEREAS, Miller proposes the annexation of the Annexation Property to the Town; and

WHEREAS, the Town has determined that it would be in the best interest of the public health, safety, and welfare of its citizens to impose certain terms and conditions on the Owner in connection with the annexation of the Annexation Property to the Town; and

WHEREAS, Owner and Town have come to an Agreement with respect to the terms and conditions of the annexation of the Annexation Property to the Town, all as more fully set forth hereafter.

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** As used in this Agreement, unless the context clearly requires otherwise:

"2.29 Acre Parcel" means that parcel of land already located within the boundaries of the Town as of the date of this Agreement as described on the attached **Exhibit "B"**.

"AMI" means Area Median Income for Summit County, Colorado published by the United States Department of Housing and Urban Development, or if no longer published, any successor index.

"Annexation Ordinance" means the ordinance adopted by the Town Council of the Town of Breckenridge pursuant to the Municipal Annexation Act of 1965 (Section 31-12-101, et seq., C.R.S.) officially annexing the Annexation Property to the Town of Breckenridge.

ANNEXATION AGREEMENT

1 "Annexation Property" means that certain real property described on the attached **Exhibit**
2 **"A"**.

3
4 "Annexation Surcharge" or "Surcharge" means the fee due and payable to the Town
5 pursuant to Section 8 of this Agreement. Such fee shall be paid to the Town as a general
6 annexation fee and in lieu of the transfer of raw water to the Town by the Owner.
7

8 "Applicable Town Ordinances" means all ordinances of the Town which regulate the
9 development, subdivision, and use of the Master Planned Property, as in effect from time
10 to time. Such ordinances shall include, but shall not be limited to, the Town's:
11

- 12 (i) Development Code;
- 13 (ii) Street Standards;
- 14 (iii) Lighting Ordinance;
- 15 (iv) Drainage Ordinance;
- 16 (v) Flood Prevention Ordinance;
- 17 (vi) Water Quality Ordinance;
- 18 (vii) Subdivision Ordinance;
- 19 (viii) Building, Technical and Construction Codes;
- 20 (ix) ordinances concerning annexation/water surcharges;
- 21 (x) ordinances concerning payment of fees;
- 22 (xi) ordinances concerning public dedications; and
- 23 (xii) all other applicable Town Ordinances, Resolutions, regulations and polices.

24 "Braddock" means Braddock Holdings, LLC, a Colorado limited liability company, its
25 successors and assigns, and all other subsequent owners of Braddock's interest in the
26 Master Planned Property.
27

28 "Development Permit" means Development Permit No. 2008006 issued or to be issued
29 by the Town approving a master plan for the Master Planned Property, and any
30 amendments thereto subsequently approved by the Town through its land use regulatory
31 system.
32

33 "Guidelines" means the Town of Breckenridge Affordable Housing Guidelines, as
34 amended from time to time by the Town Council following a public hearing.

ANNEXATION AGREEMENT

1
2 “Key Employee” means an employee of a business, private organization, or
3 governmental entity providing essential services in Summit County, Colorado as
4 determined by the Town, including, but not limited to, (i) municipal employees; (ii)
5 Summit School District employees; and (iii) emergency and medical personnel.

6
7 “Master Plan” means the master plan approved by the Development Permit.

8
9 “Master Planned Property” means both the Annexation Property and the 2.29 Acre
10 Parcel.

11
12 “Miller” means Joseph S. Miller, his successors and assigns, and all other subsequent
13 owners of Miller’s interest in the Master Planned Property.

14
15 “Owner” means Miller and Braddock collectively, their successors and assigns, and all
16 other subsequent owners of the Master Planned Property, or any interest therein.

17
18 “Owner-Occupied Restricted Units” means the Restricted Units described in Section
19 3.8(c).

20
21 “Phase I” means the 2.29 Acre Parcel and the Sale Parcel together.

22
23 “Phase II” means the Remainder Parcel.

24
25 “PIF” means the current Town Plant Investment Fee as provided for by the Ordinances or
26 regulations of the Town at the time such charges are due and payable to the Town as
27 provided in Section 7 of this Agreement.

28
29 “Remainder Parcel” means all of the Master Planned Property except for the Sale Parcel
30 and the 2.29 Acre Parcel.

31
32 “Rental Restricted Units” means the Restricted Units described in Section 3.8(d).

33
34 “Restricted Units” means the ~~400-105~~ residential Units approved for construction on the
35 Master Planned Property pursuant to the Development Permit which are to be and shall
36 remain in perpetuity subject to the Restrictive Covenants, including both the Owner-
37 Occupied Restricted Units and the Rental Restricted Units. Unless otherwise indicated,
38 the term “Restricted Units” includes both the Owner-Occupied Restricted Units and the
39 Rental Restricted Units.

40
41 “Restrictive Covenants” collectively means the restrictive covenant executed by
42 Braddock encumbering the Master Planned Property for the benefit of the Town as
43 described in Section 3.8 of this Agreement, and the restrictive covenants executed by

ANNEXATION AGREEMENT

1 Owner encumbering the Remainder Parcel for the benefit of the Town as described in
2 Section 3.8 of this Agreement.

3
4 “Sale Parcel” means the northerly portion of the Master Planned Property consisting of
5 approximately 12 acres that owner intends to sell to Braddock.

6
7 “SFE” means a single family equivalent of density as defined by the Applicable Town
8 Ordinances.

9
10 “TDR” means a transferable development right as created pursuant to the
11 intergovernmental agreement between the Town and the Board of County Commissioners
12 of Summit County, Colorado.

13
14 “Units” includes both the Restricted Units and the Unrestricted Units.

15
16 “Unrestricted Units” means the ~~55-57~~ residential Units approved for construction on the
17 Master Planned Property pursuant to the Development Permit which are not Restricted
18 Units.

19
20 “Upper Blue Employee” mean an employee of a business physically located in and
21 serving the Upper Blue River Basin.

22
23 “Upper Blue River Basin” means the geographic area bounded by Farmers Korner to the
24 north; Hoosier Pass to the south; the Continental Divide to the East; and the top of the
25 Ten Mile Range to the west.

26
27
28 2. **DEVELOPMENT SUBJECT TO APPLICABLE TOWN ORDINANCES AND**
29 **DEVELOPMENT PERMIT.** Upon the annexation to the Town, development of the
30 Master Planned Property shall conform in all respects with the Applicable Town
31 Ordinances and the Development Permit. The Master Planned Property shall only be
32 developed in accordance with this Agreement and the Development Permit. All parties
33 acknowledge that pursuant to Section 31-12-115, C.R.S., the Development Permit shall
34 not become effective until the Annexation Ordinance has been passed on final reading.

35 3. **PROPOSED USE OF THE MASTER PLANNED PROPERTY.**

36 3.1 **Land Use District Designation.** Upon annexation the Annexation Property shall
37 be placed in Land Use District 33 and Land Use District 1. However, all of the
38 development of the Master Planned Property will occur in Land Use District 33,
39 and no development of the Master Planned Property shall be permitted within
40 Land Use District 1.

1 3.2 **General Development Concept.** The general development concept for the
2 Master Planned Property is as follows:

- 3 (a) **Single Master Plan.** The Annexation Property and the 2.29 Acre Parcel
4 shall be developed pursuant to a single master plan approved in
5 accordance with Policy 39(Absolute) of the Town’s Development Code.
- 6 (b) **Units.** The Master Plan shall provide for development of a maximum of
7 ~~155-162~~ Units on the Master Planned Property. One hundred of the Units
8 shall be Restricted Units, and ~~55-57~~ of the Units shall be Unrestricted
9 Units. The Restricted Units shall include not less than ~~659~~ Owner-
10 Occupied Restricted Units, and the remainder of the Restricted Units may
11 be Rental Restricted Units if located on the Remainder Parcel in a multi-
12 family configuration approved pursuant to the Master Plan.
- 13 (c) **Density.** The ~~155-162~~ SFEs of density required for the development of the
14 Master Planned Property shall be provided as follows:
- 15 (i) 22 SFEs already exist within the Town as of the date of this
16 Agreement (19 SFEs to be transferred to the Master Planned
17 Property from Braddock’s adjacent “Braddock Flats” parcel and 3
18 SFEs that currently exist on the 2.29 Acre Parcel);
- 19 (ii) 26 SFEs exist on the Annexation Property under Summit County
20 zoning as of the date of this Agreement;
- 21 (iii) If required to complete the development of the ~~575~~ Unrestricted
22 Units, ~~7-9~~ TDRs are to be purchased for the development of the
23 Master Planned Property; and
- 24 (iv) ~~100-105 or 109.75 (TBD)~~ SFEs are to be provided by the Town
25 pursuant to Section 3.5.
- 26 (d) **Phasing; Extended Vested Property Rights.** The Town acknowledges
27 that the Owner intends to sell the Sale Parcel to Braddock, and that
28 Braddock intends to develop the Sale Parcel as soon as possible. The
29 development of the Sale Parcel is planned to include ~~17-22~~ Restricted
30 Units and ~~242~~ Unrestricted Units. The Town further acknowledges that the
31 Owner intends to continue the current operations of Stan Miller, Inc. on
32 the Remainder Parcel for approximately 10 years and that development of
33 Units on the Remainder Parcel is not likely to occur until after those
34 current operations cease.

35 The development of the Master Planned Property shall be phased over a
36 period of approximately 18 years, and the Owner will request of the Town

ANNEXATION AGREEMENT

1 18 years of extended vested property rights for the Development Permit to
2 reflect such phasing. Phase I will be undertaken by Braddock commencing
3 in 2009 and is expected to be completed in five to six years. Phase II will
4 be undertaken by Miller, and is expected to be completed by the end of
5 2027.

6 | 3.3 **Construction of Restricted Units.** The ~~1050~~ Restricted Units shall be
7 constructed in accordance with the following schedule:

8 | (a) ~~17-22~~ of the Restricted Units shall be constructed as part of Phase I; and

9 (b) the remaining 83 Restricted Units shall be constructed as part of Phase II.

10 3.4 **Development Density In Land Use District 33.** The Town of Breckenridge Land
11 Use District Guidelines which are in effect as of the date of this Agreement
12 provide that a 1 to 75 floor area ratio is acceptable for service commercial
13 development in Land Use District 33. However, the parties acknowledge that the
14 Town staff has recommended to the Town Council that the Land Use District
15 Guidelines for Land Use District 33 be amended to provide that a density of
16 approximately 4.5 units per acre is acceptable for residential development in Land
17 Use District 33 if the new Town density to be developed consists of not less than
18 seventy five percent (75%) affordable housing units that are encumbered with a
19 Town-approved restrictive covenant. Such an amendment is required in order for
20 the Development Permit to be approved. The staff's recommendation has not been
21 approved or acted upon by the Town as of the date of this Agreement. Nothing in
22 this Agreement shall obligate the Town to adopt the proposed amendments to the
23 Land Use District Guidelines for Land Use District 33. If such amendments are
24 not adopted within one year of the date of this Agreement, the Owner shall have
25 the rights and remedies provided in Section 12 of this Agreement.

26 3.5 **Transfer of Density.** Within 60 days after the last of the contingencies in Section
27 12 have been satisfied, the Town shall provide the density necessary for the
28 development of the Restricted Units by transfer or exemption, and, if by transfer,
29 the Town and the Owner shall enter into and record a density transfer agreement
30 and covenant in a form acceptable to the Town Attorney.

31 | 3.6 **Purchase of TDRs.** Owner shall pay the cost of purchasing the ~~97~~ TDRs required
32 for the development of the Master Planned Property if required to complete the
33 development of the ~~575~~ Unrestricted Units, and Town shall have no liability for
34 such cost. The timing for the purchase of the ~~97~~ TDRs for the Master Planned
35 Property shall be determined in connection with the approval of the Master Plan.

36 3.7 **Minimum Unit Sizes.** The minimum size for the 100 Restricted Units shall be as
37 follows: one-bedroom Restricted Units shall be a minimum of 600 square feet in
38 size; two-bedroom Restricted Units shall be a minimum of 900 square feet in size;

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1 and three-bedroom Restricted Units shall be a minimum of 1200 square feet in
2 size. There shall be no minimum size for the Unrestricted Units.

3 **3.8 Restrictive Covenants.**

4 **(a) Restrictive Covenants—Filing Against Master Planned Property.**

5 (i) At the time of the issuance of the first building permit for the
6 construction of improvements to the Sale Parcel, Braddock shall
7 execute and file the Restrictive Covenant for the Sale Parcel with
8 the Clerk and Recorder of Summit County, Colorado. As
9 originally filed, the Restrictive Covenant for the Sale Parcel shall
10 encumber both the Restricted Units and the Unrestricted Units.
11 The Unrestricted Units may be released from the Restrictive
12 Covenant as provided in Section 3.8(g).

13 (ii) At the time of the issuance of the first building permit for the
14 construction of improvements to the Remainder Parcel, Miller
15 shall execute and file the Restrictive Covenant for the Remainder
16 Parcel with the Clerk and Recorder of Summit County, Colorado.
17 As originally filed, the Restrictive Covenant for the Remainder
18 Parcel shall encumber both the Restricted Units and the
19 Unrestricted Units. The Unrestricted Units may be released from
20 the Restrictive Covenant as provided in Section 3.8(g).

21 **(b) Restrictive Covenant—Approval, Priority and Required General**
22 **Topics.** The forms of the Restrictive Covenants shall be subject to the
23 approval of the Town, and neither Miller nor Braddock shall file the
24 Restrictive Covenants until they have been reviewed and approved by the
25 Town. At the time of recording, the Restrictive Covenants shall be
26 superior in priority to all liens and encumbrances against the Sale Parcel
27 and the Remainder Parcel, except for the lien of the general property taxes
28 for the year in which a Restrictive Covenant is recorded and subsequent
29 years. The Restrictive Covenants shall contain, without limitation,
30 provisions regulating and limiting: (i) the ownership of each Restricted
31 Unit; (ii) the occupancy and use of each Restricted Unit; (iii) the sale and
32 resale of each Restricted Unit; and (iv) remedies for the breach or other
33 violation of the Restrictive Covenant.

34 **(c) Restrictive Covenants—Mandatory Provisions Re: Owner-Occupied**
35 **Restricted Units.** It shall be the stated intent of the Owner-Occupied
36 Restrictive Covenants to ensure that each Owner-Occupied Restricted Unit
37 is the exclusive and permanent residence of the owner of such unit.
38 Therefore, and without limiting the generality of Section 3.8(b), the
39 Restrictive Covenants shall provide that (i) each Owner-Occupied

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1 Restricted Unit shall be owned only by a natural person, unless otherwise
2 allowed by the terms of the Restrictive Covenant; (ii) each owner of a
3 Owner-Occupied Restricted Unit shall be a 18 years of age or older who,
4 during the entire period of his or her occupancy of the Owner-Occupied
5 Restricted Unit earns his or her living by working in Summit County,
6 Colorado an average of at least 30 hours per week for a business
7 physically located in Summit County, Colorado and providing goods or
8 services to persons located primarily in Summit County, Colorado; and
9 (iii) at all times, an owner of a Owner-Occupied Restricted Unit shall: (a)
10 occupy the Owner-Occupied Restricted Unit as his or her sole place of
11 residence, unless otherwise allowed by the terms of the applicable
12 Restrictive Covenant, (b) not engage in any business activity on or in such
13 Owner-Occupied Restricted Unit, other than as permitted in the applicable
14 land use regulations of the Town or by applicable Town ordinance, (c) sell
15 or transfer the Owner-Occupied Restricted Unit only in accordance with
16 the terms, conditions and limitations of the applicable Restrictive
17 Covenant, (d) not sell or otherwise transfer the Owner-Occupied
18 Restricted Unit for use in a trade or business, (e) not permit any use of
19 occupancy of the Owner-Occupied Restricted Unit except in compliance
20 with the terms, conditions and limitations of the applicable Restrictive
21 Covenant, and (f) not encumber the Owner-Occupied Restricted Unit in an
22 amount in excess of the owner's purchase price.

- 23 (d) **Restrictive Covenants—Mandatory Provisions Re: Rental Restricted**
24 **Units.** It shall be the stated intent of the Rental Restrictive Covenants to
25 ensure that each Rental Restricted Unit is the exclusive residence of the
26 tenant of such unit. Therefore, and without limiting the generality of
27 Section 3.8(b), the Restrictive Covenants shall provide that (i) each
28 Rental Restricted Unit may be owned by any legal entity capable of taking
29 title to such Rental Restricted Unit under Colorado law; (ii) each tenant of
30 a Rental Restricted Unit shall be a 18 years of age or older who, during
31 the entire period of his or her occupancy of the Restricted Unit earns his or
32 her living by working in Summit County, Colorado an average of at least
33 30 hours per week for a business physically located in Summit County,
34 Colorado and providing goods or services to persons located primarily in
35 Summit County, Colorado; and (iii) each tenant of a Rental Restricted
36 Unit shall: (a) occupy the Restricted Unit as his or her sole place of
37 residence, unless otherwise allowed by the terms of the applicable
38 Restrictive Covenant, and (b) not engage in any business activity on or in
39 such Restricted Unit, other than as permitted in the applicable land use
40 regulations of the Town or by applicable Town ordinance. At all times, an
41 owner of a Rental Restricted Unit shall: (i) sell or transfer the Rental
42 Restricted Unit only in accordance with the terms, conditions and
43 limitations of the applicable Restrictive Covenant, (ii) not sell or otherwise

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1 transfer the Rental Restricted Unit for use in a trade or business, (iii) and
2 not permit any use of occupancy of the Rental Restricted Unit except in
3 compliance with the terms, conditions and limitations of the applicable
4 Restrictive Covenant.

- 5 (e) **Restrictive Covenants—Exceptions.** The Restrictive Covenants shall
6 provide that it shall not be a violation of the Restrictive Covenants if: (i)
7 rooms within a Owner-Occupied Restricted Unit are rented to qualified
8 occupants sharing the Owner-Occupied Restricted Unit with the unit
9 owner; (ii) a Owner-Occupied Restricted Unit is rented for use and
10 occupancy as qualifying employee housing for a maximum cumulative
11 total of 12 months during the time of ownership by a unit owner or while
12 the Owner-Occupied Restricted Unit is initially being marketed by the
13 Owner; (iii) a Owner-Occupied Restricted Unit is owned or occupied by a
14 person age 65 years or older who has owned and occupied the unit and
15 worked at paid employment in Summit County, Colorado at least 30 hours
16 per week on an annual basis, for the previous 7 years, together with such
17 person’s spouse and minor children, if any; (iv) a Owner-Occupied
18 Restricted Unit is owned or occupied by a person otherwise authorized to
19 own or occupy the Owner-Occupied Restricted Unit pursuant to the
20 applicable Restrictive Covenant who becomes disabled after commencing
21 ownership or occupancy of the Owner-Occupied Restricted Unit such that
22 he or she cannot work the required number of hours each week required
23 by the applicable Restrictive Covenant, provided, however, that such
24 person shall be permitted to own or rent the Owner-Occupied Restricted
25 Unit for a maximum period of one year following the commencement of
26 such person’s disability unless a longer period of ownership or occupancy
27 is authorized by the Town; and (v) guests visiting a qualified occupant and
28 paying no rent or other consideration.

29 (f) **Restrictive Covenants—Sale and Resale Limitations.**

- 30 (i) **Initial Sale Price.** The Restrictive Covenants shall contain
31 provisions governing the sale and resale of each of the Restricted
32 Units. Unless otherwise agreed by the Town, the Restrictive
33 Covenants taken together shall provide that: (i) ~~52-54~~ of the
34 Restricted Units will initially be sold by the Owner at a price that
35 is equal to or less than 100% of the AMI based on the most current
36 data as of the date of sale; provided, however, that there is no
37 required initial sales price for any building containing Rental
38 Restricted Units; (ii) ~~3830~~ of the Restricted Units will initially be
39 sold by the Owner at a price that is equal to or less than 125% of
40 the AMI for Summit County, Colorado based on the most current
41 data as of the date of sale; (iii) ~~45-11~~ of the Restrictive Units will

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1 Initially be sold by the Owner at a price that is equal to or less than
2 150% of the AMI for Summit County, Colorado based on the most
3 current data as of the date of sale; (iv) 23 of the Restricted Units
4 will initially be sold by the Owner at a price that is equal to or less
5 than 180% of the AMI for Summit County, Colorado based on the
6 most current data as of the date of sale; and (v) each prospective
7 purchaser of a Restricted Unit shall meet income testing standards
8 acceptable to the Town and consistent with the requirements of the
9 applicable Restrictive Covenant. The affordable price calculations
10 shall include the following: (i) a purchase price shall not exceed
11 30% of gross household income adjusted for household size based
12 on average regional interest rates for a 30 year fixed-rate loan at an
13 interest rate not to exceed 7.5 per cent (7.5%) per annum, based on
14 the Federal Home Loan Mortgage Corporation (Freddie Mac®)
15 index, or other index acceptable the Town; (ii) 10% down
16 payment; (iii) \$250 monthly expenses (homeowner association
17 dues; insurance; taxes); and (iv) a family size based on 1.5 persons
18 per bedroom.

19 (ii) **Income Testing Standards—Owner-Occupied Restricted Units.**

20 The Town's methodology for performing income testing for the
21 Owner-Occupied Restricted Units shall be substantially as follows:
22 (i) determine the size of the prospective purchaser's household
23 (this is based on the number of bedrooms in the particular Owner-
24 Occupied Restricted Unit and a factor of 1.5 persons per bedroom
25 [i.e., a two bedroom Owner-Occupied Restricted Unit equates to a
26 three person household regardless of the actual size of the
27 prospective purchaser's family]); (ii) determine the AMI target for
28 the particular Owner-Occupied Restricted Unit (either 100%,
29 125%, 150% or 180%); (iii) determine the prospective purchaser's
30 maximum allowed income using the AMI in effect at the time of
31 sale for the applicable household size and the AMI percent
32 calculated in item (ii); and (iv) determine the prospective
33 purchaser's most recent annual adjusted gross income based on the
34 prospective purchaser's federal income tax and pay records. A
35 prospective purchaser shall be qualified to purchase an Owner-
36 Occupied Restricted Unit if his or her adjusted gross income does
37 not exceed the maximum allowed income by more than ten percent
38 (i.e., a prospective purchaser may qualify to purchase a 100% AMI
39 Owner-Occupied Restricted Unit if his or her income does not
40 exceed 110% of the AMI). Income testing is required at the time
41 of the initial sale of an Owner-Occupied Restricted Unit by the
42 Owner, and on each subsequent resale.

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- (iii) **Income Testing Standards—Rental Restricted Units.** The Town’s income testing standards for the Rental Restricted Units shall be designed and implemented so as to make the Rental Restricted Units available for rental by persons earning 100% or less of the AMI.
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- (iv) **Initial Marketing Restriction—Owner-Occupied Restricted Units.** Owner-Occupied Restricted Units shall initially be marketed to Upper Blue Employees or Key Employees. If, after 60 days of actively marketing an Owner-Occupied Restricted Unit to an Upper Blue Employees and Key Employees, the Owner is unable to enter into an acceptable sales contract with an Upper Blue Employee or a Key Employee, then the Owner-Occupied Restricted Unit may be sold to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee).
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- (v) **Initial Marketing Restriction—Rental Restricted Units.** Rental Restricted Units shall initially be made available for rental to Upper Blue Employees and Key Employees. If, after 60 days of actively soliciting the rental of an Rental Restricted Unit by an Upper Blue Employee or a Key Employee, the owner is unable to rent the Rental Restricted Unit to either an Upper Blue Employee or a Key Employee, then the Rental Restricted Unit may be rented to an employee of a business physically located in and serving Summit County, Colorado (even though such person is neither an Upper Blue Employee nor a Key Employee). After the initial 60 day period described above, if a Rental Restricted Unit becomes available for rental a qualified Upper Blue Employee or a qualified Key Employee shall be given preference over all other prospective tenants.
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- (vi) **Resale Price Limit.** Subsequent to the initial sale of an Owner-Occupied Restricted Unit by the Owner, the total price for which such Owner-Occupied Restricted Unit may be re-sold shall be determined as follows:
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- (1) The selling owner’s purchase price at the time of the acquisition of the Owner-Occupied Restricted Unit, exclusive of any real estate commission paid at the time of acquisition, shall be the Base Price Limit.
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- (2) The Base Price Limit shall be increased to reflect a cost of living adjustment. Such amount shall be the selling

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owner's "Adjusted Price Limit." The Adjusted Price Limit shall be the lesser of:

The Base Price Limit	X	.0025	X	the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Residential Unit	+	The Base Price Limit ¹	=	ADJUSTED PRICE LIMIT
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OR

The Base Price Limit	X	100% of AMI most recently released prior to the selling owner's sale	÷	100% of AMI in effect at the time of the selling owner's purchase of the Residential Unit ²	=	ADJUSTED PRICE LIMIT
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- (3) The resale price of any Owner-Occupied Residential Unit shall not exceed such Adjusted Price Limit. The Adjusted Price Limit shall not take into consideration any capital improvements made to the Owner-Occupied Restricted Unit by the selling owner, nor any real estate commission paid by the selling unit owner.
- (4) Notwithstanding anything contained in the Restrictive Covenant to the contrary, the Adjusted Price Limit shall never be less than the purchase price actually paid by the selling owner for the Owner-Occupied Restricted Unit.
- (5) If the owner of a Restricted Unit sells the Owner-Occupied Restricted Unit through the services of the Summit Housing

¹ The Base Price Limit multiplied by one quarter of one percent (0.25%) multiplied by the number of whole months from the date of a Unit Owner's purchase to the date of a Unit Owner's sale of the Owner-Occupied Restricted Unit plus the Base Price Limit.

² The Base Price Limit multiplied by a fraction the numerator of which is the 100% of AMI most recently released prior to a selling owner's sale and the denominator of which is the 100% of AMI in effect at the time of the selling owner's purchase of the Owner-Occupied Restricted Unit.

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1 Authority, a commission of not more than 2% of the
2 Adjusted Price Limit may be paid to the Summit Housing
3 Authority.

4 (vii) **Appreciation Limiting Note and Deed of Trust.** Compliance
5 with the terms and conditions of the Restrictive Covenant shall be
6 secured by an “Appreciation-limiting Promissory Note and Deed
7 of Trust, in a form acceptable to the Town, which Note and Deed
8 of Trust shall be executed by each and every owner of an Owner-
9 Occupied Restricted Unit.

10 (g) **Release Ratio For Unrestricted Units.** In Phase I, ~~one~~ 12 Unrestricted
11 Units may be released from the Restrictive Covenant upon transfer of one
12 duplex lot to Habitat for Humanity for no consideration after approval of
13 the amendment to the Master Plan. After 12 Unrestricted Units have been
14 released from the Restrictive Covenant, 1 additional Unrestricted Unit
15 may be released from the Restrictive Covenant for each Restricted Unit
16 sold within the affordable purchase price range. All ~~17-22~~ Phase I
17 Restricted Units shall be sold prior to the last Phase I Unrestricted Unit
18 being sold. In Phase II, one Unrestricted Unit may be released from the
19 Restrictive Covenant for each three Restricted Units sold within the
20 affordable purchase price range.

21 (h) **Restrictive Covenants—Final Form.** The final form of the Restrictive
22 Covenants may include provisions which vary from the specific
23 requirements of Sections 3.8(c), 3.8(d), 3.8(e), and 3.8(f) only if the Town
24 Attorney approves such provisions as being fully consistent with the intent
25 of this Agreement, and with the standard housing covenant approved for
26 use within Summit County, Colorado. Once a Restrictive Covenant has
27 been recorded with the Summit County Clerk and Recorder, the provisions
28 of the Restrictive Covenant shall control over the provisions of this
29 Section 3.8.

30 (i) **Administrative Guidelines.** The Restrictive Covenants and the
31 Guidelines shall be interpreted in accordance with the following standards:

- 32 (1) to the extent the Guidelines are inconsistent with the
33 Restrictive Covenants, the Restrictive Covenant shall
34 control;
- 35 (2) to the extent the Restrictive Covenants are ambiguous or
36 unclear, the Guidelines shall control; and
- 37 (3) if the Guidelines are less burdensome or less restrictive
38 than the Restrictive Covenants, even if they are inconsistent

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1 with the Restrictive Covenants, the Guidelines shall
2 control.

3 4. **PUBLIC BENEFITS.** As public benefits and inducements to the Town to annex the
4 Annexation Property, Owner and Braddock shall provide the following at no cost to the
5 Town:

6 4.1 **Reclamation/Restoration of the Blue River.** The portion the Blue River running
7 along the westerly edge of the Master Planned Property shall be reclaimed and
8 restored in accordance with the Blue River Restoration Master Plan and the
9 Development Permit and permit for subdivision of the Master Planned
10 Property, as approved by the Town. The river edges will be reclaimed and
11 revegetated with natural landscaping and a soft surface trail will be created to link
12 to planned trails at the northerly and southerly edges of the river corridor. The
13 reclaimed/restored area, consisting of approximately 6.14 acres, will be dedicated
14 to the Town as public open space. The timing of the reclamation and restoration
15 of the Blue River, and the dedication of the 6.14 acres of public open space to the
16 Town, shall be established in the Master Plan.

17 4.2 **Right of Way Dedication; Construction of Stan Miller Drive.** A new 60 foot
18 wide right of way shall be dedicated to the Town and “Stan Miller Drive” shall be
19 constructed by Owner within the dedicated right of way extending from the
20 completed Tiger Road on the north to the soon-to-be completed Stan Miller Drive
21 on the south. In addition, the full-movement curb cut off of Highway 9 to the
22 current Stan Miller, Inc. business office will be abandoned. The timing of the
23 dedication of the right of way and the construction of Stan Miller Drive shall be
24 established in the Master Plan.

25 4.3 **Pocket Parks.** Four separate pocket parks will be placed on three acres of private
26 open space with public easements for access to the Blue River. Owner or
27 Braddock (as applicable) shall require the homeowners’ association for the
28 portion of the Master Planned Property where the pocket parks are located to
29 maintain the parks, but the public shall be allowed access to the pocket parks and
30 the river, and shall be provided not less than eight parking spaces within the
31 pocket parks, unless a smaller number is approved as part of the Master Plan. The
32 timing of the construction and dedication of the pocket parks shall be established
33 in the Master Plan.

34 4.4 **Restricted Units.** The parties acknowledge that the construction of the Restricted
35 Units will also provide a substantial public benefit.

36 4.5 **Form of Dedications.** All dedications required by this Section 4 shall be
37 evidenced by an appropriate general warranty deed conveying marketable fee
38 simple absolute title to the dedicated property to the Town, free and clear of all
39 liens and encumbrances except the lien of the general property taxes for the year

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1 of conveyance, and subsequent years. The dedicator shall provide the Town with
2 a title insurance policy in an amount of \$50,000 for each dedicated parcel. The
3 form and substance of the deeds and title insurance policies shall be subject to the
4 reasonable approval of the Town Attorney.

5 4.6 **Indemnification.** Owner and Braddock shall indemnify and defend the Town
6 from all costs and expenses, including, but not limited to, attorneys' fees and costs
7 of litigation, arising from the work and dedications required by this Section 4.

8 4.7 **Public Benefits for Extended Vesting.** While nothing in this Agreement shall
9 obligate the Town to provide extended vested property rights for the Development
10 Permit, Town acknowledges that if, in its discretion, extended vested property
11 rights for the Development Permit are granted, no public benefits other than those
12 set forth in this Section 4 shall be required of Owner or Braddock.

13 5. **UTILITY SERVICE AND PUBLIC IMPROVEMENTS.**

14 5.1 **Extensions of Utility Services and Public Improvements.** Owner shall pay all
15 costs for the design and construction of all public improvements and utility
16 services necessary to serve the Master Planned Property, including, but not
17 limited to, roads, curbs, gutters, sanitary and drainage sewers, water, street lights,
18 electricity, telephone, gas, and cable television service, all in accordance with
19 applicable Town or public utility company standards and specifications. Owner
20 shall dedicate to the Town and applicable public utility companies without charge,
21 free and clear of all liens and encumbrances, those easements and rights-of-way
22 necessary for installation and maintenance of said utility lines and other public
23 improvements, including public streets and trails, and in addition shall convey the
24 public improvements to the appropriate entity upon completion and acceptance of
25 the improvements.

26 5.2 **Sanitation District Connection Fees.** Without limiting the generality of Section
27 5.1, Owner shall pay all fees and charges required to connect the Units to the
28 Breckenridge Sanitation District.

29 5.3 **Reimbursement For Improvements.** Pursuant to Section 9-2-3-7 of the
30 Breckenridge Town Code, Owner may be eligible for reimbursement from future
31 connector(s) to the public improvements and utility services described in Section
32 5.1 which are extended by Owner to the Master Planned Property. Any claim for
33 reimbursement shall be subject to the provisions and requirements of said Section
34 9-2-3-7 of the Breckenridge Town Code, as the same may be amended from time
35 to time.

36 5.4 **Town Provision of Services.** Upon the extension of utility services and public
37 improvements as provided for in 5.1 above and acceptance by the Town of the
38 utility services and public improvements to be dedicated to the Town, the Town

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1 shall make available and provide all Town provided utilities and services to the
2 Master Planned Property and Units or other improvements served by such utility
3 services and public improvements on the normal and customary basis as such
4 utilities and services are provided and for the normal and customary charges for
5 such utilities and services, except as such charges may be waived by the Town as
6 hereinafter provided.

7 6. **PUBLIC DEDICATIONS.** Except as expressly provided in this Agreement, there are
8 no public dedications required as part of the annexation of the Annexation Property to the
9 Town. The need for road rights-of-ways, open space, and pedestrian, bicycle, and skier
10 access and trails will be evaluated during the subdivision process and site-specific
11 development review process, and dedications made in accordance with Town regulations
12 at such time.

13 7. **WATER CHARGES**

14 7.1 **PIF Charges.**

- 15 (a) Pursuant to Section 12-4-9(A)(2) of the Breckenridge Town Code, the
16 Town hereby waives the PIF charges for each of the Restricted Units.
- 17 (b) Owner shall pay to the Town applicable PIF charges for each of the
18 Unrestricted Units. Such charges shall be paid for each Unrestricted Unit
19 at or prior to the first to occur of connection of the Unrestricted Unit to the
20 Town's water utility system, or the issuance of a building permit for such
21 Unrestricted Unit. If, for any reason, an Unrestricted Unit is not owned by
22 the Owner at the time of the connection, the PIF shall be paid by the then-
23 current owner of such Unrestricted Unit.

24 7.2 **Water Rates.** Water users on the Master Planned Property (including owners of
25 both the Restricted Units and the Unrestricted Units) shall pay the then-current
26 rates for water service and other water charges paid by in-Town water users,
27 subject to all decreases or increases in fees adopted in accordance with Town
28 ordinances and regulations. Such water users are subject to all rules, regulations
29 and ordinances pertaining to the Town's water utility system, including all future
30 amendments.

31 8. **ANNEXATION SURCHARGE.**

32 8.1 **Surcharge Fees.**

- 33 (a) No Annexation Surcharge shall be required to be paid with respect to any
34 of the Restricted Units.

1 (b) An Annexation Surcharge shall be paid by the Owner to the Town for 33
2 of the Unrestricted Units, but not for the 22 Unrestricted Units to be
3 constructed using the 22 SFEs of density already within the Town for
4 which Annexation Surcharges previously were paid. The Annexation
5 Surcharges for the 33 Unrestricted Units shall be due and payable for each
6 Unrestricted Unit prior to the first to occur of: (i) connection of the
7 Unrestricted Unit to the Town's water utility system; or (ii) issuance of a
8 building permit for such Unrestricted Unit. The amount of the Annexation
9 Surcharge for each Unrestricted Unit shall be equal to the then-current PIF
10 charge per SFE at the time the Annexation Surcharge becomes due.

11 (c) Upon receipt of the Annexation Surcharges, such funds may be deposited
12 by the Town into the Town's General Fund.

13 9. **OTHER TOWN CHARGES:** The Town hereby waives the following fees, charges or
14 taxes:

- 15 A. application fees for the Development Permit;
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- 17 B. fees for future development permit applications, review of plans, building permits
18 and any similar application or permit fees for the future improvement of any
19 Restricted Unit; and
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- 21 C. real estate transfer taxes upon the transfer of any Restricted Unit.
- 22

23 Nothing contained herein shall constitute a waiver by the Town of its rights to collect all
24 of its normal and customary fees and taxes with respect to any portion of the Master
25 Planned Property except for the Restricted Units.

26

27 10. **VESTED PROPERTY RIGHTS.** The Owner hereby waives any and all vested
28 property rights that may exist on the Annexation Property. Further, nothing contained
29 herein shall be construed as to create a vested property right for the Master Planned
30 Property.

31 11. **NO RIGHT OF WAY DEVOTED TO AGRICULTURAL USE.** Owner states,
32 represents and warrants to Town that as of the date of this Agreement no portion of the
33 Annexation Property consists of a public transportation right-of-way, a customary or
34 regular use of which involves the movement of any agricultural vehicles and equipment
35 as defined in Section 31-12-115(6)(c), C.R.S. As such, the parties agree that the special
36 notice provisions of Section 31-12-115(6)(b), C.R.S., are not applicable to the annexation
37 of the Annexation Property to the Town.

ANNEXATION AGREEMENT

1 12. **ANNEXATION CONTINGENCIES.** Town and Owner agree that the annexation of
2 the Annexation Property and the effectiveness of this Agreement are contingent upon the
3 occurrence of all of the following events, and the annexation and this Agreement shall be
4 effective on the date on which the last of the following events occurs:

- 5 A. final approval by the Town of the Development Permit by the Town through its
6 land use regulatory system;
- 7
- 8 B. final adoption by the Town of an ordinance amending the Land Use District
9 Guidelines for Land Use District 33 as described in Section 3.4;
- 10
- 11 C. final adoption of an ordinance placing the Annexation Property into Land Use
12 Districts 1 and 33;
- 13
- 14 D. the Town and the Owner's agreement on the terms of the Restrictive Covenant;
15 and
- 16
- 17 E. Town's final approval of a Development Agreement providing not less than 18
18 years of extended vested property rights for the Development Permit,
- 19

20 provided, however, that, if all of the foregoing events have not occurred on or before one
21 year from the date hereof, then this Agreement shall be null and void and of no further
22 force or effect, and Owner may pursue disconnection of the Annexation Property from
23 the Town, and Town shall not object to such disconnection.
24

25 13. **PERIODIC REVIEW OF AGREEMENT.** Miller, Braddock, and Town agree that for
26 so long as either Miller or Braddock own any of the Master Planned Property, they will
27 meet and confer at least each five years to determine if changed conditions suggest that
28 modifications to either this Agreement or to the Restrictive Covenants are appropriate.
29 The parties agree to meet and confer sooner than each five years if the prevailing interest
30 rate on a 30 year fixed rate mortgage increases above 7.5 per cent (7.5%) per annum, or
31 thereafter by more than two percentage points at any time.

32 14. **MISCELLANEOUS.**

33 14.1 **Effective Date.** This Agreement is contingent upon the Town approval of the
34 annexation and shall become effective as of the date and time when the
35 annexation itself becomes effective.

36 14.2 **Parties' Authority.** The Town and Owner represent that each has the authority to
37 enter into this Agreement according to applicable Colorado law and the Town's
38 Home Rule Charter and Ordinances, and each represents that the terms and
39 conditions hereof are not in violation of any agreement previously entered into by
40 such party. This Agreement shall not become effective until a resolution or other
41 necessary authorizations for the execution of the Agreement are effective.

ANNEXATION AGREEMENT

- 1 14.3 **Recording.** This Agreement SHALL BE RECORDED in the Summit County
2 Clerk and Recorder's Office in order to put prospective purchasers of the
3 Annexation Property or other interested parties on notice as to the terms and
4 conditions contained herein.
- 5 14.4 **Entire Agreement.** This Agreement and the exhibits hereto represent the entire
6 understanding between the parties concerning the annexation of the Annexation
7 Property to the Town, and no other agreement concerning the Annexation
8 Property, oral or written, made prior to the date of this Agreement, which
9 conflicts with the terms of this Agreement shall be valid as between the parties.
- 10 14.5 **Disconnection.** In the event of disconnection of the Annexation Property from
11 the Town for any reason, the Town's infrastructure and service obligations shall
12 be void and of no further force and effect.
- 13 14.6 **Modification.** This Agreement shall not be modified except in writing executed
14 by all parties hereto.
- 15 14.7 **Additional Remedies.** If at any time any part hereof has been breached by the
16 Owner, the Town may, in addition to other remedies, withhold approval of any or
17 all building or other permits applied for by the Owner on its Annexation Property,
18 or withhold issuance of certificates of occupancy, until the breach or breaches has
19 or have been cured.
- 20 14.8 **Binding Effect.** The agreements and covenants as set forth herein shall be
21 binding upon the Owners, their successors and assigns, and all persons who may
22 hereafter acquire an interest in the Master Planned Property, or any part thereof.
- 23 14.9 **Joint And Several Liability.** If there are two or more Owners, the responsibility
24 of the Owners shall be joint and several.
- 25 14.10 **Severability.** In case one or more of the provisions contained in this Agreement
26 shall be invalid, illegal or unenforceable in any respect, the validity, legality and
27 enforceability of the remaining provisions of this Agreement shall not in any way
28 be affected or impaired thereby.
- 29 14.11 **Incorporation of Exhibits.** The attached Exhibits "A" and "B" are incorporated
30 herein by reference.
- 31 14.12 **Attorney's Fees.** If any action is brought in a court of law by either party to this
32 Agreement concerning the enforcement, interpretation or construction of this
33 Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to
34 reasonable attorney's fees, as well as costs, including expert witness' fees,
35 incurred in the prosecution or defense of such action.

ANNEXATION AGREEMENT

1 14.13 **Notices.** All notices required or permitted under this Agreement shall be given by
2 registered or certified mail, return receipt requested, postage prepaid, or by hand
3 or commercial carrier delivery, or by telecopies, directed as follows:

4 If intended for Town to:

5
6 Town of Breckenridge
7 P.O. Box 168
8 150 Ski Hill Road
9 Breckenridge, Colorado 80424
10 Attn: Town Manager
11 Telecopier number: (970)547-3104
12 Telephone number: (970)453-2251
13

14 with a copy in each case (which shall not constitute notice) to:

15
16 Timothy H. Berry, Esq.
17 Timothy H. Berry, P.C.
18 131 West 5th Street
19 P. O. Box 2
20 Leadville, Colorado 80461
21 Telecopier number: (719)486-3039
22 Telephone number: (719)486-1889
23

24 If intended for Owner, to:

25
26 ~~Joseph S. Miller~~
27 ~~615 19 1/2 Road~~
28 ~~Grand Junction, Colorado 81503~~
29

30 Telecopier number: () [TO BE INSERTED]
31 Telephone number: () [TO BE INSERTED]
32

33 If intended for Braddock, to:

34
35 Braddock Holdings, LLC
36 135 S. Main Street
37 P. O. Box 7
38 Breckenridge, CO 80424
39 Telecopier number: (970)453-6502
40 Telephone number: (970)453-2325
41

42 with a copy in each case (which shall not constitute notice) to:
43

ANNEXATION AGREEMENT

Page 20 of 23

1 Stephen C. West, Esq.
2 West, Brown, Huntley & Thompson, P.C.
3 100 South Ridge St.
4 P.O. Box 588
5 Breckenridge, CO 80424
6 Telecopier number: (970)453-0192
7 Telephone number: (970)453-2901
8

9 Any notice delivered by mail in accordance with this Section shall be deemed to
10 have been duly given and received on the third business day after the same is
11 deposited in any post office or postal box regularly maintained by the United
12 States postal service. Any notice delivered by telecopier in accordance with this
13 Section shall be deemed to have been duly given and received upon receipt if
14 concurrently with sending by telecopier receipt is confirmed orally by telephone
15 and a copy of said notice is sent by certified mail, return receipt requested, on the
16 same day to the intended recipient. Any notice delivered by hand or commercial
17 carrier shall be deemed to have been duly given and received upon actual receipt.
18 Any party, by notice given as provided above, may change the address to which
19 future notices may be sent.
20

21 14.14 **Waiver.** The failure of any party to exercise any of its rights under this
22 Agreement shall not be a waiver of those rights. A party waives only those rights
23 specified in writing and signed by the party waiving such rights.

24 14.15 **Applicable Law.** This Agreement shall be interpreted in all respects in
25 accordance with the laws of the State of Colorado, without regard to principles of
26 conflicts of laws.

27 14.16 **Counterparts.** This Agreement may be executed in several counterparts and/or
28 signature pages and all counterparts and signature pages so executed shall
29 constitute one agreement binding on all parties hereto, notwithstanding that all the
30 parties are not signatories to the original or the same counterpart or signature
31 page.

32 14.17 **Section Headings.** Section headings are inserted for convenience only and in no
33 way limit or define the interpretation to be placed upon this Agreement.

34 14.18 **Amendment.** This Agreement may be modified or amended only by a duly
35 authorized written instrument executed by the parties hereto. Oral amendments to
36 this Agreement are not permitted.

37 14.19 **No Adverse Construction.** Both parties acknowledge having had the opportunity
38 to participate in the drafting of this Agreement. This Agreement shall not be
39 construed against either party based upon authorship.

ANNEXATION AGREEMENT

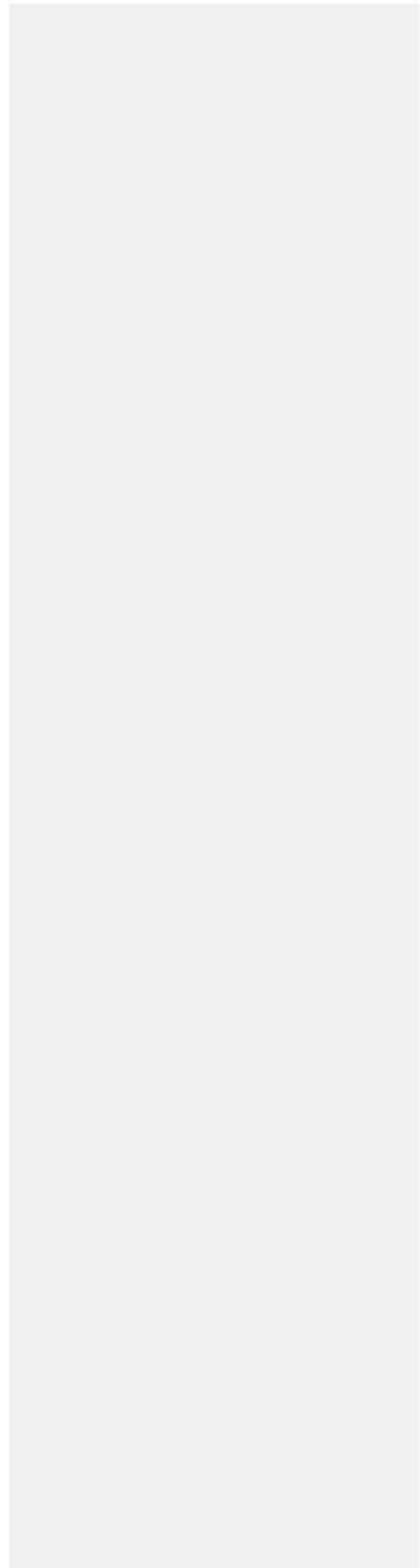
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TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

ANNEXATION AGREEMENT

Page 22 of 23



1 STATE OF COLORADO)
2) ss.
3 COUNTY OF SUMMIT)
4

5 The foregoing instrument was acknowledged before me this ____ day of
6 | _____, 2008, by ~~Joseph S. Miller.~~

7
8 WITNESS my hand and official seal.

9
10 My commission expires: _____.

11
12
13 _____
14 Notary Public
15
16
17
18
19
20
21
22
23
24

25 STATE OF COLORADO)
26) ss.
27 COUNTY OF SUMMIT)
28

29 The foregoing instrument was acknowledged before me this ____ day of
30 | _____, 2007, by ~~Kenneth M. Adams, President of Breckenridge Lands, Inc.~~ Tom
31 Begley, Manager of Braddock Holdings, LLC, a Colorado limited liability company.

32
33 WITNESS my hand and official seal.

34 My commission expires: _____.

35
36 _____
37 Notary Public
38
39
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45
46
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48 Brk\Annex\Stan Miller\Annexation Agreement_56
49 January 16, 21, 2008-1300-49

ANNEXATION AGREEMENT

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EXHIBIT "A"

Legal Description of the Annexation Property

A parcel of real property situated in Section 18, Township 6 South, Range 77 West of the Sixth Principal Meridian in the Town of Breckenridge, County of Summit, State of Colorado and being more particularly described as follows:

A part of the B & L No. 1 Placer (MS 114044), a part of the Accommodation Placer (MS 19361) and a part the Braddock Placer (MS 13465) more particularly described as follows;

Beginning at corner 5 of the B & L No. 1 Placer, corner also being corner 15 of the Munroe Placer (MS 1150) and the southwesterly corner of the West Braddock Subdivision;

thence the following four (4) courses along the southerly boundary West Braddock Subdivision:

1. thence $S75^{\circ}18'02''$, 660.00 feet along the 5-6 line of the B & L No. 1 Placer and the 15-14 line of the Munroe Placer to corner 6 of the B & L No. 1 Placer, corner 14 line of the Munroe Placer and corner 1 of the Accommodation Placer;

2. thence $S56^{\circ}04'10''E$, 310.00 feet;

3. thence $S05^{\circ}1'33''W$, 617.00 feet;

4. thence $S84^{\circ}28'27''E$, 452.80 feet to a point on the westerly right of way of Colorado State Highway 9;

thence $S12^{\circ}45'46''W$, 202.80 feet along the westerly right of way of Colorado State Highway 9 to the northeasterly corner of the Breckenridge Building Center property;

thence the following four (4) courses along the northerly and westerly boundaries of the Breckenridge Building Center property:

1. thence $N84^{\circ}21''W$, 522.58 feet;

2. thence $S05^{\circ}21'39''W$, 528.18 feet to a point on the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer;

3. thence $S56^{\circ}14'04''E$, 53.84 feet along the 8-9 line of the B & L No. 1 Placer and the 3-4 line of the Accommodation Placer to corner 9 of the B & L No. 1 Placer and corner 4 of the Accommodation Placer;

4. thence $S11^{\circ}35'37''W$, 233.91 feet along the 9-10 line of the B & L No. 1 Placer and the 4-5 line of the Accommodation Placer;

thence $S87^{\circ}17'57''W$, 875.28 feet to a point on the 2-3 line of the B & L No. 1 Placer;

thence $N31^{\circ}46'32''E$, 373.09 feet along the 2-3 line of the B & L No. 1 Placer to corner 3 of the B & L No. 1 Placer;

thence $N20^{\circ}02'19''W$, 689.13 feet along the 3-4 line of the B & L No. 1 Placer to corner 4 of the B & L No. 1 Placer;

Exhibit "A"

thence N13°35'04"E, 1037.85 feet along the 4-5 line of the B & L No. 1 Placer to the point of beginning.

Described parcel contains 40.41 acres, more or less.

Perimeter of parcel = 6556.46 feet;

Perimeter of parcel contiguous with Town of Breckenridge = 4456.39 feet

Perimeter of parcel contiguous with Town of Breckenridge = 67.97%

Exhibit "A"

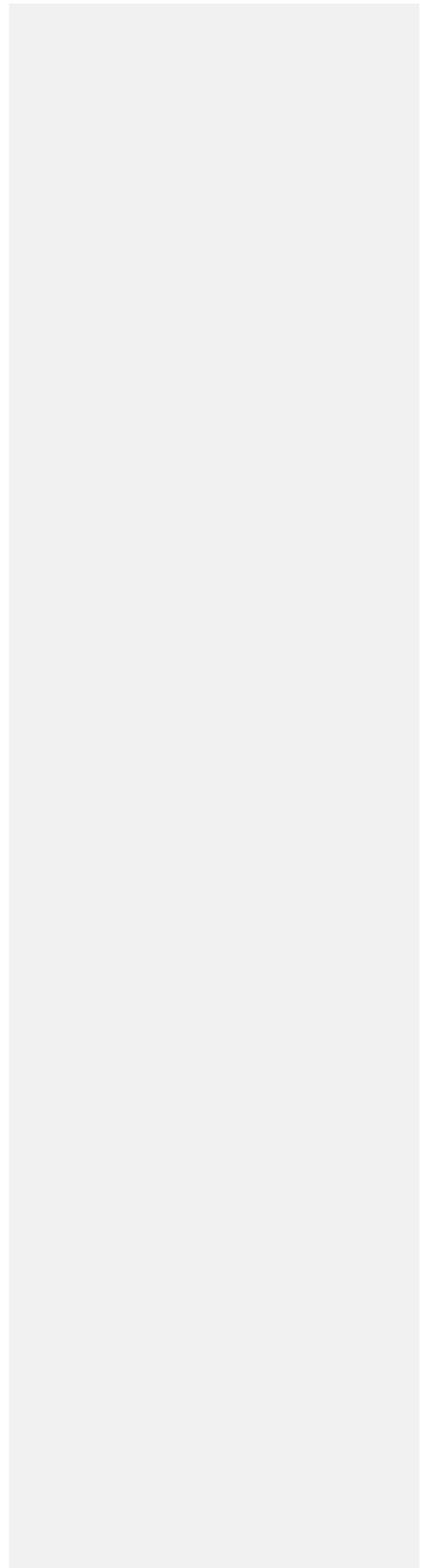
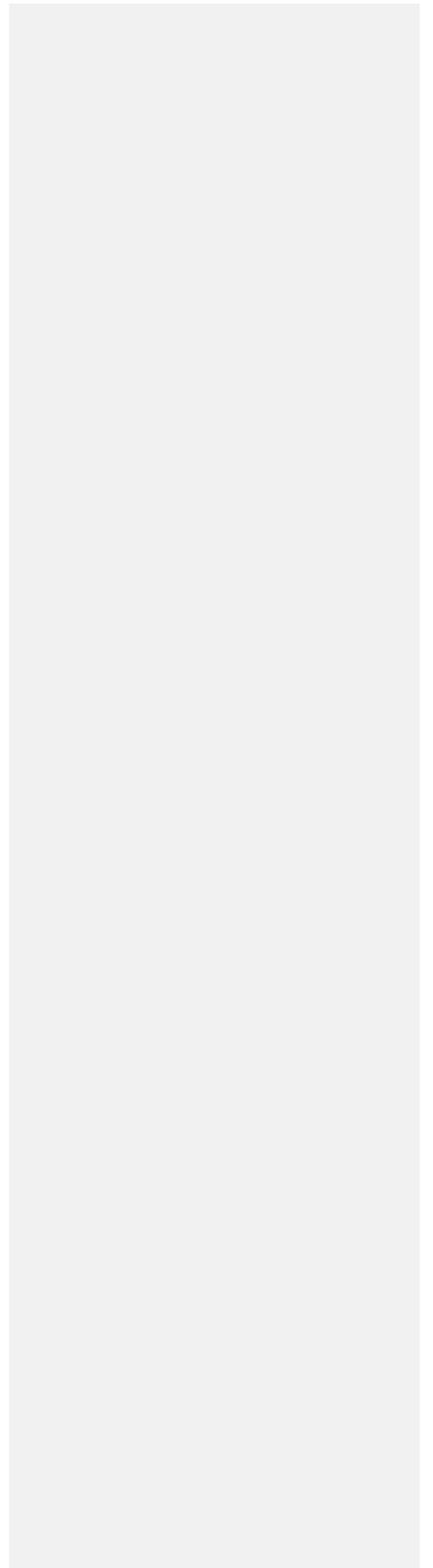


EXHIBIT "B"

Legal Description of 2.29 Acre Parcel

Parcel D-2, West Braddock Subdivision, according to the plat recorded November 19, 2007 under Reception No. 874097 of the records of the Clerk and Recorder of Summit County, Colorado

Exhibit "B"







TOWN OF BRECKENRIDGE TOWN COUNCIL AGENDA

Tuesday, December 8, 2009 (Regular Meeting); 7:30 p.m.

I	CALL TO ORDER and ROLL CALL	
II	APPROVAL OF MINUTES – November 24, 2009	Page 100
III	APPROVAL OF AGENDA	
IV	COMMUNICATIONS TO COUNCIL	
	A. Citizen’s Comment - (Non-Agenda Items ONLY; 3 minute limit please)	
	B. BRC Director Report	
V	CONTINUED BUSINESS	
	A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS*-	
	1. Council Bill No. 37, Series 2009- AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE <u>BRECKENRIDGE TOWN CODE</u> (Theobald Building – North 25.66 feet of Lot 1, Bartlett and Shock Addition; also known as 101 South Main Street)	Page 106
	2. Council Bill No. 38, Series 2009- AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE <u>BRECKENRIDGE TOWN CODE</u> BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE OF “UNLAWFUL ACTS BY SKIERS”	Page 110
	3. Council Bill No. 39, Series 2009- AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE <u>BRECKENRIDGE TOWN CODE</u> CONCERNING MARIJUANA-RELATED MUNICIPAL OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG PARAPHERNALIA	Page 114
VI	NEW BUSINESS	
	A. FIRST READING OF COUNCIL BILL, SERIES 2009 –	
	1. Council Bill No. 40, Series 2009- AN ORDINANCE CONCERNING THE CLASSIFICATION OF VIOLATIONS OF TOWN ORDINANCES	Page 119
	B. RESOLUTIONS, SERIES 2009-	
	1. A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2010	Page 124
	2. A RESOLUTION APPROVING AN AGREEMENT FOR MUNICIPAL COURT PROSECUTION SERVICES WITH RICHMOND, SPROUSE & MURPHY, LLC	Page 132
	3. A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL AFFAIRS (Valley Brook Workforce Housing Development)	Page 138
	4. A RESOLUTION APPROVING AN ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM GRANT CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL AFFAIRS(Valley Brook Parcel)	Page 174
	5. A RESOLUTION DETERMINING THAT THE TOWN OF BRECKENRIDGE WILL NOT ACT AS A REVIEWING ENTITY FOR THE STATE INCOME TAX CREDIT PROGRAM FOR QUALIFYING HISTORIC REHABILITATION PROJECTS	Page 193
	C. OTHER – NONE	
VII	PLANNING MATTERS	
	A. Planning Commission Decisions of December 1, 2009	Page 2
	B. Town Council Representative Report (Mr. Rossi)	
VIII	REPORT OF TOWN MANAGER AND STAFF*	
IX	REPORT OF MAYOR AND COUNCILMEMBERS*	
	A. CAST/MMC (Mayor Warner)	
	B. Breckenridge Open Space Advisory Commission (Mr. Joyce)	
	C. BRC (Ms. McAtamney)	
	D. Summit Combined Housing Authority (Mr. Millisor)	
	E. Breckenridge Heritage Alliance (Mr. Bergeron)	
	F. Sustainability Committee (Mr. Millisor)	
X	OTHER MATTERS	
XI	SCHEDULED MEETINGS	Page 196
XII	ADJOURNMENT	

*Report of Town Manager; Report of Mayor and Council Members; Scheduled Meetings and Other Matters are topics listed on the 7:30 pm Town Council Agenda. If time permits at the afternoon work session, the Mayor and Council may discuss these items. The Town Council may make a Final Decision on any item listed on the agenda, regardless of whether it is listed as an action item

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, NOVEMBER 24, 2009
PAGE 1**

CALL TO ORDER and ROLL CALL

Mayor Warner called the November 24, 2009 Town Council Meeting to order at 7:35 p.m. The following members answered roll call: Mr. Bergeron, Mr. Joyce, Ms. McAtamney, Mr. Mamula, Mr. Millisor, Mr. Rossi, and Mayor Warner.

APPROVAL OF MINUTES – November 24, 2009 Regular Meeting

There were no changes to the regular meeting minutes of November 10, 2009.

APPROVAL OF AGENDA

Kate Boniface, Assistant Town Manager, stated the town attorney would like to have Council consider Council Bill 36, Series 2009 – “An Ordinance Setting the Mill Levy Within the Town of Breckenridge for 2010” after consideration of “A Resolution Adopting the 2010 Budget and Making Appropriations Therefor”. It was suggested that Council Bill 36, Series 2009 be considered as item #3 under Resolutions. It will be a second reading and subject to a public hearing.

Ms. Boniface requested, under “Other Business”, the item entitled LLA Appointment be replaced with Public Art Commission Appointment. There were no further amendments or changes to the agenda.

COMMUNICATIONS TO COUNCIL

A. Citizen’s Comments - (Non-Agenda Items ONLY; 3 minute limit please) –

Kirk Mickelsen, Entrada Breckenridge, summarized the history of the Entrada project. He stated the reason he was speaking in front of Council this evening was to ask Council to reconsider the need for the cross easement currently required in the Development Agreement. Entrada Breckenridge tried to resolve differences with the Summit Ridge Center. There has been no resolution. Mr. Mickelsen stated there is a potential buyer who has submitted an offer. Two contingencies are attached to the offer. The main contingency is that the Town agrees to abandon the requirements of the Cross Easement Agreement. The other contingency is that Entrada Breckenridge discontinue any litigation in the matter.

Summit Ridge Center and the potential buyer believe the cross easement creates traffic liability for them. Mr. Mickelsen reminded Council that planning staff, Planning Commission, the town engineer and their own traffic engineer feel it has been proven the cross easement will not reduce traffic in the Highway 9/County Road 450 intersection. According to Mr. Mickelsen the only thing the Cross Easement Agreement accomplishes is it allows traffic to turn right to head north on Highway 9.

Entrada Breckenridge has an offer on the storage parcel per the County entitlements and would like to close on the bank parcel. In closing he stated they must sell something in order to reduce debt. They do not want to continue in the litigation with the Summit Ridge Center.

Council asked questions of Mr. Mickelsen. Mr. Berry, Town Attorney, asked questions of Mr. Mickelsen. Mr. Berry asked that Council hold off addressing any questions of him and suggested Council consider an executive session at the end of the tonight’s meeting.

Jason Kenyatta Smith introduced himself and his background within the community. He presented a letter to Council which addressed “inconsistencies and selective enforcement of the laws of Breckenridge”. Mr. Smith further explained there have been three separate incidents of racial harassment directed toward him since he began working at Empire Burger, 3 ½ years ago. Mr. Smith’s questions were; whether or not he was receiving the proper protection as a citizen and whether harassment crimes were being shown too much leniency at the municipal court level. Mr. Rossi asked where “hate” crimes fall into municipal law. Mr. Berry stated we are limited on the municipal level. Chief Holman will follow up with Mr. Smith.

CONTINUED BUSINESS

A. ***SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS***

1. Council Bill No. 35, Series 2009- AN ORDINANCE PROVIDING FOR AN INCREASE IN MUNICIPAL WATER USER FEES EFFECTIVE JANUARY 1, 2010

Mr. Berry commented this ordinance would set the water rates for 2010. There is a small increase in fees for 2010. This is a \$1/mo increase per SFE. There are no changes from first reading.

Mayor Warner opened a public hearing. There were no comments or questions. He closed the public hearing.

Mr. Bergeron moved to approve Council Bill No. 35, Series 2009 the title of which was previously read into the record. Mr. Mamula made the seconded the motion. The motion passed 7-0.

2. Council Bill No.36, Series 2009- AN ORDINANCE SETTING THE MILL LEVY WITHIN THE TOWN OF BRECKENRIDGE FOR 2010

This council bill was moved to Resolutions as item #3.

NEW BUSINESS

A. FIRST READING OF COUNCIL BILL, SERIES 2009

1. Council Bill No. 37, Series 2009- AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE (Theobald Building – North 25.66 feet of Lot 1, Bartlett and Shock Addition; also known as 101 South Main Street)

Mr. Berry introduced this matter for first reading. This property was approved for renovation, landmarking and variance request by Council on June 28, 2009, PC #2008058. Approval of this council bill tonight and approval on second reading would designate this property as a landmark pursuant to the Town's Historic Preservation Ordinance. It is staff's recommendation that this council bill be approved.

With no questions or comments from Council, Mr. Bergeron moved to approve on first reading Council Bill No. 37, Series 2009 as previously read into the record. Ms. McAtemney made the second.

Mayor Warner asked if there were any comments. Mr. Rossi stated he had spoken to the building's owner, Robin Theobald, concerning exterior lighting. Mr. Theobald stated to Mr. Rossi he had looked at many lighting samples. It was his feeling that once the side of the building rusts out, the effect will dull the impact of the lights.

With no further questions or comments, a roll call vote was taken. The motion passed with all members in favor of passage.

2. Council Bill No. 38, Series 2009- AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE OF "UNLAWFUL ACTS BY SKIERS"

Tim Berry stated this council bill is a result of a suggestion by the Town's Municipal Judge, Buck Allen. If passed this ordinance would make it a Town violation to commit any of the four acts that are classified as petty offenses under the "Colorado Skier Safety Act". The offenses include: skiing on a closed trail; skiing while impaired; failure to give information to a ski area employee investigating a collision; and skiing out of bounds. This council bill will not create a new crime; it will only allow the prosecution of the existing crime in the Town's Municipal Court.

With no questions or comments from Council, Mr. Millisor moved to approve on first reading Council Bill No. 38, Series 2009 as previously read into the record. Mr. Bergeron made the second. A roll call vote was taken with all members in favor of passage.

3. Council Bill No. 39, Series 2009- AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG PARAPHERNALIA

Mr. Berry stated this council bill accomplishes two different things. First, it codifiers in the Town's code book the vote of the people in the November 3, 2009 coordinated election with respect to the possession of Marijuana of person 21 years of age and older. It also modifies the Town Code in reference to the possession of marijuana and drug paraphernalia. Section 6-3H-1 and 6-3H-6 of the Town Code should be amended to reflect the changes approved by Question 2F. Staff recommends the adoption

of this ordinance and supports the addition of new municipal offenses related to the open and public display, consumption or use of marijuana by any person, and the possession of more than 1 ounce of marijuana (but less than eight ounces by any person).

With no questions or comments from Council, Mr. Bergeron moved to approve on first reading Council Bill No. 39, Series 2009 as previously read into the record. Mr. Mamula made the second. A roll call vote was taken with all members voting in favor of passage.

B. RESOLUTIONS, SERIES 2009-

1. A RESOLUTION ADOPTING THE 2010 BUDGET AND MAKING APPROPRIATIONS THEREFOR – Public Hearing

Brian Waldes, Finance Services Manager, introduced this resolution. The resolution has been prepared to adopt the 2010 Budget and the Capital Improvement Plan. Adoption of the Budget also includes changes to certain fees and charges that will become effective January 1, 2010.

It was asked if any Town staff had received any correspondence in reference to the Budget. No correspondence had been received.

Mayor Warner opened a public hearing. There were no comments or questions. He closed the public hearing.

Mr. Millisor moved to approve this resolution as previously read into the record. Mr. Rossi seconded the motion. The motion passed 7-0.

2. A RESOLUTION APPROVING A GRANT CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL AFFAIRS, AND RATIFYING ALL DOCUMENTATION SUBMITTED IN CONNECTION THEREWITH

Mr. Berry introduced this resolution stating the Town has again been selected by the State to receive a \$35,000 grant to cover over half the cost of an intern position to be housed within Community Development. The Town would contribute another \$30,000 total over the next two year period (2010 – 2011). The intern has been selected from a pool of graduate student candidates at the University of Colorado at Denver. This position is included in the 2010 Budget.

With no questions or comments from Council, Mr. Rossi moved to approve this resolution as previously read into the record. Mr. Mamula made the second. A roll call vote was taken with all members in favor of passage.

This item was moved from CONTINUED BUSINESS

A. SECOND READING OF COUNCIL BILL, SERIES 2009 - PUBLIC HEARINGS)

3. Council Bill No.36, Series 2009- AN ORDINANCE SETTING THE MILL LEVY WITHIN THE TOWN OF BRECKENRIDGE FOR 2010

Mr. Berry began by stating, since first reading the Town has received updated information from the Summit County Assessor concerning the assessed valuation of real property within the town. As a result of that certification, the additional mill levy referred to in Section 2 of the ordinance needs to be amended. Instead of it reading "...there is hereby levied an additional 1.87 mill ..." it needs to read "...an additional 1.887 mill...". Mr. Berry requested that if there is a motion to approve this ordinance on second reading, the change be specifically noted in the motion.

Mayor Warner opened a public hearing. There were no comments or questions. He closed the public hearing.

Mr. Bergeron made the motion to approve on second reading Council Bill No. 36, Series 2009 as previously read into the record including an amendment to Section 2 changing the 1.87 mill to 1.887 mill. Mr. Millisor seconded the motion. Mr. Mamula stated he would be voting in opposition to the ordinance. Mr. Rossi stated he will not be voting in favor of the ordinance.

A roll call vote was taken. The motion passed with a vote of five members in favor of passage and two members in opposition to passage. Ms. McAtamney, Mr. Millisor, Mr. Joyce, Mr. Bergeron and

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, NOVEMBER 24, 2009
PAGE 4**

Mayor Warner voted in favor of the motion. Mr. Mamula and Mr. Rossi voted in opposition to the motion.

C. OTHER –

1. Public Art Commission Appointment

Discussion occurred on the potential candidates for the position. After all votes were handed in and counted, Stephen Henderson received the majority of votes. He will be the new member on the Public Art Commission.

2. Fire Wise Task Force Appointment

Discussion occurred on the potential candidates for the position. After all votes were handed in and counted, Currie Craven received the majority of votes and will be the new member on the Fire Wise Task Force.

PLANNING MATTERS

A. Planning Commission Decisions of November 17, 2009

There were no Planning Commission decisions.

B. Report of Planning Commission Liaison

Mr. Rossi reported on the Reiling Road project. Commissioners had an issue with the proposed guest parking plan. They felt carports would be used for storage and guest parking would, in time, become an issue with a potential for conflict. According to Mr. Rossi, cost, prohibited many of the suggestions made by the Commissioners to the applicant in relation to the project presented at the meeting.

REPORT OF TOWN MANAGER AND STAFF

Ms Boniface mentioned the Town will be going to court with Gifford Spurck in reference to the new Police Facility.

REPORT OF MAYOR AND COUNCILMEMBERS-

A. **CAST/MMC** (Mayor Warner) - Mayor Warner did not have a report.

B. **Breckenridge Open Space Advisory Commission** (Mr. Joyce) – Nothing to report.

C. **Breckenridge Resort Chamber** (Ms. McAtamney) – Ms. McAtamney stated there was no meeting. She was asked how the BRC will handle staffing needs in the BRC Sales Division. Discussion followed.

D. **Summit Combined Housing Authority** (Mr. Millisor) – Mr. Millisor reported the group approved their budget.

E. **Breckenridge Heritage Alliance** (Mr. Bergeron) – There will be a meeting in early December.

F. **Sustainability** (Mr. Millisor) - Mr. Millisor reported the group discussed forest health issues.

G. **Fire Wise** (Mr. Joyce) – Nothing to report.

OTHER MATTERS

Mr. Mamula stated he had sent an email concerning water for Agape. He hadn't heard any response and wondered if people had received his email. No one had. He will send the email again to both Council and staff.

Mr. Mamula asked if the town will be doing anything about the bad press received as a result of passage of Question 2F. Discussion followed.

In closing, Mr. Mamula reported on a retailer who was concerned about skiers parking on North Main Street. Chief Holman report three hour limits are being followed. Mr. Mamula reported the same retailer had heard of a REC Center bus taking a group of seniors to Denver for shopping and the Lighting

**TOWN OF BRECKENRIDGE
TOWN COUNCIL REGULAR MEETING
TUESDAY, NOVEMBER 24, 2009
PAGE 5**

of Denver. The retailer wondered if the Town should be supporting this; “shouldn’t these people be shopping in Breckenridge?”

Mr. Bergeron asked what the next step is for the Town in reference to the sales tax question fact finding effort. Mayor Warner commented he has spoken with Rob Katz, Vail Resorts. The BRC will survey its membership.

SCHEDULED MEETINGS

Ms. Boniface mentioned the meeting on December 8 will be the only meeting in December. The employee relations holiday party has been cancelled.

At 9:00 p.m., Ms. McAtamney moved that the Town Council go into executive session pursuant to paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; and Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators. Mr. Rossi made the second.

Mayor Warner stated a motion had been moved and seconded to go into executive session pursuant to paragraph 4(b) of Section 24-6-402, C.R.S., relating to conferences with the Town Attorney for purposes of receiving legal advice on specific legal questions; and Paragraph 4(e) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations; and instructing negotiators. The conference with the Town Attorney primarily involves the Entrada Annexation Agreement but may also include conferences with the Town Attorney on other matters covered by the attorney-client privilege that exists between the Town and the Town Attorney. The matter subject to negotiations is the Entrada Annexation Agreement.

A roll call vote was taken; all members of Council were in favor of the motion.

At 9:30 p.m., Mr. Rossi moved to adjourn the executive session and return to the regular town council meeting. Mr. Mamula made the second. All members of Council were in favor of the motion.

ADJOURNMENT

With no further business to discuss, Mr. Mamula moved to adjourn the meeting at 9:31 p.m. Submitted by Wanda Creen, Deputy Town Clerk.

ATTEST:

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

EXECUTIVE SESSION CERTIFICATE

Town of Breckenridge)
County of Summit)
State of Colorado)

John Warner, the duly elected, qualified and acting Mayor of the Town of Breckenridge, hereby certifies as follows:

As part of the Town Council worksession on Tuesday, November 24, 2009 at 7:05 p.m., Mr. Bergeron moved to convene in Executive Session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations, and instructing negotiators. Mr. Mamula made the second.

Mayor Warner stated a motion had been moved and seconded to go into executive session pursuant to Paragraph 4(b) of Section 24-6-402, C.R.S., relating to determining positions relative to matters that may be subject to negotiations, developing strategies for negotiations, and instructing negotiators.

A roll call vote was taken. All members of Council were in favor of the motion.

At 7:29 p.m., Mr. Rossi moved to adjourn the executive session. Mr. Mamula made the second. All members of Council were in favor of the motion.

This certificate shall be included before the minutes of the regular Town Council meeting of Tuesday, November 24, 2009.

John Warner, Mayor

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 37 (Theobald Building Landmarking Ordinance)

DATE: November 30, 2009 (for December 8th meeting)

The second reading of the Theobald Building Landmarking Ordinance is scheduled for your meeting on December 8th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 **FOR WORKSESSION/SECOND READING – DEC. 8**

2
3 **NO CHANGE FROM FIRST READING**

4
5 COUNCIL BILL NO. 37

6
7 Series 2009

8
9 AN ORDINANCE DESIGNATING CERTAIN REAL PROPERTY AS A LANDMARK
10 UNDER CHAPTER 11 OF TITLE 9 OF THE BRECKENRIDGE TOWN CODE
11 (Theobald Building – North 25.66 feet of Lot 1, Bartlett and Shock Addition; also known as 101
12 South Main Street)

13
14 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
15 COLORADO:

16
17 Section 1. Findings. The Town Council of the Town of Breckenridge hereby finds and
18 determines as follows:

19
20 A. Theobald Family, LLC, owns the hereinafter described real property. Such
21 real property is located within the corporate limits of the Town of Breckenridge, County
22 of Summit and State of Colorado.

23
24 B. Theobald Family, LLC filed an application with the Town pursuant to Chapter
25 11 of Title 9 of the Breckenridge Town Code seeking to have the Town designate the
26 hereinafter described real property as a landmark (“Application”).

27
28 C. The Town followed all of procedural requirements of Chapter 11 of Title 9 of
29 the Breckenridge Town Code in connection with the processing of the Application.

30
31 D. The hereinafter described real property is more than fifty (50) years old.

32
33 E. The hereinafter described real property meets the “architectural” designation
34 criteria for a landmark as set forth in Section 9-11-4(A)(1)(a) of the Breckenridge Town
35 Code because the property:

- 36
37 (i) exemplifies specific elements of architectural style or period, specifically,
38 the early commercial development of Breckenridge; and
39 (ii) is of a style particularly associated with the Breckenridge area.

40
41 F. The hereinafter described real property meets the “physical integrity” criteria
42 for a landmark as set forth in Section 9-11-4(A)(3)(a) of the Breckenridge Town Code
43 because the property the property shows character, interest or value as part of the
44 development, heritage or cultural characteristics of the community, region, state or
45 nation.

1
2 G. In accordance with the requirements of Section 9-11-3(B)(3) of the
3 Breckenridge Town Code, on June 17, 2008 the Application was reviewed by the
4 Breckenridge Planning Commission. On such date the Planning Commission
5 recommended to the Town Council that the Application be granted.
6

7 H. The Application meets the applicable requirements of Chapter 11 of Title 9 of
8 the Breckenridge Town Code, and should be granted without conditions.
9

10 I. Section 9-11-3(B)(4) of the Breckenridge Town Code requires that final
11 approval of an application for landmark designation under Chapter 11 of Title 9 of the
12 Breckenridge Town Code be made by ordinance duly adopted by the Town Council.
13

14 Section 2. Designation of Property as Landmark. The following described real
15 property situate in the Town of Breckenridge, County of Summit, and State of Colorado,
16 to wit:
17

18 The North 25.66 feet of Lot 1, Bartlett and Shock Addition to the Town of
19 Breckenridge, as shown the plats thereof filed in the office of the Clerk and
20 Recorder of Summit County, Colorado; commonly known and described as 101
21 South Main Street, Breckenridge, Colorado 80424
22

23 is hereby designated as a landmark pursuant to Chapter 11 of Title 9 of the Breckenridge
24 Town Code.
25

26 Section 3. Police Power Finding. The Town Council hereby finds, determines and
27 declares that this ordinance is necessary and proper to provide for the safety, preserve the health,
28 promote the prosperity, and improve the order, comfort and convenience of the Town of
29 Breckenridge and the inhabitants thereof.
30

31 Section 4. Town Authority. The Town Council hereby finds, determines and declares
32 that it has the power to adopt this ordinance pursuant to the authority granted to home rule
33 municipalities by Article XX of the Colorado Constitution and the powers contained in the
34 Breckenridge Town Charter.
35

36 Section 5. Effective Date. This ordinance shall be published and become effective as
37 provided by Section 5.9 of the Breckenridge Town Charter.
38

39 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
40 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
41 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
42 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
43 Town.
44

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

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MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 38 (Local Skier Safety Act Ordinance)

DATE: November 30, 2009 (for December 8th meeting)

The second reading of the ordinance incorporating into Town law the penal provisions of the Colorado Skier Safety Act is scheduled for your meeting on December 8th. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 *FOR WORKSESSION/SECOND READING – DEC. 8*

2
3 ***NO CHANGE FROM FIRST READING***

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 39

9
10 Series 2009

11
12 AN ORDINANCE AMENDING SECTION 6-3H-1 AND SECTION 6-3H-6 OF THE
13 BRECKENRIDGE TOWN CODE CONCERNING MARIJUANA-RELATED MUNICIPAL
14 OFFENSES AND THE MUNICIPAL OFFENSE OF POSSESSION OF DRUG
15 PARAPHERNALIA

16
17 WHEREAS, at a special election held November 3, 2009 the electors of the Town of
18 Breckenridge voted to approve the following ballot question:

19
20 SHALL THE ELECTORS OF THE TOWN OF BRECKENRIDGE ADOPT AN
21 AMENDMENT TO THE BRECKENRIDGE TOWN CODE, EFFECTIVE
22 JANUARY 1, 2010, REMOVING ALL CRIMINAL PENALTIES UNDER
23 TOWN LAW FOR THE POSSESSION OF ONE OUNCE OR LESS OF
24 MARIJUANA AND RELATED PARAPHERNALIA BY PERSONS TWENTY
25 ONE YEARS OF AGE OR OLDER?

26
27 (“Question 2F”)

28
29 ; and

30
31 WHEREAS, the Town Council finds and determines that the Town’s ordinances
32 concerning the possession of marijuana (cannabis) and drug paraphernalia must be amended to
33 reflect the will of the electorate as expressed in the vote on Question 2F; and

34
35 WHEREAS, the Town Council further finds and determines that the Town’s marijuana-
36 related ordinances should be amended as hereafter set forth.

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

40
41 Section 1. Section 6-3H-1 of the Breckenridge Town Code is hereby amended so as to
42 read in its entirety as follows:

43 6-3H-1 ~~POSSESSION OF~~ OFFENSES RELATED TO CANNABIS:

- 1 A. ~~Any person who possesses, transfers, cultivates, grows, produces, processes or~~
2 ~~manufactures or knowingly allows to be cultivated, grown, produced, processed or~~
3 ~~manufactured on land or real property owned, occupied or controlled by him, not more~~
4 ~~than one ounce of cannabis or cannabis concentrate or derivative is guilty of the offense~~
5 ~~of possession of cannabis. **Any person under twenty-one (21) years of age who**~~
6 ~~**possesses not more than one ounce of cannabis or cannabis concentrate or derivative**~~
7 ~~**is commits an infraction.**~~ B. ~~The P~~penalty for violation of this section ~~A~~ shall be by fine
8 only. Fine shall be a maximum of one hundred dollars (\$100.00) for each offense.
9
- 10 B. Any person who openly and publicly displays, consumes, or uses not more than one
11 ounce of cannabis commits a misdemeanor municipal offense. A person “openly and
12 publicly displays, consumes, or uses” cannabis if he or she exhibits, burns, smokes,
13 or otherwise ingests cannabis in any of the following places: (i) any land or area
14 owned or controlled by the Town, such as public ways, streets, sidewalks, alleys,
15 parking lots, playgrounds, (ii) schools and school grounds, (iii) other public
16 buildings owned and operated by any governmental entity; (iv) places of business
17 generally open to the general public, (v) the common areas of buildings usually open
18 to the general public, (vi) the hallways, lobbies, balconies, decks, and other portions
19 of residential structures not constituting rooms designed for actual residence if
20 visible from a public street, sidewalk or alley by a person of normal visual acuity,
21 and (vii) any other place open to public view by a person of normal visual
22 acuity. Any person convicted of having violated this section B shall be punished, at a
23 minimum, by a fine of not less than one hundred dollars (\$100.00) or, at a
24 maximum, by a fine of not more than one hundred dollars (\$100.00) and by fifteen
25 days in the county jail.
- 26
- 27 C. Any person who possesses more than one ounce of cannabis but less than eight
28 ounces of cannabis commits a misdemeanor municipal offense. Any person
29 convicted on having violated this section C shall be punished as provided in Chapter
30 4 of Title 1 of this Code.
- 31
- 32 D. Transferring or dispensing not more than one ounce of marijuana from one person
33 to another for no consideration shall be deemed to be possession, and not dispensing
34 or sale thereof.
- 35

36 Section 2. Paragraph D of section 6-3H-6 of the Breckenridge Town Code is hereby
37 amended so as to read in its entirety as follows:

- 38 D. A person commits possession of drug paraphernalia if he possesses drug paraphernalia
39 and knows or reasonably should know that the drug paraphernalia could be used under
40 circumstances in violation of the laws of the town or the state of Colorado, unless the
41 person is twenty-one (21) years of age or older and the drug paraphernalia is
42 reasonably associated with marijuana.
- 43

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

MEMO

TO: Town Council

FROM: Town Attorney

RE: Council Bill No. 39 (Amending Town's Marijuana and Drug Paraphernalia Ordinances)

DATE: November 30, 2009 (for December 8th meeting)

The second reading of the ordinance amending the Town Code to reflect the passage of Question 2F is scheduled for your meeting on December 8th. Please recall that the ordinance also adds to the Town Code new municipal offenses related to the public display and consumption of marijuana, and possession of more than one ounce but less than eight ounces of marijuana. There are no changes proposed to ordinance from first reading.

I will be happy to discuss this matter with you on Tuesday.

1 **FOR WORKSESSION/SECOND READING – DEC. 8**

2
3 **NO CHANGE FROM FIRST READING**

4
5 Additions To The Current Breckenridge Town Code Are
6 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

7
8 COUNCIL BILL NO. 38

9
10 Series 2009

11
12 AN ORDINANCE AMENDING CHAPTER 3H OF TITLE 6 OF THE BRECKENRIDGE
13 TOWN CODE BY ADOPTING PROVISIONS CONCERNING THE MUNICIPAL OFFENSE
14 OF “UNLAWFUL ACTS BY SKIERS”

15
16 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
17 COLORADO:

18
19 Section 1. Chapter 3H of Title 6 of the Breckenridge Town Code is amended by the
20 addition of a new Section 6-3H-9, which shall read in its entirety as follows:

21
22 6-3H-9: UNLAWFUL ACTS BY SKIERS:

23
24 A. As used in this section the following words shall have the following
25 meanings:

26
PASSENGER
TRAMWAY:

A device as defined in section 25-
5-702(4), C.R.S

PERSON:

An individual.

SKI AREA:

All ski slopes or trails and all other
places within the ski area boundary,
marked in accordance with section 33-
44-107(6), under the control of a ski
area operator and administered as a
single enterprise within the Town.

SKI AREA OPERATOR:

An “area operator” as defined in
section 25-5-702(1), C.R.S., and
any person, partnership,
corporation, or other
commercial entity having
operational responsibility for any

ski areas, including an agency of the state or a political subdivision thereof.

SKIER:

Any person using a ski area for the purpose of skiing, which includes, without limitation, sliding downhill or jumping on snow or ice on skis, a toboggan, a sled, a tube, a snowbike, a snowboard, or any other device; or for the purpose of using any of the facilities of the ski area, including but not limited to ski slopes and trails.

SKI SLOPES OR TRAILS:

All ski slopes or trails and adjoining skiable terrain, including all their edges and features, and those areas designated by the ski area operator to be used by skiers for any of the purposes enumerated in the definition of “skier” set forth in this section. Such designation shall be set forth on trail maps, if provided, and designated by signs indicating to the skiing public the intent that such areas be used by skiers for the purpose of skiing. Nothing in this definition of the definition of “skier” set forth in this section, however, shall imply that ski slopes or trails may not be restricted for use by persons using skis only or for use by persons using any other device described in the definition of “skier” set forth in this section.

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B. It is unlawful and a misdemeanor offense for any skier to ski on a ski slope or trail that has been posted as “Closed” pursuant to section 33-44-107(2)(e) and (4), C.R.S.

C. It is unlawful and a misdemeanor offense for any person to move uphill on any passenger tramway or use any ski slope or trail while such person's ability to do so is impaired by the consumption of alcohol or by the use of any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug or while such person is under the influence of alcohol or any controlled substance, as defined in section 12-22-303(7), C.R.S., or other drug.

1 D. It is unlawful and a misdemeanor offense for any skier involved in a
2 collision with another skier or person in which an injury results shall leave
3 the vicinity of the collision before giving his or her name and current address
4 to an employee of the ski area operator or a member of the ski patrol, except
5 for the purpose of securing aid for a person injured in the collision; in which
6 event the person so leaving the scene of the collision shall give his or her
7 name and current address as required by this subsection (D) after securing
8 such aid.

9
10 E. It is unlawful and a misdemeanor offense for any person to knowingly
11 enter upon public or private lands from an adjoining ski area when such
12 land has been closed by its owner and so posted by the owner or by the ski
13 area operator pursuant to section 33-44-107(6), C.R.S.

14
15 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
16 various secondary codes adopted by reference therein, shall continue in full force and effect.

17
18 Section 3. The Town Council hereby finds, determines and declares that this ordinance is
19 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
20 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
21 thereof.

22
23 Section 4. The Town Council hereby finds, determines and declares that it has the power
24 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
25 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

26
27 Section 5. This ordinance shall be published and become effective as provided by
28 Section 5.9 of the Breckenridge Town Charter.

29
30 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
31 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
32 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
33 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
34 Town.

35
36 TOWN OF BRECKENRIDGE, a Colorado
37 municipal corporation

38
39
40 By _____
41 John G. Warner, Mayor

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ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

MEMO

TO: Town Council

FROM: Town Attorney

RE: Ordinance Amending Town's "General Penalty Ordinance"

DATE: December 1, 2009 (for December 8th meeting)

A violation of the Town Code¹ is classified as being either a "misdemeanor" or an "infraction." Misdemeanors are criminal violations that carry the possibility of a fine of up to \$999; imprisonment in the county jail for up to one day less than one year; or both fine and imprisonment. "Infractions" are non-criminal (that is to say, civil) violations that are punishable only by a fine of up to \$500. Prior to 2000 all Town Code violations were misdemeanors. In 2000, the Council decriminalized the more minor Code violations while leaving the more serious violations as misdemeanors.

The penalty provisions for misdemeanors and infractions are set forth in the Town's "General Penalty Ordinance." The two key principals behind the General Penalty Ordinance are that it is unlawful to violate any provision of the Town Code and that all violations are to be classified as misdemeanors unless the Code specifically says they are infractions. This means that the "default rule" is that a Code violation is a misdemeanor unless specifically provided otherwise. Because the penalties for misdemeanors and infractions are so different, it is important that the Code make it clear which Town law violations are misdemeanors and which are infractions.

I recently noticed certain language in the current General Penalty Ordinance that I think is not sufficiently clear on this important point. I would like for the Council to amend the General Penalty Ordinance to unambiguously set forth the "default rule" that all Code violations are misdemeanors unless otherwise expressly provided. Doing so will avoid any possible argument in court about whether conduct is unlawful under Town law and, if so, what procedure is to be followed and what punishment is allowed.

To that end, I have prepared the enclosed ordinance for your consideration. In some respects this is just a housekeeping matter. On the other hand, I think it is important that people be notified in clear and unambiguous language which Town law violations are misdemeanors and which are merely infractions. I think the enclosed ordinance does that.

As you will notice, in the process of drafting the ordinance I also made a few grammatical corrections to the current ordinance that I thought were necessary. I also eliminated the requirement in Section 1-4-1-1 that the Municipal Judge establish a fine schedule for all

¹ This term includes violations of the Breckenridge Town Code, as well as violations of codes adopted by reference in the Town Code (unless otherwise expressly provided) and any uncodified Town ordinance. The intent is to cover all formally adopted Town laws.

infractions. In practice, Judge Allen only has a fine schedule for traffic infractions that can be paid outside of court. For other infractions (such as a Sign Code violation or a Building Code violation), the Judge requires a court appearance and sets the fine based upon the facts of the particular case. In light of this practice, the current language mandating a fine schedule for all infractions should be taken out.

I will be happy to discuss this ordinance with you next Tuesday.

1 **FOR WORKSESSION/FIRST READING – DEC. 8**

2
3 Additions To The Current Breckenridge Town Code Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 COUNCIL BILL NO. ____

7
8 Series 2009

9
10 AN ORDINANCE CONCERNING THE CLASSIFICATION OF VIOLATIONS OF TOWN
11 ORDINANCES

12
13 BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRECKENRIDGE,
14 COLORADO:

15
16 Section 1. The definition of "Code Infraction" set forth in Section 1-3-2 of the
17 Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

CODE INFRACTION:

Any violation of this code, any ordinance of the town, or any code adopted by reference, other than a traffic infraction, which is classified as an infraction in the applicable penalty section. A code infraction is a civil (noncriminal) matter. ~~Any violation of this Code which is neither a code infraction nor a traffic infraction is a misdemeanor (criminal) violation.~~

18
19 Section 2. The definition of "Misdemeanor" set forth in Section 1-3-2 of the
20 Breckenridge Town Code is hereby amended so as to read in its entirety as follows:

MISDEMEANOR:

Any violation of this code, any ordinance of the town, or any code adopted by reference that is not specifically classified as an infraction. A misdemeanor is a ~~Any criminal matter violation of this code.~~ The term "misdemeanor" ~~shall~~ does not include any ~~noncriminal (civil)~~ infraction as defined in this Code.

21
22 Section 3. Subsection A of Section 1-4-1 of the Breckenridge Town Code is amended so
23 as to read in its entirety as follows:

24 A. It ~~shall be~~ is unlawful for any person to violate any ~~of the misdemeanor~~
25 ~~provisions of the~~ ordinances of the town, this code, or any code adopted by
26 reference, ~~or any regulation adopted pursuant to this code or town ordinance.~~

1 Each violation is a misdemeanor offense, except those violations specifically
2 classified as infractions in any Town ordinance, this code, or any code
3 adopted by reference. Except in cases where a different punishment is
4 prescribed by an ordinance of the town or this code, aAny person convicted of a
5 misdemeanor violation of this code, any ordinance of the town, any code adopted
6 by reference, or any regulation adopted pursuant to this code or town ordinance
7 shall be punished by a fine of not more than nine hundred ninety nine dollars
8 (\$999.00), or by imprisonment not to exceed one day less than one year, or by
9 both such fine and imprisonment; provided, however, that no person under the age
10 of eighteen (18) years as of the date of the offense for which he is convicted shall
11 be subject to a jail sentence, except in the case of a conviction of a traffic offense
12 under title 7 of this code. Any persons found to have committed a violation of
13 an infraction shall be punished as provided in Section 1-4-1-1.
14

15 Section 4. Section 1-4-1-1 of the Breckenridge Town Code is amended so as to read in
16 its entirety as follows:

17 1-4-1-1: GENERAL PENALTY--INFRACTIONS: It ~~shall be~~ is unlawful and a
18 violation for any person to violate any ~~of the~~ provisions of the ordinances of the
19 Town, this Code, or any code adopted by reference, ~~or any regulations adopted~~
20 ~~pursuant to this Code or Town ordinance which that~~ is classified as an infraction.
21 Any person found to be in violation of, or against whom a default judgment has
22 been entered for any infraction (other than a traffic infraction) shall be fined in an
23 amount not to exceed five hundred dollars (\$500.00), unless a greater or lesser
24 amount is specified in any specific penalty provision. ~~The Municipal Judge shall~~
25 ~~establish a schedule of the fines to be paid for each infraction.~~ Any person found
26 to be in violation of, or against whom a default judgment has been entered for any
27 traffic infraction shall be punished as provided in Section 7-1-6 of this Code. No
28 person found to be in violation of, or against whom a default judgment has been
29 entered for, any infraction shall be subject to imprisonment. Each day that an
30 infraction occurs shall constitute a separate offense.
31

32 Section 5. Except as specifically amended hereby, the Breckenridge Town Code, and the
33 various secondary codes adopted by reference therein, shall continue in full force and effect.

34 Section 6. The Town Council hereby finds, determines and declares that this ordinance is
35 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and
36 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants
37 thereof.

38 Section 7. The Town Council hereby finds, determines and declares that it has the power
39 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article
40 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

41 Section 8. This ordinance shall be published and become effective as provided by
42 Section 5.9 of the Breckenridge Town Charter.

1 INTRODUCTION, READ ON FIRST READING, APPROVED AND ORDERED
2 PUBLISHED IN FULL this ____ day of _____, 2009. A Public Hearing shall be held at the
3 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of
4 _____, 2009, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the
5 Town.

6
7 TOWN OF BRECKENRIDGE, a Colorado
8 municipal corporation
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12 By _____
13 John G. Warner, Mayor
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15 ATTEST:

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19 _____
20 Mary Jean Loufek, CMC,
21 Town Clerk
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MEMO

TO: Mayor & Town Council

FROM: Tim Gagen

DATE: December 2, 2009

RE: Town Attorney Contract

It is time for the Council to consider Tim Berry's agreement to serve as Town Attorney for fiscal year 2010. Tim Berry is available to us as much as we need him, he handles issues of extreme complexity and his expertise has been extremely valuable to the Town. Enclosed is a proposed Agreement. There are no fee increases for 2010.

Staff strongly recommends approval of this agreement.

December 1, 2009

Town Council
Town of Breckenridge
P.O. Box 168
Breckenridge, Colorado 80424

RE: Proposed 2010 Legal Services Agreements

Dear Mayor Warner and Councilmembers:

It is time for the Council to consider my agreement for fiscal 2010, as well as Seth Murphy's annual contract to provide services as the Town's Municipal Court Prosecutor.

Enclosed are proposed forms of agreement for both Seth and me. The proposed contracts are identical in substance to the contracts that you approved last year; however, I have removed the provision of my contract obligating the Town to reimburse me for attending a seminar sponsored by the International Municipal Lawyers Association. If I attend such a seminar next year I will be pleased to foot the bill.

I look forward to continuing my relationship with the Town, and I know that Seth does too.

I will be happy to discuss these proposed agreements with you on Tuesday.

Very truly yours,

Timothy H. Berry

THB

FOR WORKSESSION/ADOPTION – DEC. 8

A RESOLUTION

SERIES 2009

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT FOR ATTORNEY SERVICES WITH TIMOTHY H. BERRY, P.C. FOR 2010

WHEREAS, the Town of Breckenridge desires to enter into a Town Attorney Agreement with Timothy H. Berry, P.C. for 2010;

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

Section 1. The Town Attorney Agreement with Timothy H. Berry, P.C. for 2010, a copy of which is attached hereto as Exhibit “A” and by this reference made a part hereof, is hereby approved by the Town Council.

Section 2. The Mayor of the Town of Breckenridge be and hereby is authorized, empowered and directed in the name of the Town of Breckenridge and on behalf of its Town Council to make, execute and deliver the Town Attorney Agreement attached hereto as Exhibit “A”.

RESOLUTION ADOPTED AND APPROVED this _____ day of December, 2009.

ATTEST:

TOWN OF BRECKENRIDGE

Mary Jean Loufek, CMC, Town Clerk

John Warner, Mayor

APPROVED IN FORM

Town Attorney

Date

TOWN ATTORNEY AGREEMENT

This Agreement (“*Agreement*”) is made and entered into this _____ day of _____ ~~2009~~2010, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“*Town*”) and TIMOTHY H. BERRY, P.C., a Colorado corporation (“*Attorneys*”).

WITNESSETH:

1. The Town does hereby employ and retain the Attorneys as Town Attorney for the period commencing January 1, ~~2009~~2010 and ending December 31, ~~2009~~2010. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.
2. The Attorneys accept such employment and agree to perform the duties required of it as Town Attorney in a competent and professional manner.
3. The Attorneys are hired to, and shall perform, the following duties:
 - A. Act as legal advisor to, and be the attorney and counsel for, the Town Council.
 - B. Advise any Town officer, department head or staff member in matters relating to his or her duties. To facilitate the performance of this duty, Timothy H. Berry, President of Attorneys, shall be available in the Town Hall offices from 9:00 a.m. to 4:30 p.m. each Tuesday, except on those Tuesdays when the Timothy H. Berry is to attend a Town Council or Planning Commission meeting, in which event he shall be available until the conclusion of such meeting.
 - C. Prepare and review ordinances, contracts and other written instruments when requested by the Town Council, municipal officials or staff members and promptly give its opinion as to the legal consequences thereof.
 - D. Call to the attention of the Town Council, municipal officials and staff members all matters of law, and changes and developments therein, which affect the Town.
 - E. Have Timothy H. Berry attend all regular and special meetings of the Town Council.
 - F. Have Timothy H. Berry attend regular and special Town Planning Commission meeting when requested to do so by the Town staff or the Planning Commission.
 - G. Have Timothy H. Berry attend meetings of the Breckenridge Open Space Advisory Commission when requested to do so by the Town staff or the Open Space Advisory Commission.

~~2009~~2010 TOWN ATTORNEY AGREEMENT

- H. Have Timothy H. Berry attend meetings of the Town's Liquor Licensing Authority when requested to do so by the Town staff or the Liquor Licensing Authority.
 - I. Unless otherwise directed by the Town Council, the Attorneys shall represent the Town in any litigation in state or federal courts or before administrative agencies.
4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of \$160.00 per hour for each hour of time, whether litigation or non-litigation, expended by Timothy H. Berry (whether in the Town's offices or the Attorneys' offices). Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with litigation matters including, but not limited to, the cost of subpoenas, witness fees and photocopying costs incurred outside of Attorneys' office. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorney for such services. The Attorneys shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorneys' monthly statement for services rendered shall be mailed to the Town on or before the first day of each month and shall be paid by the Town not later than the 15th day of each month.
 5. Notwithstanding the provisions of Paragraph 4 of this Agreement, legal services performed by the Attorneys for the Town which are to be reimbursed by third parties (such as real estate developers or property owners) shall be billed at the rate of \$220.00 per hour. Such services shall be separately billed and accounted for as directed by the Financial Services Manager of the Town.
 6. The Attorneys shall not bill the Town for travel time to and from Attorneys' Leadville office and Breckenridge. In lieu thereof, the Town shall pay to the Attorneys a mileage allowance of \$0.25 per mile round trip for each regularly scheduled trip made on Town business by Attorneys.
 - ~~7. In addition to the compensation provided in this Agreement, Town shall pay or reimburse Attorneys for the reasonable expenses incurred by Timothy H. Berry in attending one municipal law seminar sponsored by the International Municipal Lawyers Association, or other similar national sponsor, during fiscal year 2009. Such expenses shall include only: (i) the registration fee for the seminar; (ii) air fare; and (iii) hotel accommodations.~~
 - 8.7. The Attorneys shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$ 1,000,000.00 yearly aggregate.
 - 9.8. The Attorneys shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees.

~~2009~~2010 TOWN ATTORNEY AGREEMENT

~~10.9.~~ The Attorneys understands that (i) Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Attorneys are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorneys are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorneys are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Attorneys or some other entity. Attorneys agree to indemnify and hold Town harmless from any liability resulting from Attorneys' failure to pay or withhold state or federal taxes on the compensation paid hereunder

~~11.10.~~ The Attorneys shall devote so much of the firm's time to the business of the Town as may be required to assure proper representation of the Town, but the Attorneys shall not be prevented from taking other employment by reason of this Agreement; provided, however, that the Attorneys shall not enter into other contractual or business relationships, nor undertake to represent a client, when such contract, business relationship or representation would create a conflict of interest as to Attorneys' continued representation of Town.

~~12.11.~~ The Attorneys understand and acknowledge that the firm serves at the pleasure of the Town Council, and that this Agreement may be terminated at any time by the Town Council, without liability to the Attorneys for breach, and without the need for either cause for the termination or a hearing.

~~13.12.~~ Throughout the extended term of this Agreement, Attorneys shall not:

- A. knowingly employ or contract with an illegal alien who will perform work under this Agreement; or
- B. enter into a contract with a subcontractor that fails to certify to Attorneys that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Attorneys have confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Colorado Department of Labor and Employment employment verification program. As used in this provision: (i) the term "E-Verify Program" means the electronic employment verification program created in Public Law 104-208, as amended and expanded in Public Law 108-156, as amended, and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program; and (ii) the term "Colorado Department of Labor and Employment employment verification program" means the program established by Section 8-17.5-102(5)(c), C.R.S.

~~2009~~2010 TOWN ATTORNEY AGREEMENT

Attorneys are prohibited from using E-Verify Program or the Department Program procedures to undertake preemployment screening of job applicants while this Agreement is being performed.

If Attorneys obtain actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Attorneys shall:

- A. notify such subcontractor and the Town within three days that Attorneys has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Attorneys shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Attorneys shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Attorneys violates any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section ~~1312~~, the Town may terminate this Agreement for a breach of the contract. If this Agreement is so terminated, Attorneys shall be liable for actual and consequential damages to the Town.

~~14.13.~~ The Town shall contract with another attorney or law firm to handle the prosecution of municipal ordinance violations in the Town's Municipal Court, and appeals from the judgments of such court. Such services are excluded from this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
John G. Warner, Mayor

~~2009~~2010 TOWN ATTORNEY AGREEMENT

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

TIMOTHY H. BERRY, P.C., a Colorado
corporation

By: _____

Timothy H. Berry, President

| 100-2-0\20092010 Retainer Agreement (12-01-08)\09

| 20092010 TOWN ATTORNEY AGREEMENT

Page 5 of 5

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TOWN OF BRECKENRIDGE

By _____
John Warner, Mayor

ATTEST:

Mary Jean Loufek,
CMC, Town Clerk

APPROVED IN FORM

Town Attorney Date

MUNICIPAL COURT PROSECUTOR AGREEMENT

This Agreement ("Agreement") is made and entered into this ____ day of _____, 20____, by and between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation ("Town") and RICHMOND, SPROUSE & MURPHY, LLC, a Colorado limited liability company ("Attorneys").

WITNESSETH:

1. The Town does hereby employ and retain the Attorneys to act as the prosecutor in the Town's Municipal Court ("Prosecutor") for the period commencing January 1, 2010 and ending December 31, 2010. The Attorneys shall perform the services as more fully described in Paragraph 3 of this Agreement.

2. The Attorneys accept such employment and agree to perform the duties required of it as Prosecutor in a competent and professional manner.

3. The Attorneys are hired to, and shall perform, the following duties:

A. Prosecute all matters brought in the Town's Municipal Court ("Municipal Court"), including having Seth Murphy, or another competent prosecuting attorney, appear on behalf of the Town in each session of the Municipal Court, which sessions are generally scheduled on the second and fourth Wednesday of each month, with additional sessions scheduled as required by the Municipal Court's schedule.

B. Unless otherwise requested by the Town, represent the Town in any appeals of Municipal Court matters.

C. Advise any Town officer, department head or staff member in matters relating to Municipal Court.

D. Have Seth Murphy attend Town Council or other Town meetings when requested to do so by the Town Council or Town staff.

4. As compensation for the services to be provided by the Attorneys as set forth in Paragraph 3, the Town shall pay the Attorneys the sum of \$100.00 per hour for each hour expended by Seth Murphy on matters related to the Municipal Court. Attorneys shall also be reimbursed for all reasonable and necessary expenses which it may pay or incur on behalf of the Town in connection with Municipal Court matters including, but not limited to, the cost of subpoenas, witness fees and photocopying costs incurred outside of Attorneys' office. Computerized legal research services performed for the Town shall be billed to the Town at the same rate paid by the Attorneys for such services. The Attorneys shall submit to the Town on a monthly basis an itemized billing detailing all services performed for the Town during the preceding month. The Attorneys' monthly statement for services rendered shall be mailed to the Town on or before the fifth day of each month and shall be paid by the Town not later than the 15th day of each month.

2009 FEE AGREEMENT

A. Attorneys shall also be reimbursed the cost of employing, as an independent contractor or otherwise, an assistant for the Attorneys for Municipal Court matters. Such person shall assist Attorneys in preparing general court filings, contacting witnesses and victims, management of victim restitution and other victim input matters, and other matters relating to the Municipal Court. The Town's reimbursement for such assistant shall be at a rate not to exceed \$25.00 per hour, and such expense shall be submitted with the Attorneys' monthly itemized billing.

5. The Attorneys shall not bill the Town for travel time to and from the Municipal Court. In the event that any other travel is required as part of Attorneys' duties, such travel shall be billed at the hourly rate set forth above.

6. The Attorneys shall at all times maintain professional liability insurance in an amount of not less than \$1,000,000.00 per claim/\$1,000,000.00 yearly aggregate.

7. The Attorneys shall not be entitled to paid vacation, health benefits, sick leave or any other benefit paid, given or provided to Town employees.

8. The Attorneys understands that (i) Town will not pay or withhold any sum for income tax, unemployment insurance, Social Security or any other withholding pursuant to any law or requirement of any governmental body; (ii) Attorneys are obligated to pay federal and state tax on any moneys earned pursuant to this Agreement; (iii) Attorneys are not entitled to workers' compensation benefits from the Town or the Town's workers' compensation insurance carrier; and (iv) Attorneys are not entitled to unemployment insurance benefits unless unemployment compensation coverage is provided by Attorneys or some other entity. Attorneys agree to indemnify and hold Town harmless from any liability resulting from Attorneys' failure to pay or withhold state or federal taxes on the compensation paid hereunder.

9. The Attorneys shall devote so much of the firm's time to the business of the Town as may be required to assure proper representation of the Town, but the Attorneys shall not be prevented from taking other employment by reason of this Agreement; provided, however, that the Attorneys shall not enter into other contractual or business relationships, nor undertake to represent a client, when such contract, business relationship or representation would create a conflict of interest as to Attorneys' continued representation of Town.

10. The Attorneys understand and acknowledge that the firm serves at the pleasure of the Town Council, and that this Agreement may be terminated at any time by the Town Council, without liability to the Attorneys for breach, and without the need for either cause for the termination or a hearing.

11. Throughout the extended term of this Agreement, Attorneys shall not:

A. knowingly employ or contract with an illegal alien to perform work under this Agreement; or

B. enter into a contract with a subcontractor that fails to certify to Attorneys that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.

Attorneys have verified or have attempted to verify through participation in the Federal Basic Pilot Program that Attorneys do not employ any illegal aliens; and if Attorneys are not accepted into the Federal Basic Pilot Program prior to the extension of the term of this Agreement, Attorneys shall apply to participate in the Federal Basic Pilot Program every three months thereafter, until Attorneys are accepted or this Agreement has been completed, whichever is earlier. The requirements of this section shall not be required or effective if the Federal Basic Pilot Program is discontinued.

Attorneys are prohibited from using Federal Basic Pilot Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

If Attorneys obtain actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Attorneys shall:

A. notify such subcontractor and the Town within three days that Attorneys have actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

B. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to this section the subcontractor does not stop employing or contracting with the illegal alien; except that Attorneys shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Attorneys shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation that the Colorado Department of Labor and Employment undertakes or is undertaking pursuant to the authority established in Subsection 8-17.5-102 (5), C.R.S.

If Attorneys violate any provision of this Agreement pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. or this Section 13, the Town may terminate this Agreement for a breach of the contract. If this Agreement is so terminated, Attorneys shall be liable for actual and consequential damages to the Town.

12. Attorneys may contract with another qualified attorney to act as a substitute prosecutor in the event that Seth Murphy is unavailable to attend any Municipal Court session. The Attorneys shall pay such substitute prosecutor directly at the hourly rate set forth in this Agreement, and the Town shall reimburse Attorneys for such costs.

[SIGNATURE PAGE FOLLOWS]

2009 FEE AGREEMENT

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

ATTEST:

TOWN OF BRECKENRIDGE

Town Clerk

John Warner, Mayor

RICHMOND, SPROUSE & MURPHY, LLC,
a Colorado limited liability company

By: Seth Murphy, Member

MEMO

TO: Town Council

FROM: Laurie Best

RE: Resolutions for Valley Brook Housing Development grants

DATE: December 1, 2009 (for December 8th meeting)

In April of 2009 the Town received notice that two grants from the State of Colorado had been approved for infrastructure related to the Valley Brook Workforce Housing Project. A grant in the amount of \$750,000 was authorized by the State Housing Board and a grant in the amount of \$250,000 was authorized from the Energy/Mineral Impact Assistance Fund. We had applied for \$750,000 from each entity, so the total award of \$1,000,000 is a significant award, but less than originally requested. We have received contracts from each division of the State (Housing and Mineral Impact) which must be executed before any of the funds can be obligated or expended. Resolutions are included in your packet to approve the contracts and authorize the Town Manager to execute the contracts on behalf of the Town.

We are currently working with staff from the Housing Department and the Mineral Impact Fund to update the Scope of Services and Project Performance Plan which will be attachments to the contracts. The original Scopes and Plans were based on preliminary budget and schedule from January 2009 when the grant applications were submitted. The original Scopes and Plans also described that the property would be transferred to Mercy Housing as the developer prior to any construction or expenditure of reimbursable funds. This was consistent with our Development Agreement with Mercy and our plans at the time.

We have subsequently learned that the Housing Funds (\$750,000) must be expended while the property is owned by the Town. While these funds are made available through the State of Colorado they are Federal Funds from the Community Development Block Grant program and subject to specific federal regulations established by Department of Housing and Urban Development. The State had made us aware of other federal regulations affecting how the money could be spent but the ownership issue was not raised until October of 2009. Splitting the project into an infrastructure phase by the Town and vertical construction by the developer is feasible and also provides us with the opportunity to exempt the vertical construction phase from other federal requirements. This should result in some project cost savings particularly related to the Federal Davis Bacon (prevailing wage) requirements. We have been working with State staff to modify the scope of services and the budgets to reflect these changes and when these are completed they will be attached to the contracts prior to execution by the Town Manager.

Recommendation: We have been advised by the State that the Town should execute the contracts as soon as possible to protect the funds from cuts that are being considered by the State. Therefore, we are recommending approval of the contracts via resolution by the Council. We will continue to update the attachments/exhibits and will have the Town Manager execute the contracts as soon as these updates are completed.

1 **FOR WORKSESSION/ADOPTION – DEC. 8**

2
3 A RESOLUTION

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5 SERIES 2009

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7 A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT
8 CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL AFFAIRS
9 (Valley Brook Workforce Housing Development)

10
11 WHEREAS, the Town intends to develop an affordable workforce housing project on a
12 Town-owned parcel of land, which project is commonly referred to as the “Valley Brook
13 Workforce Housing Development”; and

14
15 WHEREAS, the Town has previously submitted a Community Development Block Grant
16 Application seeking to obtain a grant of \$750,000 to assist with the development of infrastructure
17 and affordable workforce housing for the “Valley Brook Workforce Housing Development”; and

18
19 WHEREAS, the Colorado Department of Local Affairs has approved the Town’s grant
20 request, and has submitted to the Town for its review and approval a proposed Contact (“Grant
21 Contract”), a copy of which is marked Exhibit "A", attached hereto, and incorporated herein by
22 reference; and

23
24 WHEREAS, the Town Council has reviewed the proposed Grant Contract, and finds and
25 determines that it would be in the best interest of the Town and its residents for Grant Contract to
26 be approved.

27
28 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
29 BRECKENRIDGE, COLORADO, as follows:

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31 Section 1. The grant contract between the Town and the Colorado Department of Local
32 Affairs (Exhibit "A" hereto) is approved, and the Town Manager is hereby authorized,
33 empowered, and directed to execute such contract on behalf of the Town of Breckenridge.

34
35 Section 2. The Town Manager is authorized to modify the exhibits to the approved grant
36 contract as may be necessary to reflect the project’s final scope, budget and schedule.

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38 Section 3. This resolution shall become effective upon its adoption.

39
40 RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____,
41 2009.

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43 TOWN OF BRECKENRIDGE
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By _____
John G. Warner, Mayor

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4 ATTEST:

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8 _____
9 Mary Jean Loufek, CMC,
10 Town Clerk

11 APPROVED IN FORM

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17 Town Attorney date

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Contract Routing #
CFDA # 14.228

CONTRACT

THIS CONTRACT, made by and between the State of Colorado, for the use and benefit of The Department of Local Affairs, 1313 Sherman Street, Denver, CO 80203 hereinafter referred to as the State, and Town of Breckenridge, P. O. Box 168, Breckenridge, CO 80424, hereinafter referred to as the Contractor,

WHEREAS, authority exists in the Law and Funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment in Fund Number _____ Appropriation Code Number _____, Org. Unit _____ GBL _____, Contract Encumbrance Number H0CDB08079G; and

WHEREAS, required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

WHEREAS, the United States Government, through the Housing and Community Development Act of 1974 ("the Act"), Pub. L. No. 93-383, as amended, has established a Community Development Block Grant ("CDBG") program and has allowed each state to elect to administer such federal funds for its nonentitlement areas, subject to certain conditions, including a requirement that the state's program give maximum feasible priority to activities which will benefit very low-, low-, and moderate-income families or aid in the prevention or elimination of slums or blight; the state's program may also include activities designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Additionally, the state's program is subject to a federal requirement that not less than seventy percent (70%) of the aggregate amount of CDBG funds received by the state shall be used for the support of activities that benefit persons of very low-, low-, and moderate-income; and

WHEREAS, the State of Colorado has elected to administer such federal funds for its nonentitlement areas through the Colorado Department of Local Affairs ("Department"), pursuant to C.R.S. 1973, 24-32-106(1) (d), 24-32-304(2) (j) and 24-32-705(1) (i); and

WHEREAS, the Department has received applications from political subdivisions in Colorado for allocations from the federal CDBG funds available to Colorado; and

WHEREAS, the Contractor is one of the eligible political subdivisions to receive CDBG funds; and

WHEREAS, the Department has approved the proposed Project of the Contractor;

NOW, THEREFORE, it is hereby agreed that:

1. Scope of Services. In consideration for the monies to be received from the State, the Contractor shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the "Scope of Service", set forth in Exhibit A, which is attached hereto and is incorporated herein by reference, and is hereinafter referred to as the "Project". Work performed prior to the execution of this Contract shall not be considered part of this Project.

2. Responsible Administrator. The performance of the services required hereunder shall be under the direct supervision of Tim Gagen, an employee or agent of Contractor, who is hereby designated as the responsible administrator of this Project. At any time the Contractor wishes to change the responsible administrator, the Contractor shall propose and seek the State's approval of such replacement responsible administrator. The State's approval shall be evidenced through a Contract Amendment to this contract initiated by the State as set forth in paragraph 16.b) of this Contract. Until such time as the State concurs in the replacement responsible administrator, the State may direct that Project work be suspended.

3. Time of Performance. This Contract shall become effective upon proper execution of this Contract by the State Controller or designee. The Project contemplated herein shall commence as soon as

practicable after the execution of this Contract and shall be undertaken and performed in the sequence set forth in the attached Exhibit A, Scope of Services. The Contractor agrees that time is of the essence in the performance of its obligations under this Contract, and that completion of the Project shall occur not later than the termination date set forth in the Scope of Services.

4. Eligibility and National Objectives. All project activities shall be eligible under Section 105 of the Act, as amended, and all related regulations and requirements. Furthermore, project activities shall meet the following indicated (with a "X") broad national objective(s), as set forth in Section 104(b)(3) of the Act, as amended, and all related regulations and requirements:

- Benefit persons of very low-, low-, and moderate-income;
- Prevent or eliminate slums or blight;
- Meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs.

5. Obligation, Expenditure and Disbursement of Funds.

a) Prior Expenses. Expenses incurred by the Contractor in association with said Project prior to execution of this Contract are not eligible CDBG expenditures and shall not be reimbursed by the State.

b) Environmental Review Procedures. Funds shall not be obligated or utilized for any activities requiring a release of funds by the State under the Environmental Review Procedures for the CDBG program at 24 CFR Part 58 until such release is issued in writing. Administrative costs, reasonable engineering and design costs, and costs of other exempt activities identified in 24 CFR 58.34(a)(1) through (8) do not require a release of funds by the State. For categorically excluded activities listed in 58.35(a) determined to be exempt because there are no circumstances which require compliance with any other Federal laws and authorities cited at 58.5, the Contractor must make and document such a determination of exemption prior to incurring costs for such activities.

c) Community Development Plan Requirement. Prior to receiving disbursements of CDBG funds from the State, the Contractor shall identify its community development and housing needs, including the needs of very low-, low-, and moderate-income persons, and the activities to be undertaken to meet such needs.

6. Definition of Very low-, Low- and Moderate-Income Persons. Very low-, low-, and moderate-income persons are defined, for the purposes of this Contract, as:

- Those persons who are members of very low-, low-, and moderate-income families as set forth in Exhibit B, which is attached hereto and incorporated herein by reference, or as subsequently promulgated in writing by the State, or
- Those persons who have been determined by HUD, based upon most recent Census data, to be very low-, low-, and moderate-income persons.
- Those persons belonging to clientele groups who are generally presumed by HUD to be principally very low-, low-, and moderate-income persons.
- Not applicable to this project.

7. Citizen Participation. The Contractor shall provide citizens with reasonable notice of, and opportunity to comment on, any substantial change proposed to be made in the use of CDBG funds from one eligible activity to another by following the same citizen participation procedures required for the preparation and submission of its CDBG application to the State. The Contractor shall also comply with the procedure set forth herein regarding the modification and amendment of this Contract.

Additionally, the Contractor shall have and follow a Citizen Participation Plan (CPP) which includes the six elements specified in Section 104(a)(3) the Act. The CPP must include a provision for at least one public hearing during the course of the Project to allow citizens to review and comment on the Contractor's performance in carrying out the Project.

8. Residential Antidisplacement and Relocation Assistance Plan. The Contractor shall follow a residential antidisplacement and relocation assistance plan which, should displacement occur, provides that:

a) governmental agencies, non- and for-profit organizations, or private developers shall provide within the same community comparable replacement dwellings for the same number of occupants as could have been housed in the occupied and vacant occupiable low- and moderate-income dwelling units demolished or converted to a use other than for housing for low- and moderate-income persons, and provide that such replacement housing may include existing housing assisted with project based assistance provided under Section 8 of the United State Housing Act of 1939;

b) such comparable replacement dwellings shall be designed to remain affordable to persons of low- and moderate-income for ten (10) years from the time of initial occupancy;

c) relocation benefits shall be provided for all low-income persons who occupied housing demolished or converted to a use other than for low- or moderate-income housing, including reimbursement for actual and reasonable moving expenses, security deposits, credit checks, and other moving-related expenses; including any interim living costs; and, in the case of displaced persons of low- and moderate-income, provided either:

- i) compensation sufficient to ensure that, for a five-year (5-year) period, the displaced families shall not bear, after relocation, a ratio of shelter costs to income that exceeds thirty percent (30%); or
- ii) if elected by a family, a lump-sum payment equal to the capitalized value of the benefits available under subclause (i) to permit the household to secure participation in a housing cooperative or mutual housing association;

d) Persons displaced shall be relocated into comparable replacement housing that is:

- i) decent, safe, and sanitary;
- ii) adequate in size to accommodate the occupants;
- iii) functionally equivalent; and,
- iv) in an area not subject to unreasonably adverse environmental conditions.

Persons displaced shall have the right to elect, as an alternative to the benefits under this paragraph, to receive benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, if such persons determine that it is in their best interest to do so; and, where a claim for assistance under subparagraph (d) is denied by the Contractor, the claimant may appeal to the State, and that the decision of the State shall be final unless a court determines the decision was arbitrary and capricious.

The Contractor shall follow the Residential Antidisplacement and Relocation Assistance Plan except that paragraphs a) and b) shall not apply in a case in which the Secretary of the U. S. Department of Housing and Urban Development finds, on the basis of objective data, that there is available in the area an adequate supply of habitable affordable housing for low-, and moderate-income persons. A determination under this paragraph is final and nonreviewable.

9. Affirmatively Furthering Fair Housing. The Contractor shall affirmatively further fair housing in addition to conducting and administering its Project in conformity with the equal opportunity requirements of Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, as required herein.

10. Recovery of Capital Costs of Public Improvements. The Contractor shall not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of very low-, low-, or moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless;

a) CDBG funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than the CDBG program, or

b) for the purposes of assessing any amount against properties owned and occupied by persons of moderate income who are not persons of very low- or low-income, it certifies that it lacks sufficient CDBG funds to comply with the requirements of subparagraph (a) hereinabove.

11. Compensation and Method of Payment. The State agrees to pay to the Contractor, in consideration for the work and services to be performed, a total amount not to exceed \$750,000. The method and time of payment shall be made in accordance with the "Payment Schedule" set forth herein in EXHIBIT A. Any State funds not required for completion of the Project will be deobligated by the State through the processing of a bilateral amendment.

Unless otherwise provided in the Scope of Services:

a) The Contractor shall periodically initiate all reimbursement requests by submitting to the Department a written request using the State-provided form, for reimbursement of actual and proper expenditures of State CDBG funds plus an estimation of funds needed for a reasonable length of time.

b) The State may withhold any payment if the Contractor has failed to comply with the State CDBG program objectives, contractual terms, or reporting requirements.

c) The State may withhold the final payment until the Contractor has submitted and the Department has accepted, all required quarterly Financial Status Report and Performance Report information.

12. Financial Management and Budget. At all times from the effective date of this Contract until completion of this Contract, the Contractor shall comply with the administrative requirements, cost principles and other requirements set forth in the State's Financial Management Guide and the Financial Management Section of the State CDBG Guidebook. Contractor may adjust individual budgeted expenditure amounts without approval of the State provided that no budget transfers to or between administration budget categories are proposed and provided that cumulative budgetary line item changes do not exceed Twenty Thousand Dollars (\$20,000.00), unless otherwise specified in the "Budget" section of Exhibit A. Any budgetary modifications that exceed these limitations must be approved by the State through a Contract Amendment as set forth in Paragraph 16. c).

13. Audit.

a) Discretionary Audit. The State, through the Executive Director of the Department, the State Auditor, or any of their duly authorized representatives, including an independent Certified Public Accountant of the State's choosing, or the federal government or any of its properly delegated or authorized representatives shall have the right to inspect, examine, and audit the Contractor's (and any subcontractor's) records, books, accounts and other relevant documents. Such discretionary audit may be requested at any time and for any reason from the effective date of this Contract until five (5) years after the date final payment for this Project is received by the Contractor, provided that the audit is performed during normal business hours.

b) Mandatory Audit. Whether or not the State calls for a discretionary audit as provided above, the Contractor shall include the Project in its annual audit report as required by the Colorado Local Government Audit Law, C.R.S. 1973, 29-1-601, et seq and the Single Audit Act of 1996, Pub. L. 104-156, and Federal and State implementing rules and regulations. Such audit reports shall be simultaneously submitted to the Department and the State Auditor. Thereafter, the Contractor shall supply the Department with copies of all correspondence from the State Auditor or Federal Agency related to the relevant audit report. If the audit reveals evidence of non-compliance with applicable requirements, the Department reserves the right to institute compliance or other appropriate proceedings notwithstanding any other judicial or administrative actions filed pursuant to C.R.S. 1973, 29-1-607 or 29-1-608.

14. Contract Suspension. If the Contractor fails to comply with any contractual provision, the State may, after notice to the Contractor, suspend the Contract and withhold further payments or prohibit the Contractor from incurring additional obligations of contractual funds, pending corrective action by the Contractor or a decision to terminate in accordance with provisions herein. The State may determine to

allow such necessary and proper costs which the Contractor could not reasonably avoid during the period of suspension provided such costs were necessary and reasonable for the conduct of the Project.

15. Contract Termination. This contract may be terminated as follows:

a) Termination Due to Loss of Funding. The parties hereto expressly recognize that the Contractor is to be paid, reimbursed, or otherwise compensated with federal CDBG funds provided to the State for the purpose of contracting for the services provided for herein or with program income, and therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to compensation arising under this Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate or amend this Contract.

b) Termination for Cause. In accordance with 24 CFR Part 85.44, suspension or termination may occur if the Contractor materially fails to comply with any term of the Contract, or, in the State's discretion, the Contract may be terminated for convenience. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Contractor under this Contract shall, at the option of the State, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, the Contractor shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the State from the Contractor is determined.

c) Termination for Convenience. The State may terminate this Contract at any time the State desires. The State shall effect such termination by giving written notice of termination to the Contractor and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. All finished or unfinished documents and other materials as described in subparagraph 16.b) above shall, at the option of the State, become its property. If the Contract is terminated by the State as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Contractor covered by this Contract, less payments of compensation previously made: Provided, however, that if less than sixty percent (60%) of the services covered by this contract have been performed upon the effective date of such termination, the Contractor shall be reimbursed (in addition to the above payment) for that portion of the actual out-of-pocket expenses (not otherwise reimbursed under this Contract) incurred by the Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract. If this Contract is terminated due to the fault of the Contractor, subparagraph 16.b) hereof relative to termination shall apply.

16. Modification and Amendment.

a) Modification by Operation of Law. This Contract is subject to such modifications as may be required by changes in federal or state law or regulations. Any such required modifications shall be incorporated into and be part of this Contract as if fully set forth herein.

~~b) Unilateral Amendment. The State may unilaterally modify the following portions of this Contract when such modifications are requested by the Contractor or determined by the State to be necessary and appropriate. In such cases, the Amendment is binding upon proper execution by the Executive Director of the Department and State Controller's designee and without the signature of the Contractor.~~

~~_____ i) Paragraph 2. of this Contract, "Responsible Administrator";~~

~~_____ ii) Paragraph 3. of Exhibit A, Scope of Services "Time of Performance";~~

~~_____ iii) Paragraph 4 of Exhibit A, Scope of Services "Remit Address";~~

~~iv) Paragraph 5 of Exhibit A, Scope of Services "Payment Schedule".~~

~~Contractor must submit a written request to the Department if modifications are required. Amendments to this Contract for the provisions outlined in this Paragraph 16 b. i) through iv): Responsible Administrator, Time of Performance, Remit Address, or Payment Schedule can be executed by the State (Exhibit C1).~~

~~c) Bilateral Amendment. In the following circumstances, modifications shall be made by an Amendment signed by the Contractor, the Executive Director of the Department and the State Controller's designee. Such Amendments must be executed by the Contractor then the State and are binding upon proper execution by the State Controller's designee.~~

~~i) unless otherwise specified in the "Budget" section of Exhibit A, when cumulative budgetary line item changes exceed Twenty Thousand Dollars (\$20,000.00);~~

~~ii) unless otherwise specified in the "Budget" section of Exhibit A, when any budget transfers to or between administration budgetary categories are proposed;~~

~~iii) when any other material modifications, as determined by the State, are proposed to Exhibit A or any other Exhibits;~~

~~iv) when additional or less funding is needed and approved and modifications are required to Paragraph 5 of this Contract, Compensation and Method of Payment as well as to Exhibit A "Budget" and "Payment Schedule";~~

~~v) when there are additional federal statutory or regulatory compliance changes in accordance with Paragraph 20 of this Contract.~~

~~Such Bilateral Amendment may also incorporate any modifications allowed to be made by Unilateral Amendment as set forth in subparagraph 16.b) of this paragraph.~~

~~Upon proper execution and approval, such Amendment (Exhibit C2) shall become an amendment to the Contract, effective on the date specified in the amendment. No such amendment shall be valid until approved by the State Controller or such assistant as he may designate. All other modifications to this Contract must be accomplished through amendment to the contract pursuant to fiscal rules and in accordance with subparagraph 16 d).~~

d) Other Modifications. If either the State or the Contractor desired to modify the terms of this Contract other than as set forth in subparagraphs 16.b) and 16.c) above, written notice of the proposed modification shall be given to the other party. No such modification shall take effect unless agreed to in writing by both parties in an amendment to this Contract properly executed and approved in accordance with applicable law. Any amendment required per this subparagraph will require the approval of other state agencies as appropriate, e.g. Attorney General, State Controller, etc.

Such Amendment may also incorporate any modifications allowed to be made by Unilateral and Bilateral Amendment as set forth in subparagraphs 16.b) or 16.c) of this paragraph.

17. Integration. This Contract, as written, with attachments and references, is intended as the complete integration of all understanding between the parties at this time and no prior or contemporaneous addition, deletion or amendment hereto shall have any force or effect whatsoever, unless embodied in a written authorization or contract amendment incorporating such changes, executed approved pursuant to applicable law.

18. Reports.

a) Financial Reports. The Contractor shall submit to the Department quarterly financial status reports in the manner and method set forth in the Reporting Section of the State CDBG Guidebook.

b) Performance Reports. The Contractor shall submit to the Department quarterly performance reports and a project completion report in a manner and method prescribed by the Department in the Reporting Section and Close-Out Section of the State CDBG Guidebook.

19. Conflict of Interest.

a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by the Contractor and its subcontractors, no employee, officer or agent of the Contractor or its subcontractors shall participate in the selection or in the award of administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of the Contractor and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.

b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing rehabilitation assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to CDBG activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure for one year thereafter.

i) Persons Covered. The conflict of interest provisions of this subparagraph 19.b) apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the Contractor or of any designated public agencies or subcontractors receiving CDBG funds.

ii) Threshold Requirements for Exceptions. Upon the written request of the Contractor, the State may grant an exception to the provisions of this subparagraph 19.b) when it determines that such an exception will serve to further the purposes of the CDBG program and the effective and efficient administration of the Contractor's Project. An exception may be considered only after the Contractor has provided the following:

- a) A disclosure of the nature of the conflict, accompanied by an assurance that:
 - i. there has been or will be a public disclosure of the conflict and a description of how the public disclosure was or will be made; and
 - ii. the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific CDBG-assisted activity in question; and
- b) An opinion of the Contractor's attorney that the interest for which the exception is sought would not violate State or local law; and
- c) A written statement signed by the chief elected official of the Contractor holding the State harmless from all liability in connection with any exception which may be granted by the State to the provisions of this subparagraph 19.b);

iii) Factors to be Considered for Exceptions. In determining whether to grant a requested exception after the Contractor has satisfactorily met the requirements of subparagraph 19.b) ii) above, the State shall consider the cumulative effect of the following factors, where applicable:

- a) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Project which would otherwise not be available;
- b) Whether an opportunity was provided for open competitive bidding or negotiation;
- c) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be beneficiaries of the CDBG-assisted activity, and the exception will permit such person to receive generally the same benefits as are being made available or provided to the group or class;
- d) Whether the interest or benefit was present before the affected person was in a position as described in this subparagraph 19.b);

- e) Whether undue hardship will result either to the Contractor or the person affected when weighted against the public interest served by avoiding the prohibited conflict; and
- f) Any other relevant considerations.

20. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor and any subcontractors shall strictly adhere to all applicable Federal and State laws, orders, and all applicable standards, regulations, interpretations or guidelines issued pursuant thereto. The applicable Federal laws and regulations include:

- a) National Environmental Policy Act of 1969 (42 USC 4321 et seq.), as amended, and the implementing regulations of HUD (24 CFR Part 58) and of the Council on Environmental Quality (40 CFR Parts 1500-1508) providing for establishment of national policy, goals, and procedures for protecting, restoring and enhancing environmental quality.
- b) National Historic Preservation Act of 1966 (16 USC 470 et seq.), as amended, requiring consideration of the effect of a project on any district, site, building, structure or object that is included in or eligible for inclusion in the National Register of Historic Places.
- c) Executive Order 11593, Protection and Enhancement of the Cultural Environment, May 13, 1971 (36 FR 8921 et seq.), requiring that federally-funded projects contribute to the preservation and enhancement of sites, structures and objects of historical, architectural or archaeological significance.
- d) The Archaeological and Historical Data Preservation Act of 1974, amending the Reservoir Salvage Act of 1960 (16 USC 469 et seq.), providing for the preservation of historic and archaeological data that would be lost due to federally-funded development and construction activities.
- e) Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951 et seq.) prohibits undertaking certain activities in floodplains unless it has been determined that there is no practical alternative, in which case notice of the action must be provided and the action must be designed or modified to minimize potential damage.
- f) Executive Order 11990, Protection of Wetlands, May 24, 1977 (42 FR 26961 et seq.) requiring review of all actions proposed to be located in or appreciably affecting a wetland. Undertaking or assisting new construction located in wetlands must be avoided unless it is determined that there is no practical alternative to such construction and that the proposed action includes all practical measures to minimize potential damage.
- g) Safe Drinking Water Act of 1974 (42 USC 201, 300f et seq., 7401 et seq.), as amended, prohibiting the commitment of federal financial assistance for any project which the Environmental Protection Agency determines may contaminate an aquifer which is the sole or principal drinking water source for an area.
- h) The Endangered Species Act of 1973 (16 USC 1531 et seq.), as amended, requiring that actions authorized, funded, or carried out by the federal government do not jeopardize the continued existence of endangered and threatened species or result in the destruction or modification of the habitat of such species which is determined by the Department of the Interior, after consultation with the State, to be critical.
- i) The Wild and Scenic Rivers Act of 1968 (16 USC 1271 et seq.), as amended, prohibiting federal assistance in the construction of any water resources project that would have a direct and adverse effect on any river included in or designated for study or inclusion in the National Wild and Scenic Rivers System.
- j) The Clean Air Act of 1970 (42 USC 1857 et seq.), as amended, requiring that federal assistance will not be given and that license or permit will not be issued to any activity not conforming to the State implementation plan for national primary and secondary ambient air quality standards.
- k) Flood Disaster Protection Act of 1973 (42 USC 4001), placing restrictions on eligibility and acquisition and construction in areas identified as having special flood hazards.

l) HUD Environmental Criteria and Standards (24 CFR Part 51) providing national standards for noise abatement and control, acceptable separation distances from explosive or fire prone substances and suitable land uses for airport runway clear zones.

m) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 -- Title III, Real Property Acquisition (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by federal or federally-assisted programs and establishing uniform and equitable land acquisition policies for federal assisted programs. Requirements include bona fide land appraisals as a basis for land acquisition, specific procedure for selecting contract appraisers and contract negotiations, furnishing to owners of property to be acquired a written summary statement of the acquisition price offer based on the fair market price, and specified procedures connected with condemnation.

n) Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 -- Title II, Uniform Relocation Assistance (Pub. L. 91-646 and implementing regulations at 24 CFR Part 42), providing for fair and equitable treatment of all persons displaced as a result of any federal or federally-assisted program. Relocation payments and assistance, last-resort housing replacement of displacing agency, and grievance procedures are covered under the Uniform Act. Payments and assistance will be made pursuant to State or local law, or the grant recipient must adopt a written policy available to the public describing the relocation payments and assistance that will be provided. Moving expenses and up to \$22,500 or more for each qualified homeowner or up to \$5,250 or more for each tenant are potential costs.

o) Section 104(d) of the Housing and Community Development Act of 1974, (42 USC 5301 as amended and implementing regulations at 24 CFR Part 570) providing for the replacement of all low- and moderate-income dwelling units that are demolished or converted to another use as a direct result of the use of CDBG funds, and which provides for relocation assistance for low- and moderate-income households so displaced.

p) Davis-Bacon Fair Labor Standards Act (40 USC 276A -276a-5) requiring that, on all contracts and subcontracts which exceed \$2,000 for federally-assisted construction, alteration or rehabilitation, laborers and mechanics employed by contractors or subcontractors shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor. (This requirement applies to the rehabilitation of residential property only if such property is designed for use of eight or more units.) The requirements set forth in this subparagraph are inapplicable to individuals who volunteer their services under circumstances set forth in 24 CFR Part 70.

Assistance shall not be used directly or indirectly to employ, award contracts to, or otherwise engage the services of, or fund any subcontractor or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR Part 24.

q) Contract Work Hours and Safety Standards Act of 1962 (40 USC 327 et seq.) requiring that mechanics and laborers employed on federally-assisted contracts which exceed \$2,000 be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work week.

r) Copeland "Anti-Kickback" Act of 1934 (40 USC 276 (c)) prohibiting and prescribing penalties for "kickbacks" of wages in federally-financed or -assisted construction activities.

s) The Lead-Based Paint Poisoning Prevention Act -- Title IV (42 USC 4831) prohibiting the use of lead-based paint in residential structures constructed or rehabilitated with federal assistance, and requiring notification to purchasers and tenants of such housing of the hazards of lead-based paint and of the symptoms and treatment of lead-based paint poisoning.

t) Unless otherwise provided for in EXHIBIT A, Scope of Services, this contract is subject to the following: Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701 (u)), as amended.

- i) The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701 (u) (Section 3). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to very low- and low-income persons, particularly persons who are recipients of HUD assistance for housing.
- ii) The parties to this contract agree to comply with HUD's regulations in 24 CFR Part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the Part 135 regulations.
- iii) The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the persons) taking applications for each of the positions; and the anticipated date the work shall begin.
- iv) The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR Part 135 ((Paragraph 23 t)i) - 23 t)vii) of this contract)), and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR Part 135. The Contractor will not subcontract with any subcontractor where the Contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR Part 135.
- v) The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR Part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR Part 135.
- vi) Noncompliance with HUD's regulations in 24 CFR Part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- vii) With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations, and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and Section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

u) Section 109 of the Housing and Community Development Act of 1974 (42 USC 5309), as amended, providing that no person shall be excluded from participation (including employment), denied program benefits or subjected to discrimination on the basis of race, color, national origin or sex under any program or activity funded in whole or in part under Title I (Community Development) of the Act.

- v) Title IV of the Civil Rights Act of 1964 (Pub. L. 88-352; 42 USC 2000 (d)) prohibiting discrimination on the basis of race, color, and incorporates laws prohibiting age or handicap or religious affiliation, or national origin discrimination in any program or activity receiving federal financial assistance.
- w) The Fair Housing Act (42 USC 3601-20), as amended, prohibiting housing discrimination on the basis of race, color, religion, sex, national origin, handicap and familial status.
- x) Executive Order 11246 (1965), as amended by Executive Orders 11375 and 12086, prohibiting discrimination on the basis of race, color, religion, sex or national origin in any phase of employment during the performance of federal or federally-assisted contracts in excess of \$2,000.
- y) Executive Order 11063 (1962), as amended by Executive Order 12259, requiring equal opportunity in housing by prohibiting discrimination on the basis of race, color, religion, sex or national origin in the sale or rental of housing built with federal assistance.
- z) Section 504 of the Rehabilitation Act of 1973 (29 USC 793), as amended, providing that no otherwise qualified individual shall, solely by reason of a handicap, be excluded for participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal funds.
- aa) Age Discrimination Act of 1975 (42 USC 6101), as amended, providing that no person shall be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funds.
- ab) Fire Administration Authorization Act of 1992 (P.L. 102-522), prohibiting the use of housing assistance in connection with certain assisted and insured properties, unless various protection and safety standards are met.
- ac) Excessive Force. In accordance with Section 519 of Public Law 101-144, the HUD Appropriations Act, Section 906 of Cranston-Gonzalez Affordable Housing Act of 1990, the Contractor has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and has adopted and is enforcing a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstration within its jurisdiction.
- ad) Lobbying. The Contractor assures and certified that:
- i) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of a federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
 - ii) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an offer or employee of any agency, a Member of Congress, an officer or employee of congress, or an employee of a Member of Congress in connection with this federally funded contract, grant, loan, or cooperative agreement, it shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
 - iii) It shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

- iv) It understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, USC. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

21. Monitoring and Evaluation. The State will monitor and evaluate the Contractor for compliance with the terms of the contract, and the rules, regulations, requirements and guidelines which the State has promulgated or may promulgate, including the State CDBG Guidebook. The Contractor may also be subject to monitoring and evaluation by the U.S. Department of Housing and Urban Development.

22. Severability. To the extent that this Contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof shall not be construed as waiver of any other term nor as waiver of a subsequent breach of the same term.

23. Binding on Successors. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns.

24. Subletting, Assignment or Transfer. Neither party nor any subcontractors hereto may sublet, sell, transfer, assign or otherwise dispose of this Contract or any portion thereof, or of its rights, title, interest or duties therein, without the prior written consent of the other party. No subcontract or transfer of Contract shall in any case release the Contractor of liability under this Contract.

25. Non-Discrimination. The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws and requirements with respect to discrimination and unfair employment practices.

26. Applicant Statement of Assurances and Certifications. The Contractor has previously signed an "Applicant Statement of Assurances and Certifications" which is hereby incorporated and made a part of this Contract by reference.

27. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Contract shall survive such termination date and shall be enforceable to the State as provided herein in the event of such failure to perform or comply by the Contractor or its subcontractors.

28. Order of Precedence. In the event of conflicts or inconsistencies between this contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A. Colorado Special Provisions
- B. Contract
- C. The Scope of Services, Exhibit A

29. Insurance

29.1 The Contractor shall obtain, and maintain at all times during the term of this agreement, insurance in the following kinds and amounts:

- a. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.

- b. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the contractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the State a certificate or other document satisfactory to the State showing compliance with this provision.

- c. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

29.2 The State of Colorado shall be named as additional insured on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required of the contract will be primary over any insurance or self-insurance program carried by the State of Colorado.

29.3 The Insurance shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the State by certified mail.

29.4 The contractor will require all insurance policies in any way related to the contract and secured and maintained by the contractor to include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.

29.5 All policies evidencing the insurance coverages required hereunder shall be issued by insurance companies satisfactory to the State.

29.6 The contractor shall provide certificates showing insurance coverage required by this contract to the State within 7 business days of the effective date of the contract, but in no event later than the commencement of the services or delivery of the goods under the contract. No later than 15 days prior to the expiration date of any such coverage, the contractor shall deliver the State certificates of insurance evidencing renewals thereof. At any time during the term of this contract, the State may request in writing, and the contractor shall thereupon within 10 days supply to the State, evidence satisfactory to the State of compliance with the provisions of this section.

29.7 Notwithstanding subsection a of this section, if the Contractor is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended ("Act"), the contractor shall at all times during the term of this contract maintain only such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Act. Upon request by the State, the contractor shall show proof of such insurance satisfactory to the State.

30. Legal Resident

Contractor must confirm that any individual natural person eighteen years of age or older is lawfully present in the United States pursuant to CRS 24-76.5-101 et seq., when such individual applies for public benefits provided under this Contract by requiring the applicant to:

- (a) Produce:
 - I. A valid Colorado driver's license or a Colorado identification card, issued pursuant to article 2 of title 42, C.R.S.; or
 - II. A United States military card or a military dependent's identification card; or

- III. A United States Coast Guard Merchant Mariner card; or
- IV. A Native American tribal document; and

- (b) Execute an affidavit herein attached as Exhibit E, Affidavit of Legal Residency, stating:
 - I. That he or she is a United States citizen or legal permanent resident; or
 - II. That he or she is otherwise lawfully present in the United States pursuant to federal law.

31. Indemnification.

i. Intergovernmental Grants

If this is an intergovernmental Grant, the provisions hereof shall not 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, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

ii. Non-Intergovernmental Grants

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Grant.

32. Statewide Contract Management System.

[This section shall apply when the State funds provided under this contract is \$100,000 or higher]

By entering into this Grant, the Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system. The Grantee's performance shall be evaluated in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation of the Grantee's performance shall be part of the normal contract administration process and the Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Statement of Project of this Grant. Such performance information shall be entered into the statewide Contract Management System at intervals established in the Statement of Project and a final review and rating shall be rendered within 30 days of the end of the Grant term. The Grantee shall be notified following each performance and shall address or correct any identified problem in a timely manner and maintain work progress. Should the final performance evaluation determine that the Grantee demonstrated a gross failure to meet the performance measures established under the Statement of Project, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the DOLA, and showing of good cause, may debar the Grantee and prohibit the Grantee from bidding on future contracts. The Grantee may contest the final evaluation and result by: (i) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)); or (ii) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Grantee, by the Executive Director, upon showing of good cause.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** 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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor 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.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.
- 11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.
- 12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center">CONTRACTOR Town of Breckenridge</p> <p>By: Tim Gagen Title: Town Manager</p> <hr/> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Bill Ritter, Jr., GOVERNOR DEPARTMENT OF LOCAL AFFAIRS</p> <p>By: _____ Susan E. Kirkpatrick, Executive Director</p> <p>Date: _____</p> <p align="center">PRE-APPROVED FORM CONTRACT REVIEWER</p> <p>By: _____ Autumn Gold, Housing Programs Manager</p> <p>Date: _____</p>
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ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

<p>A. STATE CONTROLLER David J. McDermott, CPA</p> <p>B. By: _____ Yingste Cha, Controller Delegate</p> <p>Date: _____</p>

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT A
SCOPE OF SERVICES
COLORADO DIVISION OF HOUSING

Town of Breckenridge, H0CDB08079G

1. PROJECT DESCRIPTION, OBJECTIVES, AND REQUIREMENTS.

A. **Project Description.** The Town of Breckenridge has been awarded a CDBG grant in the amount of \$750,000 to assist with the infrastructure housing development for the Valley Brook Subdivision in Breckenridge, Summit County. At the closing of this property, ownership will be conveyed to Mercy Housing Colorado, who has been selected by the Town to be the developer. Once the development is complete, the Summit Combined Housing Authority will market the homes and determine household eligibility. At least 51% (fifty-one percent) of the units will serve households at or below 80% of Area Median Income. This activity is eligible under 105(a)(4).

Type of Units	# of Units	Income of Beneficiaries
<u>CDBG-Assisted Units</u> (14) 2BR, (8) 3BR	22	≤ 80% of AMI (\$64,000)
<u>Other Affordable Units</u> (14) 2BR, (6) 3BR	20	≤ 120% of AMI (\$102,120)
Total Units	42	

B. **Form of Subsidy.** \$750,000 in CDBG funds will be used for construction.

2. ADMINISTRATIVE REQUIREMENTS.

A. **Administrative Requirements.** These funds will be administered in accordance with the requirements of this contract, Division of Housing (DOH) Revolving Loan Policies and the Project Performance Plan (Exhibit D). The Contractor shall comply with the administration requirements set forth in the most recent Community Development Block Grant Guidebook, or such requirements as may be subsequently issued by the State. The Contractor shall be responsible for administration of the contract but will convey ownership to Mercy Housing Colorado which shall own the project and carry out the proposed construction. Summit Combined Housing Authority shall manage the sale and resale of the properties and will ensure that the homeownership units are made available to eligible households.

- B. **Procurement Standards.** Selection of contractors and purchase of materials to accomplish the Project shall follow appropriate procurement standards as outlined in the Financial Management Section of the State's CDBG Guidebook.
- C. **Davis-Bacon Standards.** The Contractor shall comply with all the requirements of the Davis-Bacon Fair Labor Standards in accordance with the provisions set forth in Paragraph 20. p) within the main body of this contract.
- D. **Section 3 Requirements.** This project is subject to Section 3 Requirements that, to the greatest extent feasible, provides that opportunities for training and employment or the awarding of contracts that arise from or in this HUD-financed project, the Contractor will give preference in the hiring to persons whose income is equal to or less than 50 percent of Area Median Income (AMI), and the Contractor must give preference in contracting to businesses owned by persons, or that substantially employ persons, whose income is equal to or less than 50 percent of AMI in the project area. Compliance requirements are set forth in Paragraph 20. t) within the main body of this Contract.

3. ELIGIBLE BENEFICIARIES

- A. **Eligible Beneficiaries.** The prospective purchasing household must have a gross income that does not exceed 120% of the AMI. A listing of the incomes for all family household sizes is attached as Exhibit B.
- B. **Affordability Enforcement.** The beneficiary income requirements must be enforced by covenants running with the land. The contractor shall ensure that the DOH Beneficiary Use Covenant is recorded in the project name and land records during construction until individual homeownership units are sold to eligible buyers. Once all the units are sold, the unit deed restrictions for the units will replace the DOH Covenant. A copy of the recorded use covenant must be provided to the DOH at the time of recording and before any request for payment is made.
- C. **Change in Use.** During a period of 30 years following the date of the execution of the Project by the State, the Contractor may not change the use or planned use of the property acquired or improved unless: 1) the State determines the new use meets one of the national objectives of the CDBG program, and 2) the Contractor provides affected citizens with reasonable notice and an opportunity to comment on any proposed changes. If the Contractor decides, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which the State determines does not qualify in meeting a CDBG national objective, the Contractor must reimburse the State an amount equal to the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property. At the end of the 30 year period following the execution of the contract date and thereafter, no State restrictions on use of the property shall be in effect.

4. **PROPERTY STANDARDS. New Construction.** Newly constructed facilities will, at a minimum meet the HUD Section 8 Housing Quality Standards for Existing Housing contained in 24 CFR 982.405, incorporated by reference, and all applicable local codes, zoning and ordinances at the time of project completion.
5. **NATIONAL OBJECTIVE. Limited Clientele Activities:** This project meets the national objective of benefit to low and moderate-income persons as required in §570.483(b)(2)(A).
6. **TIME OF PERFORMANCE.** The Project shall commence upon the full and proper execution of this Contract and the completion of the appropriate environmental review, and shall be completed on or before December 31, 2009. However, the Project time of performance may be extended by amendment, subject to mutual agreement of the State and Contractor. To initiate this process, a written request shall be submitted to the State by the Contractor at least sixty (60) days prior to December 31, 2009, and shall include a full justification for the extension request.
7. **BUDGET.** Funds from sources other than CDBG shall not be considered matching funds subject to federal audit requirements.

Project Activities	Project Cost	CDBG Funds	Other Funds	Source
Land Value	\$3,000,000		\$3,000,000	Town of Breckenridge
Appraisal and Market Study	\$12,200		\$12,200	Predevelopment Loan
Building Permit, Water and Sewer Tap Fees	\$920,000		\$920,000	Town of Breckenridge
Off-Site & On-Site Infrastructure Costs	\$1,508,739	\$749,000	\$250,000	DOLA Energy Impact Assistance Fund
			\$509,739	Town of Breckenridge
Construction and Landscaping	\$7,516,607		\$2,286,590	Town of Breckenridge
			\$5,230,017	Sales Proceeds
Contingency	\$938,746		\$938,746	Sales Proceeds
Architect and Engineering	\$484,101		\$484,101	Sales Proceeds
Interim Financing Costs	\$432,413		\$432,413	Sales Proceeds
Attorneys Fee and Audit	\$27,615		\$27,615	Sales Proceeds
HOA Reserve Funding	\$31,500		\$31,500	Sales Proceeds
Developer's Fee	\$850,000		\$850,000	Sales Proceeds
Marketing Materials	\$50,000		\$50,000	Sales Proceeds
Project Management	\$150,000		\$150,000	Sales Proceeds
Consultants	\$44,061		\$44,061	Sales Proceeds
CDOH Final Payment	\$1,000	\$1,000		Predevelopment Loan
TOTAL	\$15,966,982	\$750,000	\$15,216,982	

8. **PAYMENT SCHEDULE.** Payments shall be made in accordance with the provisions set forth in Paragraph 11. within the main body of this Contract.

\$749,000 Interim Payment-Paid upon receipt and approval of written requests from the Contractor for funds to meet immediate cash needs.

\$1,000 Final Payment-Paid upon substantial completion of the Project, provided that the Contractor has submitted, and the Department of Local Affairs, Division of Housing has accepted, all required quarterly Financial Status Reports and Performance Report information.

\$750,000 TOTAL

REMITTANCE ADDRESS

Town of Breckenridge
P.O. Box 168
Breckenridge, CO 80424

9. **CONTRACT MONITORING.** The Colorado Department of Local Affairs, Division of Housing shall monitor this Contract in accordance with the provisions set forth in Paragraph 21 within the main body of this Contract.

10. **REPORTING SCHEDULE.** The Contractor shall provide the following reports to the Department of Local Affairs, Division of Housing in accordance with the provisions set forth in Paragraph 18 within the main body of this contract:

A. Financial Reports. One copy of the quarterly Financial Status Report shall be submitted within 20 calendar days of the end of the calendar quarter. This report must be submitted on forms provided by the Division of Housing. No requests for payments shall be processed if the Contractor has not submitted this quarterly report.

B. Narrative Reports. One copy of the quarterly Narrative Performance Report shall be submitted within 20 calendar days of the end of the calendar quarter. This report may be submitted on forms provided by the Division of Housing. No requests for payments shall be processed if the Contractor has not submitted this quarterly report.

C. Project Completion Report. Within 30 days after the completion of the Project or the final draw, whichever is later, the Contractor shall submit 1 copy of the Project Completion Report, 2 copies of the Final Financial Status Report, and 2 copies of the combined Beneficiary Report on forms provided by the Division of Housing.

D. Project Photographs. At the time of Project Close Out the contractor shall send before and after photographs of the project.

11. **MISCELLANEOUS INCOME.** Miscellaneous Income. This project will generate miscellaneous income. Miscellaneous income must be used in accordance with the most current DOH Revolving Loan Fund (RLF) Policies. Mercy Housing Colorado, as owner, is a qualifying nonprofit organization serving the development needs under Section 105(a)(15) of the Housing and Community Development Act of 1974. All revenues received which result directly from the CDBG-assisted activity, including but not limited to principal and interest payments, origination fees, servicing charges, interest earned and proceeds from the sale of acquired assets shall be considered to be miscellaneous income. All miscellaneous income shall be retained by the Contractor/Sub-grantee and used to continue the operation of the revolving loan fund unless an exception has been authorized in writing by the state, even if this Contract has expired. Miscellaneous income loses its federal identity and is generally not required to meet federal program requirements. In consideration of the state approving the miscellaneous income designation for such funds, Contractor/Sub-grantee will return RLF funds to the State if the non-profit is dissolved through bankruptcy or any other legal action. The State will then identify another non-profit to administer the existing RLF. In addition, the Contractor/Sub-grantee shall agree to provide accurate, complete, and timely disclosure of the revolving loan funds performance results for each prior and current CDBG RLF contract in accordance with reporting requirements set forth in the DOH Revolving Loan Fund Policies.
12. **INTEREST.** The Contractor shall expend the CDBG funds within 15 days of receipt and shall not earn interest on the funds prior to expenditure.

EXHIBIT B
INCOME AND RENT CHART

EXHIBIT B

COLORADO DIVISION OF HOUSING 2009 INCOME AND RENT LIMIT

HUD Release Date: March 19, 2009

County		MAXIMUM RENTS						INCOME LIMITS							
		0 BDRM	1 BDRM	2 BDRM	3 BDRM	4 BDRM	1 PERSON	2 PERSON	3 PERSON	4 PERSON	5 PERSON	6 PERSON	7 PERSON	8 PERSON	
Summit	120%	1,788	1,915	2,298	2,655	2,961	71,520	81,720	91,920	102,120	110,280	118,440	126,600	134,760	
Summit	100%	1,490	1,596	1,915	2,212	2,467	59,600	68,100	76,600	85,100	91,900	98,700	105,500	112,300	
Summit	80%	1,120	1,200	1,440	1,663	1,856	44,800	51,200	57,600	64,000	69,100	74,250	79,350	84,500	
Summit	65%	968	1,037	1,244	1,438	1,603	38,740	44,265	49,790	55,315	59,735	64,155	68,575	72,995	
Summit	60%	894	957	1,149	1,327	1,480	35,760	40,860	45,960	51,060	55,140	59,220	63,300	67,380	
Summit	55%	819	877	1,053	1,216	1,357	32,780	37,455	42,130	46,805	50,545	54,285	58,025	61,765	
Summit	50%	745	798	957	1,106	1,233	29,800	34,050	38,300	42,550	45,950	49,350	52,750	56,150	
Summit	45%	670	718	861	995	1,110	26,820	30,645	34,470	38,295	41,355	44,415	47,475	50,535	
Summit	40%	596	638	766	885	987	23,840	27,240	30,640	34,040	36,760	39,480	42,200	44,920	
Summit	30%	447	479	575	664	741	17,900	20,450	23,000	25,550	27,600	29,650	31,700	33,750	

EXHIBIT D
PROJECT PERFORMANCE PLAN

EXHIBIT D – PROJECT PERFORMANCE PLAN

Quarterly Reports: 1st Jan - March 2nd April - June 3rd July - Sept 4th Oct – Dec

Contract #: 08-079G	Town of Breckenridge – Valley Brook Subdivision	Monitoring Level – Periodic	
TARGET: Construction of subdivision infrastructure to support 42 for-sale units, 22 of which are CDOH (CDBG) assisted.		Explanation of Reasoning: Deed Restricted Homeownership	
DOH Staff: <u>Denise Selders</u> - Developer (303) 866-4650 <u>Stephanie Morey</u> - Asset Manager (303) 866-4649			
MILESTONES – Grantee shall...	CAPACITY	STATE ROLE- CDOH shall...	PROGRESS - reported quarterly (include date and description)
Provide documentation of signatory authority prior to or with Grantee executed contracts by: 4 th Quarter 2009	Grantee is authorized to enter into a legally binding contract.	Review copy of document prior to reimbursement of funds to Grantee.	ACHIEVED: <u>MM/ DD/20YY</u>
Provide certificates of insurance coverage required by this contract prior to or with Grantee executed contracts by: 3 rd Quarter 2009	Grantee has adequate insurance coverage per the terms of the Contract.	Review copy of documents prior to reimbursement of funds to Grantee.	ACHIEVED: <u>MM/ DD/20YY</u>
Provide proof of funding commitments by: 4 th Quarter 2009	Provide copy of Transfer or Title and Construction Loan approval	Track funding commitments, and will not release funds before other necessary funds are 100% committed.	ACHIEVED: <u>MM/ DD/20YY</u>

Obtain Environmental Release of Funds (ROF) Letter from DOLA by: 3 rd Quarter 2009	Grantee shall contact Tamra Hooper of the Dept. of Local Affairs at 303-866-6398 or Tamra.Hooper@state.co.us to complete HUD environmental requirements. Grantee can access CDBG guidebook at http://dola.colorado.gov/dlg/fa/cdbg/cdbg_guidebook.html#section_iv	Release funds only after ROF letter is provided.	ACHIEVED: <u>MM/ DD/20YY</u>
Record Beneficiary and Rent Use Covenant against property and submit original to CDOH by: 3 rd Quarter 2009	Grantee understands CDOH's term of affordability.	Release funds only after the Use Restriction is recorded or at closing if acquisition.	ACHIEVED: <u>MM/ DD/20YY</u>
Close on property acquisition and submit settlement by: by: 4 th Quarter 2009	Grantee will coordinate the closing date with the seller, funding sources and the title company.	Review copy of settlement statement and maintain on file.	ACHIEVED: <u>MM/ DD/20YY</u>
Receive and review CDOH Monitoring Documents by: 3 rd Quarter 2009	Grantee shall become familiar with CDOH reporting requirements.	Provide forms to Grantee within 30 days of contract execution. Respond to a request for training within 10 days.	ACHIEVED: <u>MM/ DD/20YY</u>
If Davis-Bacon is applicable: Identify Lead Agency: Mercy Housing Colorado Lock in wage determination by: 3 rd Quarter 2009	Grantee shall contact Becky Murray of the Dept. of Local Affairs at 303-866-2818 or Becky.Murray@state.co.us for Davis-Bacon compliance documents. Grantee can access CDBG guidebook at http://dola.colorado.gov/dlg/fa/cdbg/cdbg_guidebook.html#section_viii .	Document monitoring efforts of lead agency.	ACHIEVED: <u>MM/ DD/20YY</u>

Provide a description of what the agency will do to affirmatively market housing assisted with HOME funds (24 CFR 100-115). by: 3 rd Quarter 2009	Grantee is compliant with the spirit and letter of fair housing regulations and seeks to reach out to those underserved in the market.	Approve the plan and ensure its incorporation into the agency's program guidelines prior to project close out.	ACHIEVED: <u>MM/ DD/20YY</u>
Provide copy of signed agreement between Mercy Housing and the Summit County Housing Authority by: 4 th Quarter 2009	Grantee will ensure that the agreement between Mercy Services and SCCHA included all compliance task assignments for perpetuity of deed restriction and marketing and sales plan	Review document for completeness and understanding assignment of roles during and after sell off of initial units to homeowners	ACHIEVED: <u>MM/ DD/20YY</u>
Provide copy of deed restriction form required from homeowners by: 3 rd Quarter 2009			ACHIEVED: <u>MM/ DD/20YY</u>
Complete construction contracts per HUD contracting and procurement guidelines by: by: 4 th Quarter 2009	Grantee shall contact Lucia Smead of the Dept. of Local Affairs at 303-866-3128 or Lucia.Smead@state.co.us for HUD contracting compliance requirements. Grantee can access CDBG guidebook at http://dola.colorado.gov/dlg/fa/cdbg/cdbg_guidebook.html#section_viii .	Review compliance in quarterly reports and on-site monitoring visit.	ACHIEVED: <u>MM/ DD/20YY</u>
Begin construction on infrastructure by: 4 th Quarter 2009 On 20 units by: 1 st Quarter 2010. On 22 units by: 2 nd Quarter 2010.	Grantee shall monitor construction work and review status reports to ensure scope of work is on time and on budget. Grantee has contracted with Mercy Housing Colorado, an experienced affordable housing developer.	Monitor construction inspection reports from the Grantee.	ACHIEVED: <u>MM/ DD/20YY</u> ACHIEVED: <u>MM/ DD/20YY</u> ACHIEVED: <u>MM/ DD/20YY</u> ACHIEVED: <u>MM/ DD/20YY</u>

<p>Complete construction & obtain Certificates of Occupancy On infrastructure by: 1st Quarter 2010.</p> <p>On 20 units by: 2nd Quarter 2010.</p> <p>On 22 units by: 3rd Quarter 2010.</p>	<p>Grantee shall ensure construction work is complete, homes have been properly inspected to obtain Certificates of Occupancy, and they are ready to be sold.</p>	<p>Review in quarterly reports and on-site monitoring and place documentation in project file.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p> <p>ACHIEVED: <u>MM/ DD/20YY</u></p> <p>ACHIEVED: <u>MM/ DD/20YY</u></p> <p>ACHIEVED: <u>MM/ DD/20YY</u></p>
<p>Register property with Coloradohousingsearch.com by calling 1-877-428-8844 by: 1st Quarter 2010.</p>	<p>Summit Combined Housing Authority has experience marketing & selling affordable housing units.</p>	<p>Provide information about the affordable housing website and check it to ensure that the property has been listed.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p>
<p>Close on unit sales to qualified homebuyers: On 20 units by: 2nd Quarter 2010.</p> <p>On 22 units by: 3rd Quarter 2010.</p>	<p>Summit Combined Housing Authority has experience marketing & selling affordable housing units.</p>	<p>Provide information in quarterly reports and rent roll as needed.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p> <p>ACHIEVED: <u>MM/ DD/20YY</u></p> <p>ACHIEVED: <u>MM/ DD/20YY</u></p> <p>ACHIEVED: <u>MM/ DD/20YY</u></p>

<p>Grantee will submit quarterly reports on a timely basis, which includes: Project Performance Plan accomplishments and a Financial Summary Report (20 calendar days after each quarter)</p> <p>by: 4th Quarter 2009 by: 1st Quarter 2010 by: 2nd Quarter 2010 by: 3rd Quarter 2010 by: 4th Quarter 2010</p>	<p>Grantee will monitor work performed under the Scope of the Contract, and has experience with CDOH reports.</p>	<p>Review documents and provide follow up technical assistance as necessary.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p>
<p>Submit, on a monthly, quarterly or as-needed basis, pay requests and supporting documentation of expenses by:</p> <p>Ongoing</p>	<p>Grantee shall ensure that no costs were encumbered prior to contract execution.</p>	<p>Review backup documentation prior to approving pay request.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p>
<p>Verify homeowners of CDBG-assisted units meet the income requirements and all persons in the household are lawfully present in the United States (C.R.S. 24-76.5)</p>	<p>Grantees shall submit Exhibit E of the Contract "Affidavit of Residency" for all family members and required identification for family members 18 years of age and older when submitting each quarterly report.</p>	<p>Review verification documentation at time quarterly reports are received.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p>
<p>Submit the Project Completion Report (PCR) to CDOH 1 month after the contract expires</p> <p>by: 3rd Quarter 2010.</p>	<p>Grantee will report on work performed and demographic information of applicants and beneficiaries served on PCR forms</p>	<p>Provide forms to Grantee within 30 days of learning that all loans are closed. If needed, respond to a request for training within 10 days. Process the PCO within 30 days of receiving a complete report.</p>	<p>ACHIEVED: <u>MM/ DD/20YY</u></p>

EXHIBIT E
LEGAL RESIDENCY AFFIDAVIT

EXHIBIT E

AFFIDAVIT OF LEGAL RESIDENCY

I, _____, swear or affirm under penalty of perjury under the laws of the State of Colorado that (check one):

- I am a United States citizen, or
- I am a Permanent Resident of the United States, or
- I am lawfully present in the United States pursuant to Federal law.

I understand that this sworn statement is required by law because I have applied for a public benefit or I am a sole proprietor entering into a contract or purchase order with the State of Colorado. I understand that state law requires me to provide proof that I am lawfully present in the United States prior to receipt of this public benefit or prior to entering into a contract with the State. I further acknowledge that making a false, fictitious, or fraudulent statement or representation in this sworn affidavit is punishable under the criminal laws of Colorado as perjury in the second degree under Colorado Revised Statute 18-8-503 and it shall constitute a separate criminal offense each time a public benefit is fraudulently received.

Signature

Date

Name (please print)

1 ***FOR WORKSESSION/ADOPTION – DEC. 8***

2
3 A RESOLUTION

4
5 SERIES 2009

6
7 A RESOLUTION APPROVING AN ENERGY AND MINERAL IMPACT ASSISTANCE
8 PROGRAM GRANT CONTRACT WITH THE COLORADO DEPARTMENT OF LOCAL
9 AFFAIRS
10 (Valley Brook Parcel)

11
12 WHEREAS, the State of Colorado “Energy and Mineral Impact Assistance Program”
13 was created to assist political subdivisions that are socially and/or economically impacted by the
14 development, processing, or energy conversion of minerals and mineral fuels; and

15
16 WHEREAS, the Town intends to develop affordable workforce housing on a Town-
17 owned parcel of land commonly known as the “Valley Brook Parcel”; and

18
19 WHEREAS, the Valley Brook Parcel has been impacted by historical mining activities;
20 and

21
22 WHEREAS, the Town has previously submitted an Energy and Mineral Impact
23 Assistance Program Application to the Colorado Department of Local Affairs seeking to obtain a
24 grant of \$750,000 from the Energy and Mineral Impact Assistance Program to assist with the
25 construction of 42 workforce housing units on the “Valley Brook Parcel”; and

26
27 WHEREAS, the Colorado Department of Local Affairs has approved partial funding of
28 the Town’s grant request (\$250,000), and has submitted to the Town for its review and approval
29 a proposed Contract (“Grant Contract”), a copy of which is marked Exhibit "A", attached hereto,
30 and incorporated herein by reference; and

31
32 WHEREAS, the Town Council has reviewed the proposed Grant Contract, and finds and
33 determines that it would be in the best interest of the Town and its residents for Grant Contract to
34 be approved.

35
36 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
37 BRECKENRIDGE, COLORADO, as follows:

38
39 Section 1. The grant contract between the Town and the Colorado Department of Local
40 Affairs (Exhibit "A" hereto) is approved, and the Town Manager is hereby authorized,
41 empowered, and directed to execute such contract on behalf of the Town of Breckenridge.

42
43 Section 2. The Town Manager is authorized to modify the exhibits to the approved grant
44 contract as may be necessary to reflect the project’s final scope, budget and schedule.

45
46 Section 3. This resolution shall become effective upon its adoption.

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RESOLUTION APPROVED AND ADOPTED THIS ____ DAY OF _____,
2009.

TOWN OF BRECKENRIDGE

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

APPROVED IN FORM

Town Attorney date

Contract Routing #
Vendor #
CFDA # N/A

GRANT CONTRACT ENERGY AND MINERAL IMPACT ASSISTANCE PROGRAM
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THIS CONTRACT, made by and between the State of Colorado for the use and benefit of the Department of Local Affairs, 1313 Sherman Street, Denver, Colorado 80203 hereinafter referred to as the State, or the Department, and the Town of Breckenridge, P.O. Box 168, Breckenridge, Colorado 80424, hereinafter referred to as the Contractor.

WHEREAS, authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for encumbering and subsequent payment of this Contract in Fund Number 152, Appropriation Code Number 127, Org. Unit FBAØ, GBL _____, Contract Encumbrance Number F1ØS6573; and

WHEREAS, required approval, clearance and coordination have been accomplished from and with appropriate agencies; and

WHEREAS, the State desires to assist political subdivisions and state agencies of the State of Colorado that are experiencing social and economic impacts resulting from the development, processing, or energy conversion of minerals or mineral fuels; and

WHEREAS, pursuant to 39-29-110, C.R.S., the Local Government Severance Tax Fund has been created, which fund is administered by the Department of Local Affairs, herein referred to as the "Department," through the Energy and Mineral Impact Assistance program; and

WHEREAS, pursuant to section 39-29-110(1)(a) and (b)(I), C.R.S., the Executive Director of the Department is authorized to make grants from the Local Government Severance Tax Fund to those political subdivisions socially or economically impacted by the development, processing, or energy conversion of minerals and mineral fuels for the planning, construction, and maintenance of public facilities and for the provision of public services; and

WHEREAS, the Contractor, a political subdivision or state agency eligible to receive Energy and Mineral Impact Assistance funding, has applied to the Department for assistance with the construction of 42 workforce housing units in the Valley Brook Subdivision, as further described in the attached Exhibit A, herein referred to as the "Project"; and

WHEREAS, the Executive Director of the Department desires to distribute said funds pursuant to law; and

WHEREAS, the Executive Director wishes to provide assistance in the form of a grant from the Local Government Severance Tax Fund to the Contractor for the Project upon mutually agreeable terms and conditions as hereinafter set forth;

NOW THEREFORE, in consideration of and subject to the terms, conditions, provisions and limitations contained in this Contract, the State and the Contractor agree as follows:

1. **Scope of Services.** The Contractor shall do, perform, and carry out, in a satisfactory and proper manner, as determined by the State, all work elements as indicated in the "Scope of Services" section of Exhibit A, attached hereto and incorporated by reference herein.
2. **Responsible Administrator.** The performance of the services required hereunder shall be under the direct supervision of Laurie Best, Planner, an employee or agent of the Contractor who is hereby designated as the "Responsible Administrator" of the Project. At any time, the Contractor may propose, in writing, and seek the State's approval of a replacement Responsible Administrator, in accordance with paragraph 8.b.ii) of this Contract. The State, in its sole discretion, may direct that Project work be suspended in the event the current Responsible Administrator ceases to serve as such prior to the approval by the State of a replacement Responsible Administrator.
3. **Time of Performance.** This Contract shall become effective upon approval by the State Controller or designee (the "Effective Date") and extend through the completion date set forth in the "Time of Performance" section of Exhibit A. Performance of this Contract shall commence as soon as practicable after the Effective Date of this Contract; provided however, that the Contractor shall not be entitled to payment for any performance rendered before the Effective Date and shall not be eligible for reimbursement of any expenses incurred before the Effective Date. The Contractor shall undertake and perform its obligations hereunder as set forth in Exhibit A. The Contractor agrees that time is of the essence in the performance of its obligations under this Contract.

EIAF #6573 – Breckenridge Workforce Housing & Community Park

4. Authority to Enter into Contract and Proceed with Project. The Contractor represents and warrants that it possesses the legal authority to enter into this Contract and has taken all actions required to exercise such authority and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Contractor to its terms. The person signing and executing this Contract on behalf of the Contractor does hereby warrant and guarantee that he/she has full authorization to execute this Contract. In addition, the Contractor represents and warrants that it currently has the legal authority to proceed with the Project.

Furthermore, if the nature or structure of the Project is such that a decision by the electorate is required, the Contractor represents and warrants that it has held such an election and secured the voter approval necessary to allow the Project to proceed.

5. Payment of Funds: Grant. In consideration for the work and services to be performed hereunder, the State agrees to provide to the Contractor a grant from the Local Government Severance Tax Fund in an amount not to exceed TWO HUNDRED FIFTY THOUSAND AND XX/100 Dollars (\$250,000). The method and time of payment of such grant funds to the Contractor shall be made in accordance with the "Distribution Schedule" set forth in Exhibit A.

The Contractor shall use the funds provided by the State under this Contract solely for the purposes set forth in Exhibit A.

6. Refund of Excess Funds to the State.

a) Any State funds paid to the Contractor and not expended in connection with the Project shall be remitted by the Contractor to the State within thirty (30) days of either (i) the completion of the Project or (ii) a determination by the State, in its sole discretion, that the Project will not be completed, whichever occurs first. Any State funds not required for completion of the Project shall be de-obligated by the State.

b) It is expressly understood that if the Contractor receives funds from this Contract during any fiscal year in excess of its spending limit for such fiscal year, the Contractor shall refund all excess funds to the State within thirty (30) days of the later of (i) the receipt of such funds or (ii) the determination of such excess.

c) Under no circumstances shall unexpended or excess funds received by the Contractor under this Contract be refunded or paid to any party other than the State.

7. Financial Management and Budget. At all times from the Effective Date until completion of the Project, the Contractor shall maintain properly segregated accounts of State funds, matching funds, and other funds associated with the Project. All receipts and expenditures associated with the Project shall be documented in a detailed and specific manner, in accordance with the "Budget" section of Exhibit A. The Contractor may adjust individual budgeted expenditure amounts without approval of the State; provided that no transfers to or between administration categories are made; and provided further, that cumulative budgetary line item changes do not exceed the lesser of ten percent (10%) of the total budgeted amount or Twenty Thousand Dollars (\$20,000.00). All other budgetary modifications must be approved by the State pursuant to paragraph 8 of this Contract. Matching funds, if required, shall be expended by the Contractor on the Project in accordance with the requirements set forth in the "Budget" section of Exhibit A.

8. Modification and Amendment.

a) **Modification by Operation of Law.** This Contract is subject to such modifications as may be necessitated by changes in federal or state law or their implementing regulations. Any such required modifications automatically shall be incorporated into and be part of this Contract on the effective date of such modification, as if fully set forth herein.

b) **Modification by State.**

i) **Option Letter.** The State unilaterally may extend the term for performance of this Contract for up to one (1) additional year on the same terms and conditions specified in this Contract and Exhibit A. The State may exercise the option by written notice to the Contractor within thirty (30) days prior to the end of the current Contract term, in a form substantially equivalent to Exhibit B-1 attached hereto and incorporated by reference herein. The State may exercise this option only once during the duration of this Contract. The total duration of this Contract shall not exceed a total Contract period of five (5) years. Financial obligations of the State of Colorado payable after any current fiscal year are contingent upon the availability of funds for that purpose as set forth in paragraph 24 of this Contract.

ii) **Change Order Letter.** The State may make the following modifications to this Contract using a Unilateral Change Order Letter, in a form substantially equivalent to Exhibit B-2 attached hereto and incorporated by reference herein, when such modifications are requested by the Contractor, in writing, or determined by the State to be necessary and appropriate:

A) Change of Responsible Administrator, set forth in paragraph 2 of this Contract;

- B) Transfers to or between administrative budgetary categories, as required by paragraph 7 of this Contract;
- C) Changes to cumulative budgetary line item in excess of the lesser of ten percent (10%) of the total budgeted amount or Twenty Thousand Dollars (\$20,000.00), as required by paragraph 7 of this Contract;
- D) Change of Remit Address set forth in paragraph 5 of Exhibit A.

c) **Other Modifications.** If either Party desires to modify the terms of this Contract other than as set forth in subparagraphs a) and b) of this paragraph 8, written notice of the proposed modification shall be given to the other Party. No such modification shall take effect unless agreed to in writing by both Parties in an amendment to this Contract properly executed and approved in accordance with Colorado law, fiscal rules, and policies. Such amendment may also incorporate any modifications permitted under subparagraphs a) and .b) of this paragraph 8.

9. Audit.

a) **Discretionary Audit.** The State, through the Executive Director of the Department of Local Affairs, the Colorado State Auditor, or any of their duly authorized representatives and the federal government or any of its duly authorized representatives shall have the right to inspect, examine and audit the Contractor's and any subcontractor's records, books, accounts and other relevant documents. For the purposes of discretionary audit, the State specifically reserves the right to hire an independent certified public accountant of the State's choosing. A discretionary audit may be requested at any time and for any reason during the period commencing on the Effective Date and continuing for five (5) years after the date of the final payment for the Project under this Contract is received by the Contractor, provided that the audit is performed during normal business hours.

b) **Mandatory Audit.** Whether or not the State or the federal government calls for a discretionary audit as provided above, the Contractor shall include the Project in its annual audit report as required by the Colorado Local Government Audit Law, 29-1-601, et seq., C.R.S., and implementing rules and regulations. Such audit reports shall be simultaneously submitted to the Department and the State Auditor. Thereafter, the Contractor shall supply the Department with copies of all correspondence from the State Auditor related to the relevant audit report. If the audit reveals evidence of non-compliance with applicable requirements, the Department reserves the right to institute compliance or other appropriate proceedings notwithstanding any other judicial or administrative actions filed pursuant to 29-1-607 or 29-1-608, C.R.S.

10. Insurance. The Contractor shall at all times during the term of this Contract maintain such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, CRS 24-10-101, et seq., as amended. Upon request by the State, the Contractor shall show proof of such insurance satisfactory to the State. The Contractor shall require each contract with a subcontractor providing goods or services for or in connection with the Project to include insurance requirements substantially similar to the following:

a) Subcontractor shall obtain, and maintain at all times during the term of the subcontract, insurance in the following kinds and amounts:

i. Worker's Compensation Insurance as required by state statute, and Employer's Liability Insurance covering all of the subcontractor's employees acting within the course and scope of their employment.

ii. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- A. \$1,000,000 each occurrence;
- B. \$1,000,000 general aggregate;
- C. \$1,000,000 products and completed operations aggregate; and
- D. \$50,000 any one fire.

If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, the subcontractor shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Contractor a certificate or other document satisfactory to the Contractor showing compliance with this provision.

iii. Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.

b) In addition, the Contractor shall require the subcontractor, with respect to all insurance policies in any way related to the subcontract, to:

- i. name the Contractor and the State of Colorado as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction contracts will require the additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent). Coverage required by the subcontract will be primary over any insurance or self-insurance program carried by the Contractor or the State of Colorado.
- ii. include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Contractor by certified mail.
- iii. include clauses stating that each carrier will waive all rights of recovery, under subrogation or otherwise, against the Contractor and the State of Colorado, its agencies, institutions, organizations, officers, agents, employees and volunteers.
- iv. be issued by insurance companies satisfactory to the Contractor and the State of Colorado.
- v. provide certificates showing insurance coverage required by the subcontract to the Contractor within seven (7) business days of the effective date of the subcontract, but in no event later than the commencement of the services or delivery of the goods under such subcontract. No later than fifteen (15) days prior to the expiration date of any such coverage, the subcontractor shall deliver to the Contractor certificates of insurance evidencing renewals thereof. At any time during the term of the subcontract, the Contractor may request in writing and the subcontractor, within ten (10) days, shall supply to the Contractor, evidence satisfactory to the Contractor of compliance with the provisions of this paragraph.

11. Conflict of Interest. The Contractor shall comply with the provisions of 18-8-308 and 24-18-101 through 24-18-109, C.R.S.

12. Remedies. In addition to any other remedies provided for in this Contract, and without limiting the remedies otherwise available at law or in equity, if the Contractor fails to comply with any contractual provision, the State, after written notice to the Contractor, may:

- a) suspend this Contract and withhold further payments and/or prohibit the Contractor from incurring additional obligations of contractual funds, pending corrective action by the Contractor or a decision by the State to terminate this Contract in accordance with provisions herein. The State, in its sole discretion, may allow expenditures during the suspension period which the Contractor could not reasonably avoid, provided such costs were necessary and reasonable for the conduct of the Project; or
- b) terminate this Contract for default.

The above remedies are cumulative and the State, in its sole discretion, may exercise any or all of them individually or simultaneously.

13. Contract Termination. This Contract may be terminated as follows:

- a) **Termination Due to Loss of Funding.** The Parties hereto expressly recognize that the Contractor is to be paid or reimbursed with funds provided to the State for the purposes set forth herein, and therefore, the Contractor expressly understands and agrees that all its rights, demands and claims to payment or reimbursement arising under this Contract are contingent upon receipt of such funds by the State. In the event that such funds or any part thereof are not received by the State, the State may immediately terminate or amend this Contract.
- b) **Termination for Cause.** If, for any reason, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall give written notice to the Contractor of such delay or non-performance. If the Contractor fails to promptly correct such delay or non-performance within the time specified in the notice or twenty (20) days from the date of such notice, which ever is greater, the State shall have the right, at its sole option, to terminate this entire Contract, or such part of this Contract as to which there has been delay or failure to properly perform, for cause. If the State terminates this Contract for cause, the State shall reimburse the Contractor only for eligible expenditures made up to the date of termination.

Notwithstanding the above, the Contractor shall remain liable to the State for any damages sustained by the State by virtue of any breach of this Contract by the Contractor, and the State may withhold any payments to the Contractor for the purpose of offset until such time as the exact amount of damages due the State from the Contractor is determined.

c) **Termination for Convenience.** When the interests of the State so require, the State may terminate this Contract in whole or in part for the convenience of the State. The State shall give written notice of termination to the Contractor specifying the termination of all or a part of this Contract and the effective date thereof, at least twenty (20) days before the date of termination. Exercise by the State of this termination for convenience provision shall not be deemed a breach of contract by the State. Upon receipt of written notice, the Contractor shall incur no further obligations in connection with the terminated work and, on the date set in the notice of termination, the Contractor shall stop work to the extent specified. The Contractor also shall terminate outstanding orders and subcontracts as they relate to the terminated work.

14. Integration. This Contract, together with its exhibits and attachments, is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion or modification hereto shall have any force or effect whatsoever, unless embodied in a writing, executed by the Parties pursuant to paragraph 8 of this Contract, and approved in accordance with Colorado State fiscal rules and policies.

15. Severability. To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of this Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

16. Waiver. The waiver of any breach of a term, provision or requirement hereof shall not be construed as a waiver of any other term, provision or requirement or of any subsequent breach of the same term, provision or requirement.

17. Binding on Successors. Except as otherwise provided herein, this Contract shall inure to the benefit of and be binding upon the Parties, and their respective successors and assigns.

18. Assignment. Notwithstanding paragraph 17, the Contractor may not assign its rights or duties under this Contract without the prior written consent of the State. No subcontract or transfer of this Contract shall in any case release the Contractor of responsibilities under this Contract.

19. Survival of Certain Contract Terms. Notwithstanding anything herein to the contrary, all terms and conditions of this Contract, including but not limited to the exhibits and attachments hereto, which may require continued performance, compliance or effect beyond the termination date of this Contract shall survive such termination date and shall be enforceable by the State in the event of any failure to perform or comply by the Contractor or its subcontractors.

20. Successor in Interest. In the event the Contractor is an entity formed under intergovernmental agreement and the project is for the acquisition, construction or reconstruction of real or personal property to be used as a public facility or to provide a public service, the Contractor warrants that it has established protections that ensure that, in the event the Contractor entity ceases to exist, ownership of the property acquired or improved shall pass to a constituent local government or other eligible governmental successor in interest, or other successor if specifically authorized in Exhibit A, so that the property can continue to be used as a public facility or to provide a public service.

21. Non-Discrimination. The Contractor agrees to comply with the letter and the spirit of all applicable state and federal laws and requirements with respect to discrimination and unfair employment practices.

22. Compliance with Applicable Laws. At all times during the performance of this Contract, the Contractor shall strictly adhere to all applicable federal, state and local laws, and their implementing regulations, that have been or may thereafter be established, which laws and regulations are incorporated herein by this reference as terms and conditions of this Contract. The Contractor also shall require compliance with such laws and regulations by subcontractors under subcontracts entered into in connection with the Project.

23. Order of Precedence. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A. Colorado Special Provisions, of this contract.
- B. Modifications to the Contract, pursuant to Exhibits B-1, B-2, or Amendment.
- C. Remaining paragraphs of the Contract.
- D. Exhibit A, Scope of Services.

24. Availability of Funds. This Contract is contingent upon the continuing availability of State appropriations as provided in Section 2 of the Colorado Special Provisions, incorporated as a part of this Contract. The State is prohibited by law from making fiscal commitments beyond the term of its current fiscal period. If federal appropriations or grants fund this Contract in whole or in part, this Contract is subject to and contingent upon the continuing availability of appropriated federal funds for this Contract. If State of Colorado or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may immediately terminate this Contract in whole or in part without further liability.

EIAF #6573 – Breckenridge Workforce Housing & Community Park

25. Third Party Beneficiaries. The enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the State and the Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any third person. It is the express intention of the State and the Contractor that any such person or entity, other than the State or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

26. Indemnification.

i. Intergovernmental Grants

If this is an intergovernmental Grant, the provisions hereof shall not 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, CRS 24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

ii. Non-Intergovernmental Grants

Grantee shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Grant.

SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

- 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.
- 2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.
- 3. GOVERNMENTAL IMMUNITY.** 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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.
- 4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.
- 5. COMPLIANCE WITH LAW.** Contractor 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.
- 6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.
- 7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.
- 8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.
- 9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.
- 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. *[Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101. Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.

Revised 1-1-09

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

*** Persons signing for Contractor hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.**

CONTRACTOR Town of Breckenridge, Colorado	STATE OF COLORADO Bill Ritter, Jr., GOVERNOR
By: _____ Name of Authorized Individual	DEPARTMENT OF LOCAL AFFAIRS
Title: _____ Official Title of Authorized Individual	By: _____ Susan E. Kirkpatrick, Executive Director
_____ *Signature	Date: _____
Date: _____	PRE-APPROVED FORM CONTRACT REVIEWER
	By: _____ Teri Davis, Director of Local Government Services
	Date: _____

ALL CONTRACTS REQUIRE APPROVAL by the STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER David J. McDermott, CPA
By: _____
Rose Marie Auten, Controller Delegate
Date: _____

Revised June 2, 2008

EXHIBIT A
SCOPE OF SERVICES

**EXHIBIT A
SCOPE OF SERVICES**

1. PROJECT DESCRIPTION, OBJECTIVES AND REQUIREMENTS

The Project consists of having the Town of Breckenridge (Contractor) oversee the installation of the water, sewer, and utility infrastructure related to the construction of 42 workforce housing units in the Valley Brook Subdivision.

Eligible expense include but are not limited to; Consultant fees, project management fees, RFP/bid advertisements, survey work, water/sewer testing fees, CDPHE permit fees, attorney's fees and labor and materials costs, bond and insurance costs, and right-of-way acquisition.

Energy and Mineral Impact Assistance program funds in the amount of TWO HUNDRED FIFTY THOUSAND AND XX/100 Dollars (\$250,000) are provided under this Contract to finance Project costs. The Contractor shall provide SEVEN HUNDRED EIGHTY THREE THOUSAND EIGHT HUNDRED THIRTEEN AND XX/100 Dollars (\$783,813) in Project financing from sources other than State funds, and, in any event, is responsible for all Project cost in excess of TWO HUNDRED FIFTY THOUSAND AND XX/100 Dollars (\$250,000).

Construction plans and specifications shall be drawn up by a qualified engineer or architect licensed in the State of Colorado, or pre-engineered in accordance with Colorado law, and hired by the Contractor through a competitive selection process.

A construction contract shall be awarded to a qualified construction firm through a formal selection process with the Contractor being obligated to award the construction contract to the lowest responsible bidder meeting the Contractor's specifications.

A contract shall be awarded to a qualified vendor or firm through a competitive selection process with the Contractor being obligated to award the contract to the lowest responsible bidder meeting the Contractor's specifications.

If cost savings are incurred while completing the Project, the State may require that those savings be split on a pro-rata basis between the State and the Contractor.

Copies of any and all contracts entered into by the Contractor in order to accomplish this Project shall be submitted to the Department of Local Affairs upon execution, and any and all contracts entered into by the Contractor or any of its subcontractors shall comply with all applicable federal and state laws and shall be governed by the laws of the State of Colorado.

The Contractor agrees to acknowledge the Colorado Department of Local Affairs in any and all materials or events designed to promote or educate the public about the Project, including but not limited to: press releases, newspaper articles, op-ed pieces, press conferences, presentations and brochures/pamphlets.

2. ENERGY AND MINERAL IMPACT

The Town of Breckenridge was home to dredge mining from 1898 until 1942. The environmental damage was widespread and the once scenic rivers throughout the Upper Blue Basin were nearly destroyed. The Town of Breckenridge has expended over \$6.0 million in clean up efforts to restore the Blue River. The Valley Brook site is located on the western side of the Blue River.

3. TIME OF PERFORMANCE

The Project shall commence upon the Effective Date and shall be completed on or before June 30, 2010. In accordance with paragraph 8.b.i. of this Contract, the Contractor may request an extension of the time for performance by submitting a written request, including a full justification for the request, to the State at least thirty (30) days prior to the termination of the performance period. If the State, in its sole discretion, consents to an extension, the State shall grant such extension in accordance with paragraph 8.b.i. of this Contract.

4. BUDGET

<u>Revenues</u>		<u>Expenditures</u>	
Energy/Mineral Impact - GRANT	\$ 250,000	Consultant Services	\$ 250,611
Contractor Funds	\$ 783,813	Construction/Improvement of Public Utilities	\$ 994,692
DOH (CDBG)	<u>\$ 750,000</u>	Clearance/Demolition/Site Prep	<u>\$ 538,510</u>
Total	\$1,783,813	Total	\$1,783,813

5. **REMIT ADDRESS:** (Address to where payments are to be sent)

P.O. Box 168

Breckenridge, CO 80424

6. **DISTRIBUTION SCHEDULE**

Grant Payments

\$225,000 Available for interim payments reimbursing the Contractor for actual expenditures made in the performance of this Contract. Payments shall be based upon properly documented financial and narrative status reports detailing expenditures made to date.

\$ 25,000 Available for final payment to be made to Contractor upon the completion of the Project and submission by the Contractor of final financial and narrative status reports documenting the expenditure of all Energy/Mineral Impact Assistance funds for which payment has been requested.

\$250,000 **Maximum Available**

7. **PAYMENT PROCEDURE**

The State shall establish billing procedures and pay the Contractor for actual expenditures made in the performance of this Contract based on the submission of statements in the format prescribed by the State. The Contractor shall submit requests for reimbursement, setting forth a detailed description of the amounts and types of reimbursable expenses.

Payments pursuant to this Contract shall be made, in whole or in part, from available funds encumbered for the purposes of this Contract. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds. In the event this Contract is terminated, final payment to the Contractor may be withheld at the discretion of the State until completion of final audit. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation shall be recovered from the Contractor by deduction from subsequent payment under this Contract or other contracts between the State and the Contractor, or by the State as a debt due to the State.

8. **CONTRACT MONITORING**

The State shall monitor this Contract on an as-needed basis, as determined by the State in its sole discretion. The State or any of its duly authorized representatives shall have the right to enter, inspect and examine the Project upon twenty-four (24) hours advance written notice to the Responsible Administrator.

9. **REPORTING SCHEDULE**

At the time the Contractor submits quarterly payment requests, the Contractor shall submit, on a quarterly basis, financial and narrative status reports detailing Project progress and properly documenting all to-date expenditures of Energy and Mineral Impact Assistance funds. The form and substance of such status reports shall be in accordance with the procedures developed and prescribed by the State. The preparation of reports in a timely manner shall be the responsibility of the Contractor and failure to comply may result in the delay of payment of funds and/or termination of this Contract. Required reports shall be submitted to the State at such time as otherwise specified by the State.

EXHIBIT B1
OPTION LETTER

EXHIBIT B1

Contract Routing #	
Encumbrance #	
Vendor # (for Remit Address)	
APPR	GBL

OPTION LETTER # _____

(Grant Between Colorado Department of Local Affairs and (Grantee Name and Address))

Date: _____ State Fiscal Year: _____ Option Letter No.: _____

SUBJECT: Option to renew for additional term

In accordance with paragraph 8.b.i of contract routing number _____, between the State of Colorado, Department of Local Affairs, (Division name) and (Contractor's Name), the State hereby exercises the option for an additional term of **(OPTION 1)** ____ () months, **(OPTION 2)** one (1) year. The State may exercise this option only once during the duration of the Contract.

The amount of the current Fiscal Year contract value shall remain unchanged. The first sentence in paragraph 3 of Exhibit A of the Contract is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____)

APPROVALS:

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
(for) Susan E. Kirkpatrick, Executive Director
Department of Local Affairs

**EXAMPLE
DO NOT SIGN**

Reviewed by: _____
Pre-approved Form Contract Reviewer

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This Option Letter is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance under this Option Letter until the Option Letter is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and / or services provided.

STATE CONTROLLER:
David J. McDermott, CPA

By _____
Rose Marie Auten, Controller
Department of Local Affairs

Date _____

EXHIBIT B2
CHANGE ORDER LETTER

EXHIBIT B-2

Contract Routing #	
Encumbrance #	
Vendor # (for Remit Address)	
APPR	GBL

CHANGE ORDER LETTER # _____

In accordance with paragraph 8.b.ii of contract routing number _____ between the State of Colorado Department of Local Affairs, and (Name of Contractor _____), covering the period of (include performance period here), the State hereby unilaterally modifies the Contract as follows:

(Indicate purpose by choosing at least one of the following)

Choice #1: Responsible Administrator:

Paragraph 2 of the Contract is amended by deleting the name of the current Responsible Administrator in the first sentence and inserting in lieu thereof the name of the successor Responsible Administrator as follows:

Choice #2: Administrative Budget Categories: Exhibit A (Statement of Work) to the Contract is amended by transferring revenues and expenditures among administrative categories of paragraph 4 (Budget) as follows:

The total revenues and expenditures set forth in paragraph 4 of Exhibit A (Scope of Services) remain unchanged.

Choice #3: Cumulative Budgetary Line Item Changes in Excess of the lesser of ten percent (10%) or Twenty Thousand Dollars (\$20,000.00). Exhibit A (Scope of Services) to the Contract is amended by modifying paragraph 4 (Budget) as follows:

The total revenues and expenditures set forth in paragraph 4 of Exhibit A (Scope of Services) remain unchanged.

Choice #4: Remit Address: Exhibit A (Scope of Services) to the Contract is amended by deleting the current "Remit Address" in paragraph 5 (Remit Address) and inserting in lieu thereof the new "Remit Address" as follows:

The effective date of this change order is upon approval of the State Controller, or delegee, or _____, 20___, whichever is later.

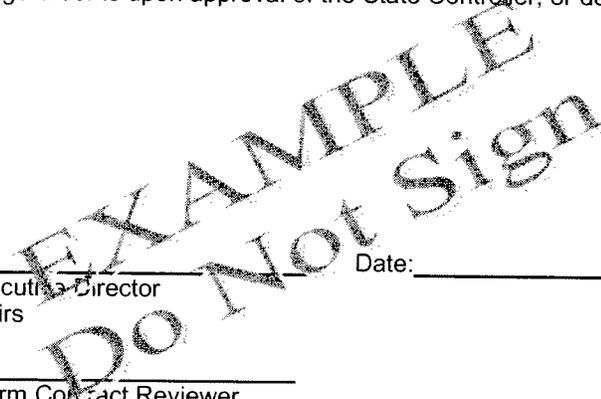
APPROVALS:

State of Colorado:

Bill Ritter, Jr., Governor

By: _____ Date: _____
(for) Susan E. Kirkpatrick, Executive Director
Department of Local Affairs

Reviewed by: _____
Pre-approved Form Contract Reviewer



ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for the goods and/or services provided.

STATE CONTROLLER:

David J. McDermott, CPA

By _____
Rose Marie Asten, Controller
Department of Local Affairs
Date _____

EXAMPLE
Do Not Sign

MEMORANDUM

To: Town Council

From: Jennifer Cram, Planner III

Re: **CLG - TAX CREDIT REVIEWING RESOLUTION**

Date: December 2, 2009 (for December 8, 2009 meeting)

In your packet is a resolution that would declare that the Town chooses NOT to be the reviewing agency for tax credits that are available with regard to historic preservation projects in perpetuity. The State would remain the reviewing agency. Because the Town is a Certified Local Government (CLG), the Town may choose to be the reviewing agency for such tax credits. Staff has no concerns with how the State has been performing these duties. Also, staff believes it would consume added staff resources to administer this program. Finally, we believe that it would require significant training due to the technical nature of the credits, and that this training would not be commensurate with the benefits that would be provided, due to the limited number of applications from our community that have traditionally been submitted for tax credits.

In either case, according to the State, the Town must adopt a resolution stating the Town's intention. The Town adopted a similar resolution in December of last year.

Recommendation: Staff recommends that Council adopt the attached resolution declaring that the Town chooses not to be the reviewing agency regarding tax credits for historic preservation, for fiscal year 2010 and beyond.

1 **FOR WORKSESSION/ADOPTION – DEC. 8**

2
3 A RESOLUTION

4
5 SERIES 2009

6
7 A RESOLUTION DETERMINING THAT THE TOWN OF BRECKENRIDGE WILL NOT
8 ACT AS A REVIEWING ENTITY FOR THE STATE INCOME TAX CREDIT PROGRAM
9 FOR QUALIFYING HISTORIC REHABILITATION PROJECTS

10
11 WHEREAS, Section 39-22-514(10)(a), C.R.S., requires each municipality to adopt a
12 resolution stating whether it will act as a reviewing entity for the state income tax credit program
13 for qualifying historic rehabilitation projects; and

14
15 WHEREAS, the Town Council of the Town of Breckenridge has considered such matter;
16 and

17
18 WHEREAS, the Town Council finds and determines that it would not be in the best
19 interests of the Town and its citizens for the Town to act as a reviewing entity for the state
20 income tax credit program for qualifying historic rehabilitation projects.

21
22 NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF
23 BRECKENRIDGE, COLORADO, as follows:

24
25 Section 1. The Town of Breckenridge will not act as a reviewing entity for the state
26 income tax credit program for qualifying historic rehabilitation projects.

27
28 Section 2. A copy of this resolution shall be sent to the State Historic Preservation
Officer as required by Section 39-22-514(10)(a), C.R.S.

29 Section 3. This resolution shall become effective upon its adoption.

30 RESOLUTION APPROVED AND ADOPTED this ___ day of ___, 2009.

31 TOWN OF BRECKENRIDGE

32
33
34
35
36 By _____
37 John G. Warner, Mayor
38
39



Scheduled Meetings, Important Dates and Events

Shading indicates Council 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. All Council Meetings are held in the Council Chambers, 150 Ski Hill Road, Breckenridge.

DECEMBER 2009

Tuesday, December 8; 3:00/7:30pm

First Meeting of the Month

OTHER MEETINGS

1st & 3rd Tuesday of the Month; 7:00pm

Planning Commission; Council Chambers

1st Wednesday of the Month; 4:00pm

Public Art Commission; 3rd floor Conf Room

2nd & 4th Tuesday of the Month; 1:30pm

Board of County Commissioners; County

2nd Wednesday of the Month; 12 pm

Breckenridge Heritage Alliance

2nd Thursday of the Month; 5:30pm

Sanitation District

3rd Monday of the Month; 5:30pm

BOSAC; 3rd floor Conf Room

3rd Thursday of the Month; 7:00pm

Red White and Blue; Main Fire Station

4th Wednesday of the Month; 9am

Summit Combined Housing Authority

Last Wednesday of the Month; 8am

Breckenridge Resort Chamber; BRC Offices

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition