



BRECKENRIDGE TOWN COUNCIL REGULAR MEETING

Tuesday, May 22, 2012; 7:30 PM

Town Hall Auditorium

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	E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)	
	F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)	
	G. WATER TASK FORCE (MR. GALLAGHER)	
	H. LANDFILL TASK FORCE (MS. WOLFE)	

*Report of the 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.

X OTHER MATTERS

XI SCHEDULED MEETINGS

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XII ADJOURNMENT

*Report of the 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.

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CALL TO ORDER, ROLL CALL

The following members answered roll call: Mr. Dudick, Ms. McAtamney, Ms. Wolfe, Mr. Gallagher, Mr. Brewer, and Mayor Warner. Mr. Burke was absent

APPROVAL OF MINUTES - APRIL 24, 2012

Mayor Warner had two corrections 1) the dates of the CML are June 19-22nd, and 2) Jerry Dzedzic's name was misspelled. Mr. Gallagher had one correction on page 6 under other matters stating he did not visit with Scott Vargo during the last Red, White and Blue meeting, but was informed by Chief Miller of the Red, White, and Blue based on her visit with Scott Vargo, and his name was misspelled. Mr. Brewer indicated two misspellings of Linda Schutt's name, and the \$50,000 grand won was actually \$15,000. With no other corrections, Mayor Warner declared the minutes would stand as corrected.

APPROVAL OF AGENDA

Mr. Gagen added an Executive Session under Other Matters for one matter not covered during the earlier Executive Session.

COMMUNICATIONS TO COUNCIL

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

Mayor Warner opened citizen's comments. There were none and the citizen's comments were closed.

B. BRECKENRIDGE RESORT CHAMBER UPDATE

No update.

C. USA PRO CYCLING CHALLENGE UPDATE FROM LOCAL ORGANIZING COMMITTEE CO-CHAIRS

Mike Schilling, Co-Chair of the Pro-Cycling Challenge Local Organizing Committed updated the Council on the Expo event the morning of the race, which includes access to the riders in an autograph alley, presence of National and Local sponsors, food and a beer garden; expanding the event to Thursday through Saturday with the possibility of Summit Huts sponsoring a cycle-related film festival, and a children's race; the directed effort to keep people in the core of town to view the race and live finish via jumbo-trons; community outreach with Town Hall like meetings to inform businesses of what to expect, a forum to air concerns, and a secondary meeting to lay out what will happen; breckenridgeprocycling.com as a centralized-clearing house for visitors and residents; and a public service announcement regarding the impact of the race especially to the Town of Blue River, which will be shut down for an hour and a half. The Council and Mr. Schilling discussed that each LOC is only responsible for their own town; signage and communication; live coverage from the moment the racers roll out of town; and the possibility of informing small businesses how they may upload internet feed so their patrons may watch the race after it has left town.

D. BOSAC ACKNOWLEDGEMENT

The Town Council recognized Scott Yule for years of service with the town and BOSAC. Mayor Warner stated Mr. Yule served on BOSAC for 15 years; Scott is the heart and soul of the administration of the open space; and there are 3,500 plus acres of acquisitions thanks to his dedication.

CONTINUED BUSINESS

A. SECOND READING OF COUNCILS BILLS, SERIES 2012 - PUBLIC HEARINGS

1. Council Bill No. 13, Series 2012 - AN ORDINANCE AMENDING BRECKENRIDGE DEVELOPMENT CODE POLICY 4 (ABSOLUTE), ENTITLED "MASS", AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE RELATED TO SUCH AMENDED DEVELOPMENT POLICY

Mayor Warner read the title into the minutes. Mr. Berry, Town Attorney, stated the ordinance if adopted establishes new rules and incentives for renewable energy, and mentioned one change on page 11 line 36, which clarifies existing building permits must be in place before today. Mayor Warner opened the public hearing. There were no comments and Mayor Warner closed the hearing.

Mr. Dudick moved to approve Council Bill No. 13, Series 2012 - AN ORDINANCE AMENDING BRECKENRIDGE DEVELOPMENT CODE POLICY 4 (ABSOLUTE), ENTITLED "MASS", AND MAKING MISCELLANEOUS AMENDMENTS TO THE BRECKENRIDGE TOWN CODE RELATED TO SUCH AMENDED DEVELOPMENT POLICY. Mc. McAtamney seconded the motion. The motion Passed 6-0.

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NEW BUSINESS

A. FIRST READING OF COUNCIL BILLS, SERIES 2012

1. Council Bill No. 14, Series 2012 - AN ORDINANCE AMENDING SECTION 9-1-21 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING THE "TOWN OF BRECKENRIDGE LANDSCAPING GUIDE (REVISED MAY 2012)" AS A CORRELATIVE DOCUMENT TO THE BRECKENRIDGE DEVELOPMENT CODE

Mayor Warner read the title into the record. Mr. Berry stated the development code has a list of documents described as correlative, including the landscaping guide. He mentioned Jennifer Cram, Planner III, has been working on revising the landscaping guide, and this ordinance will adopt the landscaping guide, which will become a new correlative document to the code. Ms. McAtamney moved to approve Council Bill No. 14, Series 2012 - AN ORDINANCE AMENDING SECTION 9-1-21 OF THE BRECKENRIDGE TOWN CODE BY ADOPTING THE "TOWN OF BRECKENRIDGE LANDSCAPING GUIDE (REVISED MAY 2012)" AS A CORRELATIVE DOCUMENT TO THE BRECKENRIDGE DEVELOPMENT CODE. Mr. Dudick seconded the motion. The motion passed 6-0.

B. RESOLUTIONS, SERIES 2012

1. A RESOLUTION APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH SUMMIT COUNTY CONCERNING JOINTLY OWNED AND JOINTLY FUNDED OPEN SPACE PARCELS

Mayor Warner read the title into the record. Scott Reid, Open Space Planner III, stated this resolution will formalize the Town and County's responsibilities regarding open space management, and allow Town staff to update the lists administratively. He stated the resolution has been approved by the Board of County Commissioners. Mr. Brewer moved to approve A RESOLUTION APPROVING AN AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT WITH SUMMIT COUNTY CONCERNING JOINTLY OWNED AND JOINTLY FUNDED OPEN SPACE PARCELS. Ms. McAtamney seconded the motion. The motion passed 6-0.

2. A RESOLUTION RATIFYING AND APPROVING A REAL ESTATE OPTION AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, AND THE UPPER BLUE SANITATION DISTRICT (Part Of The McDill Placer)

Mayor Warner read the title into the record. Mr. Berry stated the council has previously authorized the town to enter into a joint purchase of this parcel; the option agreement has been prepared to purchase the property; and, would allow the Council to ratify Mr. Gagen's signature to approve the option agreement to close the transaction. Mr. Gallagher moved to approve A RESOLUTION RATIFYING AND APPROVING A REAL ESTATE OPTION AGREEMENT BETWEEN THE TOWN OF BRECKENRIDGE, THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, AND THE UPPER BLUE SANITATION DISTRICT (Part of the McDill Placer). Ms. McAtamney seconded the motion. The motion passed 6-0.

3. A RESOLUTION RATIFYING AND APPROVING THE TOWN MANAGER'S SIGNING OF AN ASSIGNMENT OF PARTIAL INTEREST IN REAL ESTATE OPTION AGREEMENT WITH SUMMIT COUNTY, COLORADO (Juventa Lode, MS #5399)

Mayor Warner read the title into the record. Mr. Berry stated in addition the Town will also purchase with the County the Juventa Lode. He stated this resolution allows the Council to ratify Mr. Gagen's signature to approve the option agreement to close the transaction in which the town will end up owning a half-interest and the county half-interest. Mr. Brewer moved to approve A RESOLUTION RATIFYING AND APPROVING THE TOWN MANAGER'S SIGNING OF AN ASSIGNMENT OF PARTIAL INTEREST IN REAL ESTATE OPTION AGREEMENT WITH SUMMIT COUNTY, COLORADO (Juventa Lode, MS #5399). Ms. McAtamney seconded the motion. The motion passed 6-0.

C. OTHER

None.

PLANNING MATTERS

A. PLANNING COMMISSION DECISIONS - APRIL 17, 2012

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With no request to call an item off the consent calendar, Mayor Warner declared the Planning Commission Decisions would stand approved as presented.

B. PLANNING COMMISSION REPORT

Mr. Gallagher reported he updated the Planning Commission on the previous Town Council meeting, and stated they were appreciative of his attendance. Mr. Gagen noted that the joint meeting of the Planning Commission was deferred until after the Council Retreat on May 22, 2012.

REPORT OF TOWN MANAGER AND STAFF

No report.

REPORT OF MAYOR AND COUNCILMEMBERS

A. CAST/MMC (MAYOR WARNER)

Mayor Warner reported on the MMC mentioning the potential re-routing of Highway 9 through Iron Springs, located on the left side when heading toward Frisco. The Council discussed the rerouting of the Highway and the bike path. Mayor Warner reported on a Hoosier Pass bike path study, and mentioned he voiced his concerns to the County Commissioners regarding the state of existing bike path on the Park County side of the pass.

B. BRECKENRIDGE OPEN SPACE ADVISORY COMMITTEE (MR. BREWER)

No report.

C. BRC (MR. BURKE)

No report.

D. MARKETING COMMITTEE (MR. DUDICK)

Mr. Dudick reported Reservations for the Summit's (RFTS) Power Point showed that 99% of their \$5.7 million in renovations last year is from Breckenridge Businesses, and is up 7% in revenue year over year; Breckenridge is holding steady against the competitive set for searches for the word Breckenridge; preparation to do a survey about quality of lodging in town, which will be email to guests after they have left; Breckenridge Resort Chamber (BRC) board voted to dissolve Central Reservations into the BRC board, and Cen Res will operate as a department within the BRC; Breckenridge Bike Week from July 5-8 needs \$30,000 to \$70,000 to run the event and is asking for monetary support of the event. The Council discussed the quality of the lodging survey questions; how they would like to see the questions before they are used; the importance of Breckenridge bike brand; the history of bike week; accountability for Breckenridge Bike Week's budget for past events; how BMAC is the gatekeeper of the marketing fund, but does not hold the purse; the fund is intended to be built over time to use for a rainy day; the Friends Welcome program is no longer in existence; and, the Town does not currently have a process in place for funding unplanned, outside events. Mr. Dudick offered to speak to Byron Swezy with Kim Dykstra-DiLallo.

Mr. Dudick mentioned the Town has been approached to host the Snow Ball, which has formerly taken place in Aspen. He stated the event includes 3 days of music with an attendance of 10,000 people per day; BMAC overall did not approve of an early March date, but would be all right with an early April date; and, concerns of demographic of the crowd considering it is a rave event with 20-30 year old kids. The Council discussed the event as a proven commodity; the 50,000 followers on Facebook; the events current relationship with Avon; and, how the event approached the Ski Area first, which said no. Mayor Warner asked Kim -Dykstra-DiLallo if Lucy Kay was a good person to talk about it.

E. SUMMIT COMBINED HOUSING AUTHORITY (MS. WOLFE)

Ms. Wolfe mentioned the housing authority will be updating the housing survey to provide a new study on the housing demand in preparation for the potential child care ballot issue.

F. BRECKENRIDGE HERITAGE ALLIANCE (MR. BREWER)

Mr. Brewer reported from Larissa O'Neil's email stating the alliance received 22 nominations for the Theobald award, which will be awarded in late August; there are more than 300 students coming to site in May; and, the Wakefield-Sawmill project is coming soon.

G. WATER TASK FORCE (MR. GALLAGHER)

Mr. Gallagher mentioned his talk with Mr. Gagen about water issues.

H. LANDFILL TASK FORCE (MS. WOLFE)

Ms. Wolfe reported she attended two meetings: one an overview, and the second a tour of the landfill. She mentioned the task force would like to bring everyone from the Towns and County together; the landfill used to be profitable, but

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construction waste has diminished due to the recession, hauling waste to other locations, and recycling; less waste is ruining the landfill model, where waste pays for the recycling programs; possible solutions that can be sustained financially, including stockpiling recyclables until there is a market, and single-stream or curb-side recycling; that the task force needs solid answers by July; and, the landfill maybe done in 44 years depending on recycling.

OTHER MATTERS

Ms. McAtamney asked about the protocol for watering restrictions. Mr. Gagen stated there is one from 2002 in which the guidelines are dependent on volumes of the river, includes general conservation items, and it has to have approval from the state. He mentioned the program is voluntary, and in 2002 everyone was compliant, so no tickets for non-compliance were issued. Ms. McAtamney requested that the Town advertise the guidelines.

Mr. Brewer stated he was contacted by a man that is against fluoride in the water, and by a neighbor of Carter Park regarding concerns about accidents on the sledding hill. Mr. Gagen stated there will be a report on Carter Park, but thought the incidents were down. Mayor Warner mentioned that Dillon Valley has chosen to stop fluorinating water due to expense, and their equipment is not up to snuff; they are getting a lot of push back from not fluorinating; he read in a professional publication about Towns deciding to fluorinate; he would like to bring it up formally with Gary Roberts present; Breckenridge level is a little high for fluorination, and should possibly adopt a lower level; the different levels of fluoride in wells within Breckenridge; and, as a dentist knows fluorination lowers amount of tooth decay for children up to the age of 12.

Mayor Warner mentioned the Ski Area would like to do another social event with the Council, and Kristin Williams is trying to put this together with Pat Campbell's assistance; Town Clean up day is May 19th; and, new council members should consider signing up for the Colorado Municipal League (CML).

Ms. McAtamney mentioned the Council should sign up for BBQ shifts to Town Clean up as they always need help.

1 EXECUTIVE SESSION

Ms. Wolfe recused herself from the Executive Session due to a conflict of interest.

Mr. Brewer moved to go into executive session pursuant to 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 Mayor stated a motion has been made for the Town Council to go into an executive session pursuant to 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 subject matter of the executive session includes updates and continued discussions on the status of several negotiations the Town is or will soon become involved in. Mr. Dudick made the second. The motion passed 5-0, with Ms. Wolfe abstaining.

SCHEDULED MEETINGS

ADJOURNMENT

Ms. McAtamney moved to come out of Executive Session. Mr. Dudick seconded the motion. All were in favor of the motion.

With no further business to discuss the meeting adjourned at 9:42 pm.

Submitted by Cathy Boland, Accounting Coordinator.

ATTEST:

Laura Kennedy, Town Clerk

John Warner, Mayor



PROCLAMATION

Public Works Week 2012

WHEREAS, the many services provided by Public Works to our community are an integral part of our citizen's everyday lives; and

WHEREAS, the support of an understanding and informed citizenry is vital to the efficient operation of public works systems and programs such as water treatment and distribution, streets maintenance, public buildings and facility maintenance, parks and landscaping, transit & parking services and fleet, maintenance and operations; and

WHEREAS, the health, safety, economic vitality and comfort of this community greatly depends on these facilities and services; and

WHEREAS, the quality and effectiveness of these services, as well as their planning, design, and construction of public facilities and utilities, is vitally dependent upon the efforts and skills of public works representatives; and

WHEREAS, the efficiency of the qualified and dedicated personnel who staff Public Works Departments is materially influenced by the public's attitude and understanding of the importance of the work they perform,

NOW, THEREFORE, I, Mayor John Warner, on behalf of the Town Council and the Town of Breckenridge, do hereby proclaim the week of May 20 – 26, 2021 as "National Public Works Week" in the Town of Breckenridge, and I call upon all citizens and civic organizations to acquaint themselves with the issues involved in providing quality Public Works services and to recognize the contributions which Public Works representatives make every day to our health, safety, comfort, and quality of life, not only this week but throughout the year.

Adopted this 22nd day of May, 2012.

Mayor John Warner (SEAL)

Attest:

Laura Kennedy, Acting Town Clerk

MEMO

TO: Town Council
FROM: Town Attorney
RE: Council Bill No. 14 (Adopting Updated Landscaping Guide)
DATE: May 15, 2012 (for May 22nd meeting)

The second reading of the ordinance adopting the updated Landscaping Guide is scheduled for your meeting on May 22nd. There are no changes proposed to either the ordinance of the Guide itself from first reading.

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

1 **FOR WORKSESSION/SECOND READING – MAY 22**

2
3 **NO CHANGE FROM FIRST READING**

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

7
8 COUNCIL BILL NO. 14

9
10 Series 2012

11
12 AN ORDINANCE AMENDING SECTION 9-1-21 OF THE BRECKENRIDGE TOWN CODE
13 BY ADOPTING THE “TOWN OF BRECKENRIDGE LANDSCAPING GUIDE (REVISED
14 MAY 2012)” AS A CORRELATIVE DOCUMENT TO THE BRECKENRIDGE
15 DEVELOPMENT CODE

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

19
20 Section 1. The reference to the “Town of Breckenridge Landscaping Guide” in Section
21 9-1-21 of the Breckenridge Town Code is amended to read as follows:

- 22
23 • Town of Breckenridge Landscaping Guide **(Revised May 2012)**

24
25 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the
26 various secondary codes adopted by reference therein, shall continue in full force and effect.

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

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

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

39
40 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED
41 PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the
42 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day
43 of _____, 2012, at 7:30 P.M. or as soon thereafter as possible in the Municipal
44 Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
John G. Warner, Mayor

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

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Memorandum

TO: Town Council
FROM: Tom Daugherty, Public Works Director
DATE: May 17, 2012
RE: Public Works Yard Lease

Attached is the resolution and lease to Summit County for the Public Works Yard space. The highlights of this lease are as follows:

1. The term of the lease is thirty (30) years that can be renewed or extended.
2. The Town moves out of the current building space into new building.
3. The current building space gets remodeled for use by the County
4. The County pays a one-time payment in lieu of periodic lease payments to use the space.
5. The County pays a pro rata share of utilities and improvements that may be needed in the yard from time to time. An example would be repaving the yard.
6. The County identified they would need more space than what is being provided in this deal. The County can construct an additional building next to the space they will occupy. The County is to pay for the design and construction of the additional space.
7. The Town will manage the construction of this additional building as part of the Town's construction project.

Once this lease is approved by the Town Council and the Board of County Commissioners, the staff will begin construction.

To help answer the Town Council questions about cost changes, below is the table of the cost differences with an explanation of how the budget numbers were developed and the current end result.

	2012 CIP	Revised Current
Total Cost	\$ 800,000	\$ 1,208,000
Payment by County	\$ 600,000	\$ 454,000
Town Responsibility	\$ 200,000	\$ 754,000

Explanation of Total Costs

The original construction costs in the 2012 CIP were estimated at \$800,000 for the new Public Works Administration Building (4,000 square feet at \$200/sq ft). The cost did not include remodeling the space for the County.

The revised current construction cost is \$1,208,000 which includes \$1,053,000 for the new Public Works Administration building and \$150,000 to remodel the space for Summit County Road and Bridge. The cost of the new Public Works building grew from \$800,000 to \$1,053,000 because the amount of space increased from the estimated 4,000 square feet to 5,418 (approximately \$194/sq ft). The size of the new Public Works Administration building increased because the Engineering Division will be relocated into the new building, the Facilities Division offices were consolidated into this building and a meeting/training room was added to accommodate training needs.

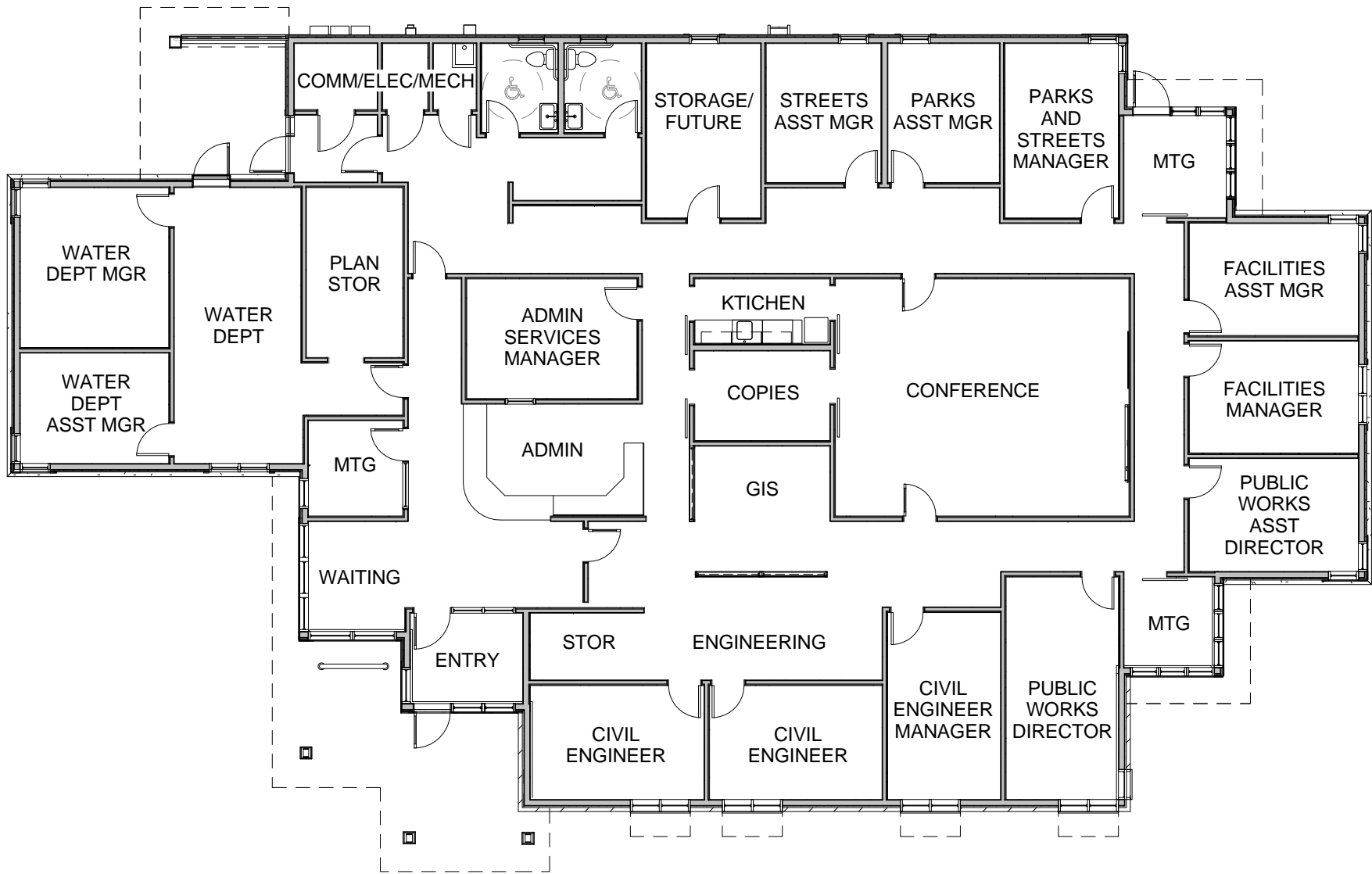
The cost to remodel the space for the County (Convert offices to garage use) came in at \$150,000, this was an unknown cost at the time the CIP was prepared. The County payment, per our agreement with the County, is based on a new building and that meant that we needed to provide them a space ready for their use.

Explanation of Payment by County

The 2012 CIP included a \$600,000 payment from the County for the use of the designated space and land associated with that space. After discussing the lease with the County we removed the cost of the land because the County is not going to own the land. The payment of \$454,000 from the County is based on \$406,000 for the garage space and \$48,000 to manage the construction of the additional building they plan to build. The \$406,000 is based on what the County would spend to build a new garage building of the same size.

Solar Option

Staff has looked into providing solar on this building and has received cost information since the last time we discussed this project. The total cost is \$108,000 for 20.58 Kw. The panels are expected to produce 30,257 kWh/year which is expected to offset approximately 40% of the buildings electric usage. Combine the electric offset with the credit from Xcel for producing solar electricity and we expect to save approximately \$6,000 on our electric costs the first year. That savings increases every year with the rise of energy prices. The payback is estimated at twelve (12) years if energy prices continue to rise at 9%. The estimated savings for the life span of 25 years is estimated at \$316,700. The current construction costs do not include solar panels. If the Council would like to see solar incorporated into the project, staff will get this incorporated into the plans. We have not talked to the County about sharing in this cost.



1 ***FOR WORKSESSION/FIRST READING – MAY 22***

2
3 COUNCIL BILL NO. 15

4
5 Series 2012

6
7 AN ORDINANCE APPROVING A LEASE WITH THE BOARD OF COUNTY
8 COMMISSIONERS OF SUMMIT COUNTY, COLORADO
9 (Part of Town’s Public Works Facility)

10
11 WHEREAS, the Town of Breckenridge owns the real property commonly known as “the
12 Town of Breckenridge Public Works Facility” located at 1095 Airport Road, Breckenridge,
13 Colorado (“**Public Works Facility**”); and

14
15 WHEREAS, a portion of the Public Works Facility is suitable for use by the Board of
16 County Commissioners of Summit County, Colorado (“**County**”) as the location of the County’s
17 Road & Bridge equipment and material storage facility; and

18
19 WHEREAS, the Town is willing to lease a portion of the Public Works Facility to the
20 County for use as the County’s Road & Bridge equipment and material storage facility; and

21
22 WHEREAS, a proposed Lease between the Town and the County has been prepared by
23 the Town Attorney and reviewed by the Town Council; and

24
25 WHEREAS, Section 15.4 of the Breckenridge Town Charter provides:

26
27 The council may lease, for such time as council shall determine, any real or
28 personal property to or from any person, firm, corporation, public and private,
29 governmental or otherwise.

30
31 and;

32
33 WHEREAS, the term of the proposed Lease with the County exceeds one year in length;
34 and

35
36 WHEREAS, Section 1-11-4 of the Breckenridge Town Code requires that any real estate
37 lease entered into by the Town that exceeds one year in length must be approved by ordinance.

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

41
42 Section 1. The proposed Lease between the Town and the Board of County
43 Commissioners of Summit County, Colorado, a copy of which is marked **Exhibit “A”**, attached
44 hereto and incorporated herein by reference, is approved, and the Town Manager is authorized,
45 empowered, and directed to execute such Lease for and on behalf of the Town of Breckenridge.

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Section 2. The Town Council finds, determines, and declares that it has the power to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

Section 3. This ordinance shall be published and become effective as provided by Section 5.9 of the Breckenridge Town Charter.

INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED PUBLISHED IN FULL this ____ day of _____, 2012. A Public Hearing shall be held at the regular meeting of the Town Council of the Town of Breckenridge, Colorado on the ____ day of _____, 2012, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the Town.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By: _____
John G. Warner, Mayor

ATTEST:

Town Clerk

1 ***DRAFT December 14, 2011 DRAFT***

2
3 Additions To The Prior Draft Dated December 9, 2011 Are
4 Indicated By **Bold + Dbl Underline**; Deletions By ~~Strikeout~~

5
6 **LEASE**

7
8 THIS LEASE (“**Lease**”) is dated _____, 2012 and is between the
9 TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and the BOARD
10 OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). The
11 Town and the County are sometimes referred individually as a “**Party**”, and together as the
12 “**Parties.**”
13

14 **Article 1. - BASIC LEASE PROVISIONS**

15 A. **Intent and Purpose.** The purpose of this Lease is provide land for the relocation of the
16 County’s Road & Bridge equipment and material storage facility from its current location on
17 County Road 450 to the Leased Premises, and to partially implement the Parties’
18 Memorandum of Understanding dated _____, 2011 (“**MOU**”).

19 B. **Leased Premises.**

20 1. In consideration of County’s payment of the sums due to Town under this Lease, and
21 the keeping of the promises, covenants, and conditions required of County by this Lease,
22 Town leases to County, and County leases from Town, for the term and upon the
23 conditions of this Lease, the real property described and depicted on the attached Exhibit
24 “A” (“**Leased Premises**”). The Leased Premises are a part the “**Town of Breckenridge**
25 **Public Works Facility**” located at 1095 Airport Road, Breckenridge, Colorado (“**Public**
26 **Works Facility**”), and include the Town’s current Public Works Administration Building
27 consisting of approximately 3,200 square feet.

28 2. In order to expedite and reduce conflict on the site, the Town will remodel the Leased
29 Premises so that it functions as an equipment storage space similar to the other equipment
30 storage buildings currently on site. This work generally includes demolishing the
31 existing office finish, placing bay doors in each bay, replacing the existing boiler with
32 radiant heating, replacing a portion of the concrete floor with a sloped floor and drains
33 and relocating the electric outlets to the outside walls.

34 3. To replace its current Public Works Administration Building (that will be become the

1 County's Public Works Facility as described in this Lease) the Town will plan, design,
2 and construct a new Public Works Administration Building at the Public Works Facility.
3 The Town will determine the location, size, and design of its new building.

4 **C. Common Area.** As part of this Lease County also has the right to use the common area
5 of the Public Works Facility ("**Common Area**"), subject to the Town's rules concerning the
6 use of such area. County has no interest in, or right to use or occupy, any portion of the
7 Public Works Facility except for the Leased Premises and the Common Area.

8 **D. Use of Leased Premises.** The Leased Premises will be used by County only for the
9 location and operation of the County's Road & Bridge equipment and material storage
10 facility, and for directly related public works uses. County will not use the Leased Premises
11 for any other purpose without Town's prior written consent.

12 **E. Term.** The term of this Lease ("**Term**") begins at 12:01 A.M., local time, on
13 _____, 2012 and ends, unless sooner terminated as hereafter provided, at
14 11:59 P.M., local time, on _____, 2042. Prior to the expiration of the Term, the
15 Town and County will negotiate in good faith to attempt to reach agreement on the possible
16 extension of the Term, or to enter into a new lease for the Leased Premises; provided,
17 however, that nothing in this Lease obligates either Party to agree to an extension of the
18 Term, or to enter into a new lease for the Leased Premises.

19 **F. Surrender of Leased Premises.**

20 1. Upon the expiration or earlier termination of this Lease County will surrender the
21 Leased Premises to Town broom clean and in good condition, ordinary wear and tear
22 excepted. Not later than the last day of the Term, County will remove its personal
23 property and fixtures (including, but not limited to, trade fixtures) from the Leased
24 Premises. The cost of such removal will be borne by County, and County will repair all
25 injury or damage done to the Leased Premises in connection with the installation or
26 removal of County's personal property and trade fixtures. All of County's fixtures
27 (including, but not limited to, trade fixtures) that are so attached to the Leased Premises
28 that they cannot be removed without material injury to the Leased Premises will, at
29 Town's option, become the property of Town upon installation and remain with the
30 Leased Premises upon surrender.

31 2. Town may retain or dispose of any personal property, fixtures (including, but not
32 limited to, trade fixtures), alterations, or improvements left remaining by County at or
33 upon the Leased Premises following the expiration or earlier termination of this Lease,
34 and Town is not accountable to County for any damages for the loss or destruction
35 thereof, or for any part of the proceeds of sale, if any, realized by Town. County waives
36 all claims against Town for any damages suffered by County resulting from Town's
37 retention or disposition of such personal property, fixtures (including, but not limited to,
38 trade fixtures), alterations or improvements. County is liable to Town for Town's costs
39 for storing, removing and disposing of any such personal property, fixtures (including

1 trade fixtures), or alterations.

2 **Article 2. - RENT AND SECURITY**

3 A. **Rent.** There is no periodic rent to be paid by the County for the lease of the Leased
4 Premises. However, County will pay to Town as and when due any amount required to be
5 paid by County under this Lease.

6 B. **Interest on Past Due Amounts.** County will pay interest to Town on any sum due to
7 Town under this Lease that is 30 days or more past due at the rate of 12% per annum from
8 the date due until the date such payment is fully paid.

9 C. **Due Date, Place and Manner of Payments.**

10 1. All sums payable to Town under this Lease are due 30 days after County's receipt of
11 Town's properly documented invoice. County will notify Town of any objection within
12 14 days of the invoice date, identifying the reasons for such objection in writing, and
13 timely paying that portion of the invoice not in dispute. Invoices will be considered
14 acceptable to County if no such objections are made. If objections to an invoice are made
15 by the County, the dispute shall be resolved in accordance with Article 13.

16 Sums due to the Town will be paid to:

17 Town of Breckenridge
18 Clerk & Finance Division
19 Attn: Accounts Receivable
20 P. O. Box 168
21 Breckenridge, CO 80424
22

23 or at such other place as the Town Manager of the Town of Breckenridge ("Town
24 Manager") may hereafter designate by written notice provided to County in accordance
25 with Section 16.1 of this Lease.

26 **Article 3. - TOWN'S DISCLAIMERS AND EXCULPATORY**
27 **PROVISIONS**

29 A. **Delay In Delivery of Possession of Leased Premises.** Town is not liable to County for
30 any delay in delivery of possession of the Leased Premises to County.

31 B. **Town's Non-liability.** As a material part of the consideration to be received by Town
32 under this Lease, County assumes all risk of damage to property or injury to persons in or
33 upon the Leased Premises from any cause other than Town's gross negligence or intentional
34 wrongful act, and County hereby waives all claims in respect thereof against Town.

1 C. **Limitation of Remedies.** Town is not liable for any indirect, special, or consequential
2 damages, including, but not limited to, loss of anticipated profits, revenue or savings,
3 business interruption, or any similar claim arising from the Town's breach of this Lease, even
4 if Town has been advised of the possibility of such damages. This limitation applies
5 notwithstanding the failure of an essential purpose of any limited remedy.

6
7 **Article 4. - COUNTY'S AFFIRMATIVE OBLIGATIONS**

8 A. **Damages to Leased Premises and Public Works Facility.** County will pay for any
9 damage to the Leased Premises caused by County or resulting from County's use of the
10 Leased Premises pursuant to this Lease. County will also pay for any damage to other
11 portions of the Public Works Facility caused by County's negligence or intentional wrongful
12 act. County will pay for any such damage within 30 days of receipt of notice from the Town.

13 B. **Taxes.** Because both Town and County are tax-exempt entities under Colorado law, the
14 parties anticipate that the Leased Premises will be tax-exempt throughout the Term.
15 However, if any taxes are lawfully assessed against the Leased Premises as a result of
16 County's use of the Leased Premises County will pay such taxes before they become
17 delinquent.

18 C. **Signs.** County will not post, place, affix, erect, or display any sign within or outside of
19 the Leased Premises without Town's prior approval. In considering County's request to place
20 a sign within or outside of the Leased Premises, Town acts in its capacity as landlord of the
21 Leased Premises, and not in its governmental capacity. Town may remove any sign placed
22 within or outside of the Leased Premises in violation of the portions of this Section. County
23 will maintain all signs located within or outside of the Leased Premises in good, clean, and
24 attractive condition. County will remove all signs placed by it within or outside of the Leased
25 Premises at the expiration or earlier termination of this Lease, and repair any damage or
26 injury caused thereby. If not so removed by County, the Town may remove such sign(s) at
27 County's expense.

28 D. **Inspection and Entry.** Town and Town's authorized representatives may enter the
29 Leased Premises at all times during reasonable hours to inspect the Leased Premises. County
30 further agrees that the Town may go upon the Leased Premises at all times and:

- 31 1. perform any work therein that may be necessary to comply with any laws, ordinances,
32 rules or regulations of any public authority or that the Town may deem necessary to
33 prevent waste or deterioration of the Leased Premises;
- 34 2. post any notice provided for by law; or
- 35 3. otherwise protect any and all rights of Town,
- 36 4. all without any liability to County for damages.

1 5. Nothing in this Section implies or creates any duty on the part of the Town to do any
2 work that under any provision of this Lease the County may be required to do, nor will it
3 constitute a waiver of County's default in failing to do such work. No reasonable exercise
4 by the Town of any rights herein reserved will entitle the County to any damage or
5 compensation of any kind from Town for any injury, loss, damage, or inconvenience
6 occasioned thereby, or to any abatement of rent.

7 E. **Compliance With Laws.** County, at its sole cost and expense, will comply with all laws,
8 ordinances, orders, and regulations of all governmental authorities with respect to the use of
9 the Leased Premises. A judgment of any court or the admission of County in any action or
10 proceeding against County, whether Town is a Party thereto or not, that County has violated
11 any law, ordinance, requirement or order in the use of the Leased Premises will be conclusive
12 of the fact as between Town and County.

13 **Article 5. – UTILITIES AND MAINTENANCE**

14 A. **Utilities.**

15 1. Town will provide water, gas, and electricity for County's use at the Leased Premises
16 if it is not being provided by a separate meter.

17 2. County will reimburse to the Town the cost of water, gas, and electricity provided to
18 the Leased Premises. For any utility service that is not separately metered the Parties will
19 agree on a formula whereby the County will pay its pro rata share of the cost of the
20 unmetered utilities used or consumed by it at the County Public Works Building. County,
21 at its cost, may elect to install meters for any utility service used by it at the County
22 Public Works Building.

23 3. County will contract pay for any telephone, cable television, and internet services
24 used by County at the Leased Premises.

25 B. **Facility Maintenance Fee.** County will pay its pro rata share of the total cost of
26 maintenance, upkeep, repair, and replacement of the Common Area (exclusive of costs
27 attributable only to the Town's new Public Works Administration Building and other
28 facilities used exclusively by the Town), including, but not limited to, a Facility Maintenance
29 Fee that will establish a cash reserve to pay for needed maintenance, upkeep, repair and
30 replacement of the Common Area.

31 C. **Maintenance and Snow Plowing.**

32 1. County's Maintenance Duties. County will provide, at its expense, all required
33 maintenance and upkeep of the Leased Premises.

34 2. Town's Maintenance Duties. Town will provide, at its expense (but subject to
35 County's obligation to pay the Facility Maintenance Fee described in Section 5.2) all

1 required cleaning and maintenance of the Common Area.

2 3. Snow Removal. Town will provide all snow plowing, and snow and ice removal for
3 the Public Works Facility.

4 **D. Sand Piles.** The Parties will jointly share the use of the “sand pile” that is located at the
5 Town’s Public Works Facility. With respect to the sand piles, it is agreed that:

6 1. each Party will purchase and pay for their own sand that will be stored in the sand
7 pile;

8 2. the Parties will not share in the cost of purchasing sand; and

9 3. the Parties will be responsible for accounting for their respective usage of sand stored
10 at the sand pile.

11 **Article 6. - COUNTY’S NEGATIVE OBLIGATIONS**

12 **A. Alterations and Improvements.**

13 1. “Alteration” means:

14 a. The remodeling of the County Public Works Building as described in Section 4.1;

15 b. The construction of the Additional Building as described in Section 6.2; and

16 c. Any other alteration, addition, substitution, installation, change, and improvement
17 to the Leased Premises.

18 2. County is responsible for constructing and paying for all Alterations once they
19 receive possession of the Leased Premises.

20 3. However, County will not make any Alteration to the Leased Premises without the
21 prior written consent of Town, which consent may be granted, withheld, or conditionally
22 approved in Town’s sole, absolute, and subjective discretion.

23 4. The exterior of any Alteration must be architecturally compatible with the current
24 Public Works Facility, it being the Parties’ intention that all of the buildings located (and
25 to be located) at the Public Works Facility during the Term will have the same general
26 appearance.

27 5. County will provide Town with plans for the construction or installation of any
28 proposed Alteration at least 60 days prior to the planned commencement of construction.
29 County will also provide any supplemental information requested by Town. County will
30 not make any Alteration that has not been approved by Town.

1 6. The following will be conditions of Town’s consent to the construction of any
2 alteration to the Leased Premises by County:

- 3 a. The work will be performed and completed:
- 4 b. In accord with the submitted plans and specifications;
- 5 c. In a workmanlike manner.
- 6 d. In compliance with the Town’s building and technical codes, and may be
7 inspected by the Town’s Building Official to determine compliance with the applicable
8 codes.
- 9 e. In compliance with all applicable laws, rules, regulations, ordinances, and other
10 requirements of governmental authorities.
- 11 f. Using new materials, unless otherwise agreed by Town.
- 12 g. With due diligence.
- 13 h. County will only use workers and contractors who Town approves.
- 14 i. County will modify plans and specifications because of reasonable conditions set
15 by Town after reviewing the plans and specifications.
- 16 j. County’s contractors will carry builders risk insurance in an amount then
17 customarily carried by prudent contractors, and workers’ compensation insurance for its
18 employees complying with applicable law.
- 19 k. Upon request County will give Town evidence that it complied with any condition
20 set by Town.

21 7. Any Alteration made by County to the Leased Premises will become the property of
22 the Town; will be considered as part of the Leased Premises; and will not be removed
23 from the Leased Premises by County upon the expiration or earlier termination of this
24 Lease unless removal is ordered by the Town.

25 8. County will not make any Alteration without first having submitted the proposed
26 Alteration to the Town for review in accordance with the Town’s “Public Project”
27 process described in the Town’s Development Code.

28 **B. Additional Building.** In addition to the County Public Works Building, the County may
29 construct one additional building at the Leased Premises (“Additional Building”) on a site of
30 a maximum size of 50 feet deep by 60 feet wide. If the County desires to construct the
31 Additional Building, then:

1 1. The site of the Additional Building must be acceptable to the Town (currently
2 expected to be adjacent to the County Public Works Building).

3 2. The County will pay to plan, design, and construct the Additional Building.

4 a. Section 6.1 will apply to the construction of the Additional Building.

5 b. If the County constructs the Additional Building, all provisions of this Lease
6 (unless otherwise indicated) apply to both the Additional Building and the County
7 Public Works Building.

8 c. In order to expedite and reduce conflict on the site, the Town is willing to manage
9 the project and construct the Additional Building as part of its contract to build the new
10 Public Works Administration Building.

11 i. The County and the Town will work together to negotiate a price that is
12 acceptable to the County with the Town's contractor.

13 ii. The Town will make payment to the contractor for the costs of the Additional
14 Building.

15 iii. The County will reimburse the Town within thirty (30) days for any costs paid
16 to the contractor for the Additional Building.

17 iv. The contractor will provide separate billing to the Town for the Additional
18 Building to account for the costs of the Additional Building.

19 **C. Assignment and Subletting.**

20 1. County will not assign, sublet, license, pledge, encumber, or allow any other person
21 or entity to occupy or use any or all of the Leased Premises without first obtaining
22 Town's prior written consent. Any assignment, sublease, license, pledge or encumbrance
23 without Town's prior written consent is voidable by Town and, at Town's election, will
24 constitute a default under this Lease. No consent by Town to any of the above acts will
25 constitute a further waiver of the provisions of this Section.

26 2. If Town consents to an assignment, sublease, or license County may be required, as a
27 condition of granting consent, to pay Town's reasonable costs incurred in considering the
28 proposed assignment, sublease, or license including, but not limited to, legal fees and
29 credit checks.

30 **D. Waste or Nuisance.** County will not commit or permit to be committed any waste upon
31 the Leased Premises. County will not commit or permit to be committed upon the Leased
32 Premises any public or private nuisance, or any other act or thing prohibited by law.

33 **Article 7. – COUNTY'S PAYMENT TO TOWN IN LIEU OF RENT**

1 A. **Payment Due to Town.** In recognition of the fact that the County will not be required to
2 pay periodic rent to occupy the Leased Premises, the County will pay to the Town a mutually
3 acceptable sum of \$454,000.

4 **Article 8. - INSURANCE**

5 A. **County's Liability Insurance.** Throughout the Term County will, at its expense,
6 continuously maintain comprehensive general liability insurance with limits of liability not
7 less than the limits of liability for local governments established from time to time by the
8 Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. ("Act"), which
9 limits are, as of the effective date of this Lease, One Hundred Fifty Thousand Dollars
10 (\$150,000) for injuries or damages sustained to one person in any single occurrence and Six
11 Hundred Thousand Dollars (\$600,000) for injuries or damages sustained to two or more
12 persons in any single occurrence. County's liability insurance policy will be endorsed to
13 include the Town as an additional insured.

14 B. **Worker's Compensation Insurance.** County will maintain at all times throughout the
15 Term worker's compensation insurance as required by Colorado law insuring the payment of
16 compensation to all its employees engaged in the performance of work at the Leased
17 Premises.

18 C. **Property and Casualty Insurance.**

19 1. Town will provide property (casualty) insurance on all of the buildings located (or to
20 be located) at the Public Works Facility, including all buildings owned by the Town and
21 all buildings owned by the County. County will reimburse Town for the cost of insuring
22 the County Public Works Building under the Town's property (casualty) insurance
23 policy.

24 2. County will provide its own property (casualty) insurance for its personal property,
25 motor vehicles, and equipment to be stored in the County Public Works Building.

26 D. **Additional Insurance Provisions.** Every insurance policy required to be carried by this
27 Article to be carried by County will be primary insurance, and any insurance carried by
28 Town, its officers, or its employees, or carried by or provided through any insurance pool of
29 which Town is a member, will be excess and not contributory insurance to that provided by
30 County. County is solely responsible for any deductible losses under its required insurance
31 policies.

32 E. **Insurance Criteria.** Insurance policies required by this Lease will:

33 1. be issued by insurance companies licensed to do business in the State of Colorado
34 with general policyholder's ratings of at least A and a financial rating of at least XI in the
35 most current *Best's Insurance Reports* available at the time such insurance is to be
36 procured; and

1 2. provide that the insurance cannot be cancelled or materially changed in the scope or
2 amount of coverage unless 15 days' advance notice is given to the Town.

3 **F. Evidence of Insurance.** Prior to the commencement of this Lease, and on each
4 subsequent renewal or replacement of the required insurance policies during the Term,
5 County will give to Town a certificate of insurance evidencing compliance with the
6 requirements of this Section. All required insurance policies will be renewed or replaced and
7 maintained by the County throughout the Term to assure continuous coverage. If County fails
8 to give the required insurance certificate within 10 days after notice or demand for it, such
9 action will constitute a default under this Lease, and the Town may then proceed as provided
10 in Article 12 of this Lease, and/or Town may obtain and pay for that insurance and receive
11 reimbursement from the County, together with interest thereon at the rate of 12% per annum.

12 **Article 9. - INDEMNIFICATION**

13 **A. Indemnification by County.** To the extent permitted by law, and subject to any
14 applicable limits of the Act, County will indemnify and defend the Town, its officers,
15 employees, insurers, and self-insurance pool from all liability, claims, and demands, on
16 account of injury, loss, or damage, including, without limitation, claims arising from bodily
17 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of
18 any kind whatsoever, arising out of or in any manner connected with this Lease or County's
19 use or possession of the Leased Premises pursuant to this Lease, except to the extent that
20 such liability, claim, or demand arises through the gross negligence or intentional wrongful
21 act of the Town, its officers, employees, or agents, or Town's breach of this Lease. If
22 indemnification is required under this Section, County will investigate, handle, respond to,
23 and to provide defense for and defend against, any such liability, claims, or demands at its
24 expense, and bear all other costs and expenses related thereto, including court costs and
25 attorney fees.

26 **B. Survival.** The obligations of this Article 9 will survive the expiration or earlier
27 termination of this Lease.

28 **Article 10. - EMINENT DOMAIN**

29 **A. Definitions.** The terms "eminent domain," "condemnation", and "taken" and related
30 terms as used in this Section include any taking for public or quasi-public use and private
31 purchases in place of condemnation by any authority authorized by applicable law to exercise
32 the power of eminent domain.

33 **B. Entire Taking.** If the entire Leased Premises are taken by eminent domain, this Lease
34 will automatically end on the earlier of:

- 35 1. the date title vests; or
36 2. the date County is dispossessed by the condemning authority.

1 C. **Partial Taking.** If the taking of a part of the Leased Premises materially interferes with
2 County's ability to continue its business operations in substantially the same manner then
3 County may terminate this Lease on the earlier of:

- 4 1. the date when title vests;
- 5 2. the date County is dispossessed by the condemning authority; or
- 6 3. 60 days following notice to County of the date when vesting or dispossession is to
7 occur.

8 If the taking of a part of the Leased Premises does not materially interfere with County's ability
9 to continue its business operations in substantially the same manner, then this Lease will
10 terminate only as to part of the Leased Premises taken, and the rent will abate in proportion to
11 the part of the Leased Premises taken.

12
13 D. **Awards and Damages.** Any compensation or damages paid by a condemning authority
14 will be divided between the Town and County as follows:

- 15 1. County is entitled to that portion of the compensation or damages that represents the
16 amount of County's moving expenses, business dislocation damages, County's personal
17 property and fixtures, and the unamortized costs of leasehold improvements paid for by
18 County; and
- 19 2. the balance of such compensation or damages belongs to the Town.

20 **Article 11. - HAZARDOUS MATERIALS**

21 A. **Hazardous Materials - Defined.** As used in this Section, the term "**Hazardous**
22 **Materials**" means any chemical, material, substance or waste:

- 23 1. exposure to which is prohibited, limited, or regulated by any federal, state, county,
24 regional or local authority, or other governmental authority of any nature; or
- 25 2. that, even if not so regulated, may or could pose a hazard to the health or safety of the
26 occupants of the Leased Premises including, without limitation, any petroleum, crude oil
27 (any fraction thereof), natural gas, natural gas liquids, and those substances defined as
28 "hazardous substances", "hazardous materials", "hazardous wastes" or other similar
29 designations in the Comprehensive Environmental Response, Compensation and Liability
30 Act of 1980, as amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials
31 Transportation Act, 49 U.S.C. Section 1801 et seq., and any other governmental statutes,
32 laws, ordinances, rules, regulations, and precautions.

33 B. **Hazardous Materials - Prohibited.** County will fully comply with all statutes, laws,
34 ordinances, rules, regulations, and precautions now or hereafter mandated or advised by any

1 federal, state, local, or other governmental agency with respect to the use, generation,
2 storage, or disposal of Hazardous Materials. County will not cause, or allow anyone else to
3 cause, any Hazardous Materials to be used, generated, stored, or disposed of on or about the
4 Leased Premises without the prior written consent of Town, which consent may be revoked
5 at any time. County's indemnification of Town pursuant to this Lease extends to all liability,
6 including all foreseeable and unforeseeable consequential damages, directly or indirectly
7 arising out of the use, generation, storage, or disposal of Hazardous Materials at the Leased
8 Premises by County, or any person claiming under County, including, without limitation, the
9 cost of any required or necessary repair, cleanup, or detoxification and the preparation of any
10 closure or other required plans, whether such action is required or necessary prior to or
11 following the termination of this Lease, to the full extent that such action is attributable,
12 directly or indirectly, to the use, generation, storage, or disposal of Hazardous Materials by
13 County or any person claiming under County; provided, however, the written consent by
14 Town to the use, generation, storage, or disposal of Hazardous Materials will excuse County
15 from County's obligation of indemnification. In the event County is in breach of the
16 covenants herein, after notice to County and the expiration of the earlier of:

- 17 1. the cure period provided in Section 12.1(c);
- 18 2. the cure period permitted under applicable law, regulation, or order,

19 then Town may, in its sole discretion, declare a default under this Lease and/or cause the
20 Leased Premises to be freed from the Hazardous Material and the cost thereof will be
21 deemed additional rent hereunder and will immediately be due and payable from County.
22 The obligations of County under this Section will survive the expiration or termination of
23 this Lease.

24 **Article 12. - DEFAULT**

25 **A. Default by County.** The occurrence of any one or more of the following events will
26 constitute a default and breach of the Lease by County:

- 27 1. The vacating or abandonment of the Leased Premises by County.
- 28 2. The failure by County to make any payment due from County hereunder as and when
29 due, when such failure will continue for a period of 10 days after service of written notice
30 thereof by Town to County.
- 31 3. The failure by County to observe or perform any of the other covenants, conditions,
32 or provisions of this Lease to be observed or performed by the County, or to obey rules
33 promulgated by Town, within 10 days after service of written notice thereof by the Town
34 to the County. In the event of a non-monetary default that is not capable of being
35 corrected within 10 days, County will not be default if it commences correcting the
36 default within 10 days of service of a demand for compliance notice and thereafter
37 corrects the default with due diligence.

1 4. The filing by or against County of a petition to have County adjudged bankrupt.

2 **B. Exceptions to Cure Periods.** The cure period provided in Section 12.1(c) does not apply
3 to:

4 1. Emergencies;

5 2. County's failure to maintain the insurance required by Article 8.

6 **C. Town's Remedies Upon Default.** If the County is in default under this Lease, Town has
7 all of the remedies provided for in such circumstances by Colorado law; provided, however,
8 the Town will comply with dispute resolution provisions of Article 13. Town's exercise of
9 any of its remedies or its receipt of County's keys will be not an acceptance of County's
10 surrender of the Leased Premises. A surrender must be agreed to in writing and signed by
11 both parties.

12 **D. Default by Town.** Town will be in default under this Lease if Town fails to comply with
13 any of the terms, provisions, or covenants of this Lease within 10 days following service of
14 written notice thereof by County. In the event of a non-monetary default that is not capable
15 of being corrected within 10 days, Town will not be default if Town commences correcting
16 the default within 10 days of receipt of notification thereof and thereafter corrects the default
17 with due diligence.

18 **E. County's Remedies Upon Default.** If the Town is in default under this Lease, County
19 has all of the remedies provided for in such circumstances by Colorado law; provided,
20 however, the County will comply with dispute resolution provisions of Article 13.

21 **Article 13. – DISPUTE RESOLUTION**

22 **A. Negotiation.** The Parties will attempt in good faith to resolve any dispute arising out of
23 or relating to this Lease not resolved promptly by negotiations between persons who have
24 authority to settle the controversy ("**Executives**"). Any Party may give the other Party
25 written notice of any dispute not resolved in the normal course of business. Within five days
26 after receipt of said notice Executives of the Parties to the dispute will meet at a mutually
27 acceptable time and place, and thereafter as often as they reasonably deem necessary, to
28 exchange relevant information and to attempt to resolve the dispute. If the matter has not
29 been resolved within ten days of the notice of dispute, or if the Parties fail to meet within five
30 days, any Party to the dispute may initiate mediation of the controversy as provided in
31 Section 13.2.

32 **B. Mediation.** If the dispute has not been resolved by negotiation as provided above, the
33 Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the
34 Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a
35 neutral third Party, such third Parties to appoint a neutral third Party to mediate. Each Party
36 will pay their own attorneys' fees incurred in connection with mediation.

1 C. **Judicial Action.** Any dispute arising out of or relating to this Lease or the breach,
2 termination or validity hereof, which has not been resolved by the methods set forth above
3 within 30 days of the initiation of mediation, may be finally resolved by appropriate judicial
4 action commenced in a court of competent jurisdiction. The Parties agree to exclusive venue
5 in the courts of Summit County, Colorado with respect to any dispute arising out of or
6 relating to this Agreement. Both Parties waive the right to a jury trial in action to enforce,
7 interpret, or construe this Lease.

8 D. **Attorneys' Fees** If any action is brought in a court of law by either Party to this
9 Agreement concerning the enforcement, interpretation or construction of this Agreement, the
10 prevailing Party, either at trial or upon appeal, will be entitled to reasonable attorneys' fees,
11 as well as costs, including expert witness' fees, incurred in the prosecution or defense of such
12 action.

13 E. **Equitable Relief.** Nothing in this Article prevents a Party from seeking to obtain from a
14 court of competent jurisdiction a temporary restraining order, preliminary injunction,
15 permanent injunction, or other appropriate form of equitable relief, to enforce the provisions
16 of this Lease if such action is authorized by applicable law.

17 **Article 14. - NO DISTURBANCE**

18 A. **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, Town covenants
19 that so long as the amounts due to Town under this Lease are paid as and when due, and there
20 is no default in any of the other covenants, conditions, or provisions of this Lease to be
21 performed, observed or kept by County, the County will peaceably and quietly hold and
22 enjoy the Leased Premises for the entire Term.

23 **Article 15. - TOWN'S RULES**

24 A. **Rules.** County will faithfully observe and comply with any rules and regulations
25 promulgated by Town with respect to the Leased Premises. The Town's rules and regulations
26 must be reasonable, and may not unilaterally change or significantly alter the material terms
27 and conditions of this Lease. The rules and regulations, and any amendments thereto, will be
28 binding upon the County upon delivery to County.

29 **Article 16. - MISCELLANEOUS**

30 A. **Notices.** All notices required or permitted under this Lease must be given by registered or
31 certified mail, return receipt requested, postage prepaid, or by hand or commercial carrier
32 delivery, or by telecopies, directed as follows:

33 If intended for Town to:

34
35 Town of Breckenridge
36 P.O. Box 168

1 150 Ski Hill Road
2 Breckenridge, Colorado 80424
3 Attn: Town Manager
4 Telecopier number: (970)547-3104
5 Telephone number: (970)453-2251
6

7 with a copy in each case (that will not constitute notice) to:

8
9 Timothy H. Berry, Esq.
10 Timothy H. Berry, P.C.
11 131 West 5th Street
12 P. O. Box 2
13 Leadville, Colorado 80461
14 Telecopier number: (719)486-3039
15 Telephone number: (719)486-1889
16

17 If intended for County to:

18
19 Board of County Commissioners
20 P.O. Box 68
21 Breckenridge, Colorado 80424
22 Attn: Gary Martinez, County Manager
23 Telephone number: (970)453-3401
24 Telecopier number: (970)453-3535
25

26 with a copy in each case (which will not constitute notice) to:

27
28 Jeff Huntley, Esq.
29 Summit County Attorney
30 P.O. Box 68
31 Breckenridge, Colorado 80424
32 Telephone number: (970)453-3407
33 Telecopier number: (970)454-3535
34

35 Any notice delivered by mail in accordance with this Section will be effective on the
36 third business day after the same is deposited in any post office or postal box regularly
37 maintained by the United States postal service. Any notice delivered by telecopier in
38 accordance with this Section will be effective upon receipt if concurrently with sending
39 by telecopier receipt is confirmed orally by telephone and a copy of said notice is sent by
40 certified mail, return receipt requested, on the same day to the intended recipient. Any
41 notice delivered by hand or commercial carrier will be effective upon actual receipt.
42 Either Party, by notice given as provided above, may change the address to which future
43 notices may be sent. The provisions of this Section do not apply to any notice or demand
44 that is required to be served in a particular manner by applicable law; and any such notice

1 or demand will be served as required by law notwithstanding the provisions of this
2 Section. E-mail is not a valid way to give notice under this Lease.

3 B. **“Day” Defined.** Unless otherwise indicated, the term “day” means a calendar (and not a
4 business) day.

5 C. **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory obligation to
6 act or to refrain from acting as specifically indicated in the context of the sentence in which
7 such word is used.

8 D. **Complete Agreement.** It is understood and agreed that this Lease contains the complete
9 and final expression of the agreement between the Parties, and there are no promises,
10 representations, or inducements except as are herein provided. All negotiations,
11 considerations, representations, and understandings between the Parties related to this Lease
12 are contained herein.

13 E. **Amendment.** This Lease may not be modified except by a written Lease signed by both
14 the Town and County. Oral modifications of this Lease are not permitted.

15 F. **Captions.** The headings of the sections and paragraphs contained in this Lease are for
16 convenience only and do not define, limit, or construe the contents of the articles, sections
17 and paragraphs.

18 G. **Waiver.** The failure of either Party to exercise any of such Party’s rights under this Lease
19 is not a waiver of those rights. A Party waives only those rights specified in writing and
20 signed by the Party waiving such rights.

21 H. **Severability.** If any provision of this Lease is held to be invalid, illegal, or unenforceable
22 in any respect, the validity, legality and enforceability of the remaining provisions contained
23 in this Lease and the application hereof will not in any way be affected or impaired thereby.

24 I. **Force Majeure.** Neither Party will be liable to the other for any failure, delay, or
25 interruption in the performance of any of the terms, covenants, or conditions of this Lease
26 due to causes beyond the control of that Party including, without limitation, strikes, boycotts,
27 labor dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts
28 of superior governmental authority, weather conditions, floods, riots, rebellion, terrorism,
29 sabotage or any other circumstance for which such Party is not responsible or that is not in its
30 power to control.

31 J. **Advances by Town For County.** If County fails to do anything required to be done by it
32 under the terms of this Lease (other than a failure to make the payments to Town herein
33 required) the Town may, at its sole option, but without any obligation to do so, do or perform
34 such act or thing on behalf of County, and in doing so the Town will not be deemed to be a
35 volunteer; provided, however, that before exercising its rights under this Section Town must
36 give notice to County as provided in Section 16.1, and afford the County not less than five

1 days from the giving of such notice within which to do or perform the act required by
2 County. Upon notification to County of the costs incurred by the Town County will promptly
3 pay to Town the full amount of costs and/or expenses incurred by Town pursuant to this
4 Section, together with interest thereon at the rate of 12% per annum.

5 **K. Governmental Immunity.** Both the Town and the County are relying on, and do not
6 waive or intend to waive by any provision of this Lease, the monetary limitations (presently
7 \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and
8 protections provided by the Act, as from time to time amended, or any other limitation, right,
9 immunity or protection otherwise available to Town or the County, or their respective elected
10 officials, officers, or employees.

11 **L. No Adverse Construction Based On Authorship.** Each Party had the opportunity to
12 participate in the drafting of this Lease. This Lease is not to be construed against either Party
13 by virtue of such Party having drafted this Lease.

14 **M. Town's Consent.** Except as otherwise expressly provided to the contrary in this Lease,
15 wherever in this Lease it is provided that some act requires the Town's prior consent, such
16 consent will not be unreasonably withheld by Town.

17 **N. Third Parties.** There are no third Party beneficiaries of this Lease.

18 **O. Lease Not To Be Recorded.** This Lease **MAY NOT BE RECORDED** with the Clerk
19 and Recorder of Summit County, Colorado.

20 **P. Time of Essence.** Time is of the essence of this Lease.

21 **Q. Governing Laws; Venue; Waiver of Jury Trial.** The laws of the State of Colorado will
22 govern the interpretation, validity, performance, and enforcement of this Lease. Any
23 litigation brought to interpret or enforce this Lease must be commenced in Summit County,
24 Colorado.

25 **R. Non-Discrimination; Compliance with Applicable Laws.** County:

26 1. will not discriminate against any employee or applicant for employment to work at
27 the Leased Premises because of race, color, creed, sex, sexual orientation, religion,
28 national origin, or disability;

29 2. will insure that applicants who are to work at the Leased Premises are employed and
30 that employees are treated during employment without regard to their race, color, creed,
31 sex, sexual orientation, religion, national origin, or disability;

32 3. will in all solicitations or advertisements for employees to be engaged in the
33 performance of work at the Leased Premises state that all qualified applicants will receive
34 consideration for employment without regard to race, color, creed, sex, sexual
35 orientation, religion, national original or disability; and

1 4. will comply with all applicable federal, state, and local laws, rules and regulations.
2 Without limiting the generality of the foregoing, County will comply with the applicable
3 provisions of the Americans With Disabilities Act, 42 U.S.C. §12101, et seq. (Public
4 Law 101-336), and all applicable regulations and rules promulgated thereunder by any
5 regulatory agency. The indemnification and termination provisions of this Lease apply to
6 County's failure to comply with all applicable laws or regulations.

7 **S. No Partnership.** The Town is not a partner, associate, or joint venturer of the County in
8 the conduct of County's business at the Leased Premises. County is an independent
9 contractor without the right or authority to impose tort or contractual liability upon the Town.

10 **T. Binding Effect.** The covenants, conditions, and obligations herein contained extend to,
11 bind, and inure to the benefit of, not only the Parties hereto, but their respective successors
12 and permitted assigns.

13 **U. Annual Appropriation.**

14 1. Town's financial obligations under this Lease are subject to an annual appropriation
15 being made by the Town Council of the Town of Breckenridge, Colorado in an amount
16 sufficient to allow Town to perform its obligations under this Lease. If sufficient funds
17 are not appropriated for such purpose, this Lease may be terminated by either Party
18 without penalty; provided, however, all sums due to the County under this Lease up to
19 date of termination will be budgeted, appropriated, and paid by Town. Town's financial
20 obligations under this Lease do not constitute a general obligation indebtedness or
21 multiple year direct or indirect debt or other financial obligation whatsoever within the
22 meaning of the Constitution or laws of the State of Colorado.

23 2. County's financial obligations under this Lease are subject to an annual appropriation
24 being made by the Board of County Commissioners of Summit County, Colorado in an
25 amount sufficient to allow County to perform its obligations under this Lease. If
26 sufficient funds are not appropriated for such purpose, this Lease may be terminated by
27 either Party without penalty; provided, however, all sums due to the Town under this
28 Lease up to date of termination will be budgeted, appropriated, and paid by County.
29 County's financial obligations hereunder do not constitute a general obligation
30 indebtedness or multiple year direct or indirect debt or other financial obligation
31 whatsoever within the meaning of the Constitution or laws of the State of Colorado.

32 **V. Conflict With MOU.** If there is any conflict between the terms and provisions of this
33 Lease and the MOU, the terms and provisions of this Lease will control.

34 **W. Incorporation of Exhibit.** The attached **Exhibit "A"** is incorporated herein by reference.

35
36 TOWN OF BRECKENRIDGE, a Colorado
37 municipal corporation

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By _____
Timothy J. Gagen, Town Manager

ATTEST:

Mary Jean Loufek, CMC,
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF
SUMMIT COUNTY, COLORADO

By: _____
Chair

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ATTEST:

Kathleen Neel, Clerk and Recorder, and ex-officio
clerk to the Board of County Commissioners

1500-69 Lease Blackline (v1 vs. v2) (12-14-11)

Exhibit "A"

DESCRIPTION AND DEPICTION OF LEASED PREMISES

[TO BE INSERTED]

Exhibit "A"

Memorandum

To: Town Council
From: James Phelps, Assistant Director Public Works
Date: 5/17/2012 (for May 22nd Meeting)
Re: Cooperative Fuel Purchasing Agreement

The Town of Breckenridge currently has a cooperative purchasing agreement in place with Red, White & Blue Fire Protection District (RWBFPD) and Summit County Government. This agreement allows for these two agencies to jointly purchase fuel (gasoline and diesel) for their government vehicles at the Town's Public Works Fuel (System) Island.

In review of this current agreement it was identified by all the parties that there were several necessary changes. After discussions with the two parties the following changes were agreed upon by all parties. Therefore, this cooperative purchasing agreement for your approval supersedes the previous cooperative purchasing agreement.

The two changes to this agreement over previous are:

Section 9 – Payment for Fuel

Administrative Processing Fee - \$0.20 per gallon
Previous Administrative Process Fee - 20% of fuel usage

Section 12 – Cost of Upgrading Town Fuel System

The section that follows provides better definition over previous agreement for when upgrades are necessary to the Town's Fuel System. The language was constructed to provide better understanding and planning for budgeting purposes.

In cooperation of the changes, all parties expressed appreciation for the agreement and the associated benefits/efficiencies that the agreement provides.

Staff will be present at Work Session for any questions that Town Council may have.

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ATTEST:

Town Clerk

APPROVED IN FORM

Town Attorney Date

800-90\Cooperative Purchasing Agreement Resolution (05-08-12)

COOPERATIVE PURCHASING AGREEMENT

This Cooperative Purchasing Agreement (“*Agreement*”) is dated _____, 2012, and is between the TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“*Breckenridge*”), SUMMIT COUNTY, COLORADO (“*County*”), and the RED, WHITE & BLUE FIRE PROTECTION DISTRICT (“*RWBFPD*”). Breckenridge, County, and RWBFPD are sometimes each individually referred to as a “*Party*”, and are collectively referred to as the “*Parties*.”

WHEREAS, each Party is a “local public procurement unit” as defined in Section 24-110-101(3), C.R.S.; and

WHEREAS, a local public procurement unit is also a “public procurement unit” as defined in Section 24-110-101(4), C.R.S.; and

WHEREAS, “cooperative purchasing” is defined by Section 24-110-101(1), C.R.S., in pertinent part, as “procurement conducted by, or on behalf of more than one public procurement unit”; and

WHEREAS, Section 24-110-201(1), C.R.S., authorizes any public procurement unit to either participate in, sponsor, conduct or administer a cooperative purchasing agreement for the procurement of any supplies, services, or construction with one or more public procurement units in accordance with an agreement entered into between the Parties; and

WHEREAS, the Parties desire to enter into a cooperative purchasing agreement to jointly purchase fuel (both gasoline and diesel) for use in their governmental vehicles.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises contained herein, and intending to be legally bound, the Parties agree as follows:

1. Authority. This Agreement is entered into pursuant to the authority granted by Section 24-110-201(1), C.R.S.
2. “Fuel” Defined. As used in this Agreement the term “*Fuel*” includes both gasoline and diesel fuel.
3. Cooperative Purchasing of Fuel; Limitation on Use of Fuel. The Parties agree to cooperatively purchase Fuel in accordance with Section 24-110-201(1), C.R.S., and this Agreement.
4. Limitation On Use of Fuel. All Fuel purchased pursuant to this Agreement will be used by the Parties solely in machines owned or operated by them to perform their respective governmental functions and activities.

COOPERATIVE PURCHASING AGREEMENT

5. Breckenridge To Administer Agreement. Breckenridge will administer this Agreement.

6. Fuel To Be Purchased And Stored. Breckenridge will purchase Fuel on behalf of the Parties in such amounts and at such intervals as Breckenridge determines to be sufficient to establish an adequate and reliable supply of Fuel for use by the Parties. The Fuel will be stored in Breckenridge's storage facilities ("**Fuel Facilities**") until taken by the respective Parties for their individual use.

7. Use of Fuel By Parties.

7.1 Limitation on Use of Fuel. The Fuel that is purchased by the Parties pursuant to this Agreement may be used by any of the Parties as and when needed to fuel their motor vehicles; subject, however, to Section 9 of this Agreement.

7.2 Access to Fuel. Breckenridge will make available to County and RWBFPD a sufficient number of chip-keys and/or access cards to allow reasonable access by County and RWBFPD to the Fuel Facilities. Each chip-key and/or access card will be clearly identified and each Party is responsible and will pay for all Fuel taken from the Fuel Facilities by use of the chip-keys and/or access cards assigned to such Party.

7.3 Each Party to Pump Own Fuel. Each Party will pump the Fuel from the Fuel Facilities into its own vehicles.

7.4 Notice of Limited Access to Fuel Facilities. If access to the Fuel Facilities must be restricted for any reason Breckenridge will immediately notify County and RWBFPD, and Breckenridge will then proceed to take such action as may be required to re-open the Fuel Facilities as soon as possible.

8. Fuel Records. Breckenridge will keep and maintain an accurate record of all Fuel purchased and taken from the Fuel Facilities by the Parties pursuant to this Agreement. Any Party may, upon reasonable notice, inspect and copy the record of all Fuel purchased by the Parties pursuant to this Agreement, and all Fuel taken from the Fuel Facilities by each of the Parties.

9. Payment For Fuel. In its role as administrator of this Agreement, Breckenridge will advance the cost of all Fuel purchased by the Parties pursuant to this Agreement. Each month, Breckenridge will bill County and RWBFPD for the Fuel taken by such Parties from the Fuel Facilities. The rate charged to County and RWBFPD will be the same per gallon charge as Breckenridge paid for the Fuel, plus a \$0.20 per gallon administrative processing fee. County and RWBFPD will each pay Breckenridge's invoice for Fuel taken from the Fuel Facilities within 30 days of receipt. Interest at the rate of 1% per month will be paid on any amount not paid within 30 days of receipt of the Town's invoice.

COOPERATIVE PURCHASING AGREEMENT

10. Fuel Facilities. Breckenridge will maintain the Fuel Facilities in compliance with all applicable state and federal rules and regulations. Nothing in this Agreement creates any legal or equitable interest in the Fuel Facilities in favor of County and RWBFPD, and Breckenridge retains sole and exclusive ownership and control over the Fuel Facilities, subject only to the right of County and RWBFPD to take Fuel from the Fuel Facilities in accordance with this Agreement.

11. Fuel Taxes.

11.1 . Exemption From State and Federal Motor Vehicle Fuel Excise Taxes. Each Party believes that it is exempt from federal and state motor vehicle fuel excise taxes pursuant to applicable law with respect to gasoline and diesel fuel purchased for use in its motor vehicles and used in the performance of such Party's governmental functions and activities. This Agreement has been entered into based upon the Parties' belief that all Fuel cooperatively purchased by Parties pursuant to this Agreement will be also exempt from federal and state motor vehicle fuel excise taxes.

11.2 No Action Taken To Cause Loss of Exemption. No Party shall take any action, or fail to take any action, that would cause the Fuel purchased pursuant to this Agreement to be subject to either federal or state motor vehicle fuel excise taxes.

11.3 If Tax Is Assessed. If either federal or state motor vehicle fuel excise tax is lawfully assessed against as a result of Fuel purchased by the Parties pursuant to this Agreement, the Party that purchased and took the taxed Fuel from the Fuel Facilities will pay such tax, and will indemnify the other Parties with respect to such tax.

11.4 Exemption Determination. Each Party will take such action as may be necessary to obtain appropriate exemptions from all federal and state motor vehicle fuel excises taxes with respect to all Fuel purchased by such Party pursuant to this Agreement. Each Party will provide Breckenridge with copies of all exemption determinations issued by federal and state authorities with respect to such Party. If a Party is unable to obtain the necessary exemptions, this Agreement may immediately be terminated by such Party notwithstanding the advance notice requirements of Section 16 of this Agreement.

11.5 No Resale of Fuel. The taking Fuel from the Fuel Facilities by a Party is not a resale of the Fuel taken to such Party. No Party shall resell any Fuel to any person or entity.

12. Cost of Upgrading Town Fuel System. The Parties acknowledge that it may be necessary for the Town to improve, upgrade, expand, or replace its current fuel storage and delivery system ("***Town's Fuel System***") in order to accommodate a sufficient access to assure adequate delivery of Fuel to the Parties pursuant to this Agreement, to meet any applicable state regulation, and/or to assure more efficient security and accounting systems. Any such improvement, upgrade, expansion, or replacement is referred to as a "modification" of the Town's Fuel System. The cost of any future modification of the Town's Fuel System that is necessary to accommodate the needs of the Parties shall be paid by the Parties on a pro rata

COOPERATIVE PURCHASING AGREEMENT

basis. A Party's share of the cost of a modification to the Town's Fuel System shall be based upon the total number of gallons of Fuel pumped by that Party during the calendar year immediately preceding the date of the modification to the Town's Fuel System compared to the total number of gallons of Fuel pumped by all of the Parties during the calendar year immediately preceding the date of the modification to the Town's fuel system. The Town shall promptly notify the other Parties if it determines that an upgrade or expansion of the Town's Fuel System is necessary and, in any event, the Town shall provide at least six months' advance notice prior to the commencement of any future upgrade or expansion to the Town's Fuel System so that any Party may terminate its participation in this Agreement in accordance with Section 16 of this Agreement and thereby avoid liability for any costs associated with the upgrade or expansion of the Town's Fuel System.

13. Mutual Indemnification.

13.1 Mutual Indemnification—Generally. Each Party (the "**Indemnifying Party**") will indemnify and defend the other Parties (the "**Indemnified Parties**") against all liability, claims, and demands, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, arising out of or in any manner connected with this Agreement, to the extent that such injury, loss, or damage is caused by:

- (i) the negligence or intentional wrongful act of the Indemnifying Party, or any officer, employee, representative or agent of the Indemnifying Party; or
- (ii) the Indemnifying Party's breach of this Agreement,

except to the extent such liability, claim or demand arises through the negligence or intentional wrongful act of the Indemnified Party, its officers, employees, or agents, or the Indemnified Party's breach of this Agreement. To the extent indemnification is required under this Agreement, the Indemnifying Party will investigate, handle, respond to, and to provide defense for and defend against, any such liability, claims, or demands at its expense, and to bear all other costs and expenses related thereto, including court costs and attorney fees.

13.2 Indemnity Subject To Act. In entering into this Agreement, each Party is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently \$150,000 per person and \$600,000 per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Section 24-10-101 *et. seq.*, C.R.S. ("**Act**"), or any other limitation, right, immunity or protection otherwise available to the Party, its officers, or its employees. Accordingly, the obligation of an Indemnifying Party to indemnify and defend the Indemnified Party pursuant to Section 13.1 is expressly subject to any applicable limitation or provision of the Act, or any other law providing similar limitations or protections.

14. Insurance. Throughout the term of this Agreement Breckenridge will procure and continuously maintain comprehensive general liability insurance with limits of liability not less

COOPERATIVE PURCHASING AGREEMENT

than the limits of liability for municipalities established from time to time by the Act, which limits are, as of the effective date of this Agreement, One Hundred Fifty Thousand Dollars (\$150,000) for injuries or damages sustained to one person in any single occurrence and Six Hundred Thousand Dollars (\$600,000) for injuries or damages sustained to two or more persons in any single occurrence. The policy will be applicable to all premises and operations. The policy will include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee's acts), blanket contractual, products, and completed operations. County and RWBFPD will be named as additional insureds under Breckenridge's liability insurance policy.

15. Rules and Regulations. Breckenridge may from time to time issue rules and regulations required in its judgment to properly implement and administer this Agreement. The rules and regulations must be reasonable, and may not unilaterally change or significantly alter the material terms and conditions of this Agreement. The rules and regulations, and any amendments thereto, will be binding upon the other Parties upon receipt. The other Parties will observe and comply with any rules and regulations that Breckenridge may promulgate from time to time pursuant to this Section 15.

16. Term; Termination.

16.1 Term. The term of this Agreement commences as of the date of this Agreement, and continues until this Agreement is terminated as provided in Section 16.2.

16.2 Right to Terminate; Notice of Termination. Any Party may terminate their participation in this Agreement, without cause and without liability for breach, upon not less than 60 days' prior written notice to the other Parties. If only one of the Parties terminates this Agreement the remaining Parties will continue operating under this Agreement; provided, however, if the terminating Party is Breckenridge this Agreement will terminate upon the effective date of Breckenridge's notice of termination. A terminating Party will pay for all Fuel taken by such Party prior to the effective date of termination.

17. Default; Resolution Of Disputes.

17.1 Negotiation. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between persons who have authority to settle the controversy ("*Executives*"). Any Party may give another Party written notice of any dispute not resolved in the normal course of business. Within five days after receipt of said notice, Executives of the Parties to the dispute will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 30 days of the notice of dispute, or if the Parties fail to meet within five business days, any Party to the dispute may initiate mediation of the controversy as provided below.

17.2 Mediation. If the dispute has not been resolved by negotiation as provided above, the Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the

Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a neutral third Party, such third Parties to appoint a neutral third Party to mediate.

17.3 Final Resolution of Disputes. In the event a dispute between the Parties is not resolved through negotiation and mediation as provided above, any Party may initiate such judicial action as it may deem to be appropriate. Venue for any action arising out of this Agreement will be deemed proper only in the state courts of Summit County, Colorado.

17.4 Exclusive Remedy. The procedures specified in this Section are the sole and exclusive procedures for the resolution of disputes among the Parties arising out of or relating to this Agreement.

17.5 Performance To Continue. Each Party is required to continue to perform its obligations under this Agreement pending final resolution of any dispute arising out of or relating to this Agreement.

17.6 Extension Of Deadlines. All deadlines specified in this Section may be extended by mutual agreement.

18. Annual Appropriation. The obligations of each Party under this Agreement are subject to an annual appropriation being made by that Party's governing body in an amount sufficient to allow the Party to perform its obligations under this Agreement. If sufficient funds are not appropriated for the payment of sums due hereunder by the governing body of any Party, this Agreement will automatically terminate as to such Party effective as of the last day of the fiscal year in which adequate funds for the payment of sums due under this Agreement were appropriated. No Party's obligations under this Agreement constitutes a general obligation indebtedness or multiple year direct or indirect debt or other financial obligation whatsoever within the meaning of the Constitution or laws of the State of Colorado.

19. Notices. Except as otherwise provided, all notices provided for or required under this Agreement will be in writing, signed by the Party giving the notice, and will be deemed properly given when actually received or two days after being mailed, by certified mail, return receipt requested, addressed to the other Parties hereto at their addresses appearing on the signature page(s). Any Party, by written notice to the other Parties, may specify any other address for the receipt of such instruments or communications.

20. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any prior agreement, intergovernmental agreement, or other understanding relating to the subject matter of this Agreement.

21. Modification. This Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties. Oral amendments to this Agreement are not permitted.

COOPERATIVE PURCHASING AGREEMENT

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

23. No Adverse Construction. Each Party acknowledges having had the opportunity to participate in the drafting of this Agreement. This Agreement is not to be construed against any Party based upon authorship.

24. No Partnership. Nothing in this Agreement creates a partnership between the Parties.

25. Binding Effect. This Agreement will be binding upon, and will inure to the benefit of the Parties, and their successor governing boards.

TOWN OF BRECKENRIDGE, a Colorado
municipal corporation

By _____
Timothy J. Gagen, Town Manager

Town's Address: P.O. Box 168, Breckenridge,
Colorado 80424

SUMMIT COUNTY, COLORADO

By _____
Gary Martinez, County Manager

County's Address: P.O. Box 68, Breckenridge,
Colorado 80424

COOPERATIVE PURCHASING AGREEMENT

RED, WHITE & BLUE FIRE PROTECTION
DISTRICT

By _____
Randy Griffin, President, Board of Directors

RWBFPD's Address: P.O. Box 710, Breckenridge,
Colorado 80424

800-90\Cooperative Purchasing Agreement (05-04-12)

COOPERATIVE PURCHASING AGREEMENT

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Memorandum

To: Town Council

From: Jennifer Cram, Planner III

Date: May 16, 2012

Re: Special Permit for Breckenridge Arts District to conduct Pit Firing Workshop with Sumi Von Dassow

We have scheduled the annual pit-firing workshop with guest artist Sumi von Dassow on Saturday and Sunday June 2nd and 3rd, where we would like to pit-fire ceramic work in the Arts District. All ceramic artwork will be prepared within the Arts District prior to the pit-firing. The pit-firing is scheduled for Saturday, June 2nd from approximately 10:00 am – 2:00 pm in the gravel parking lot on the corner of Washington Avenue and South Ridge Street (Barney Ford Lot). The pit will be dug by Public Works the week of May 29th. The pit measures approximately 4' x 5' per Sumi von Dassow's specifications. Staff, and/or Sumi von Dassow and workshop participants will be present the entire time the pit-fire is burning. The pit-fire will also be completely extinguished once the ceramic work has been fired to the appropriate temperature (approximately 5 hours). The ceramic work will be unearthed on Sunday, June 3rd. The gravel parking lot will be returned to its previous condition early the following week by Public Works. This will be the ninth year that we have done a pit-firing in the Arts District.

The current Town Code (Section 5-5-3) prohibits open burning within town limits. However, Section 5-5-5 allows the Town Council to grant a special permit to authorize open burning. Specifically, Section 5-5-5 states:

Notwithstanding the provisions of section 5-5-3 of this chapter, the town council shall have the authority to issue a special permit for the purpose of authorizing open burning within the town. An application for such a permit shall be made in writing to the town council and shall state the date, time, location and purpose of such fire, and a description of all safety and precautionary measures planned. The town council shall act upon such request at its next regularly scheduled meeting following receipt of the completed application. The town council may grant such application if it finds that there are special and unique circumstances which justify granting the application. All open burning conducted within the town pursuant to a special permit issued pursuant to this section shall be conducted in accordance with the rules pertaining to open burning contained in the town's fire code. The town council may impose such other reasonable conditions upon a special permit as it shall determine to be necessary to adequately protect the health, safety and welfare of the town and its inhabitants. It shall be unlawful for any person to conduct any open burning within the town in violation of the terms and conditions of a special permit issued pursuant to this section. (Ord. 21, Series 1994)

Fuel for the proposed pit-fire will consist of organic matter, wood shavings, hard wood scraps and aspen to provide the correct temperature to fire the ceramic work. Since the pit-firing is proposed in the gravel parking lot, an open area within the Arts District as noted above, a defensible space from any other fuel sources is secured. Staff believes the pit-fire will be well contained, and will not present a threat of spreading.

We have already discussed this proposal with the Public Works Department and the Red, White & Blue Fire Department. A special permit from the Town Council is the only outstanding issue.

Following is a motion that the Town Council may like to use to approve the special permit:

“I move to approve a special permit to allow a, pit-fire on June 2nd, 2012, within the Breckenridge Arts District as part of a scheduled workshop. All burning at the pit-fire shall comply with the “Open Burning” requirements of Section 307 of the International Fire Code, 2000 Edition. In addition, the Town shall obtain an open burning permit from the Red, White & Blue Fire Department.”

MEMORANDUM

To: Town Council

From: Peter Grosshuesch

Date: May 16, 2012

Re: Town Council Consent Calendar from the Planning Commission Decisions of the May 15, 2012, Meeting.

DECISIONS FROM THE PLANNING COMMISSION AGENDA OF May 15, 2012:

CLASS C APPLICATIONS:

1. Secker Residence Addition, PC#2012034, 776 Highfield Trail

Addition to existing single family residence to create a total of bedrooms, bathrooms, sq. ft. density and sq. ft. of mass for a F.A.R. of 1:.. Approved.

CLASS B APPLICATIONS:

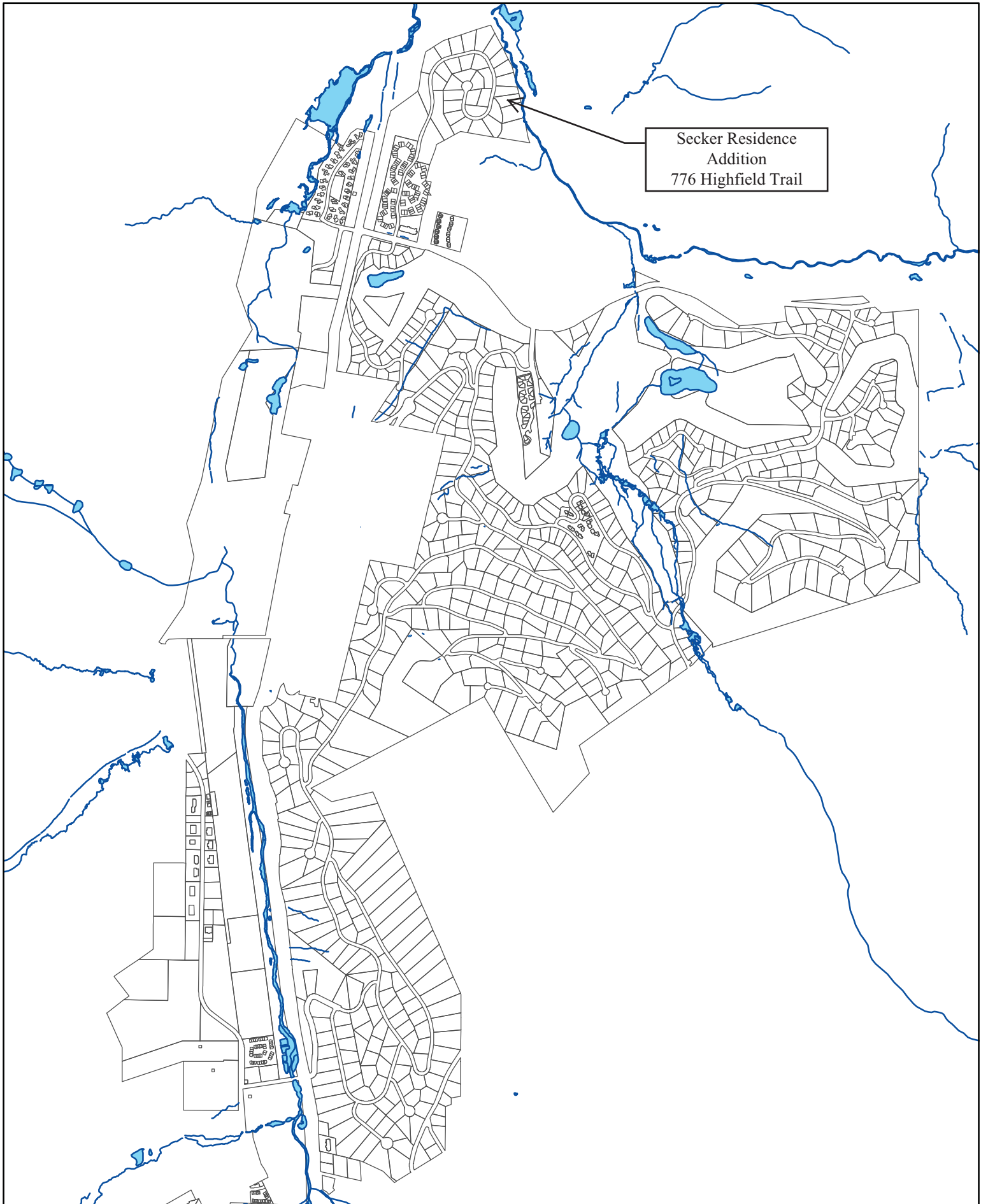
1. Giller Residence Restoration, Rehabilitation, Addition and Landmarking, PC#2011054, 306 South Ridge Street

a) Restore the exterior of the historic house to an earlier period, landmark the historic house, add a full basement beneath the historic house, demolish a newer historic addition to the house along with a non-historic shed addition at the back of the site to use the property as a residential duplex with a two-car garage and a two-car carport. 3,723 sq. ft. of density total, 1,677 sq. ft. of above ground density and 2,191 sq. ft. of mass. Approved.

b) Recommendation that the Town Council adopt an ordinance to Landmark the historic structure of the Giller Residence, PC#2011054, 306 South Ridge Street, based on proposed restoration efforts and the fulfillment of criteria for Architectural and Physical Integrity significance as stated in Section 9-11-4 of the Landmarking Ordinance. Approved.

CLASS A APPLICATIONS:

None



Secker Residence
Addition
776 Highfield Trail

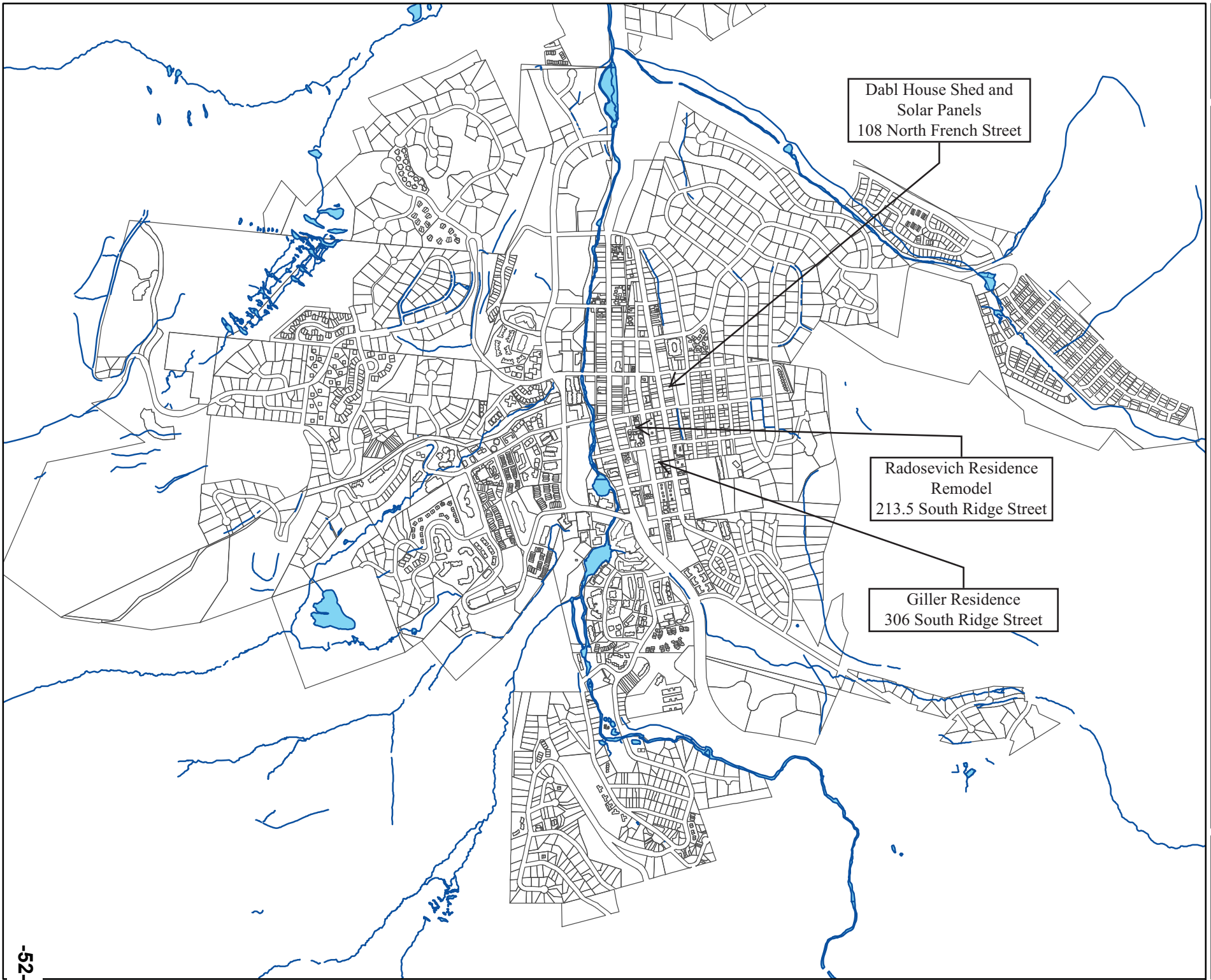


Breckenridge North

Town of Breckenridge and Summit County governments
assume no responsibility for the accuracy of the data, and
use of the product for any purpose is at user's sole risk.

printed 4/12/2011



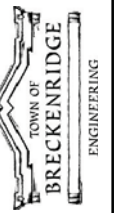


NOT TO SCALE

printed 4/12/2011

Breckenridge South

Town of Breckenridge and Summit County governments assume no responsibility for the accuracy of the data, and use of the product for any purpose is at user's sole risk.



PLANNING COMMISSION MEETING

The meeting was called to order at 7:04 p.m.

ROLL CALL

Kate Christopher Dan Schroder Trip Butler
Gretchen Dudney Michael Rath Jim Lamb
Dave Pringle
Gary Gallagher, Town Council Liaison, was not in attendance.

APPROVAL OF MINUTES

With no changes, the May 1, 2012 Planning Commission meeting minutes were approved unanimously (7-0).

APPROVAL OF AGENDA

Mr. Neubecker announced that the Town Council report would not be heard this evening. With further no changes, the May 15, 2012 Planning Commission meeting agenda was approved unanimously (7-0).

CONSENT CALENDAR:

- 1) Secker Residence Addition (MGT) PC#2012034, 776 Highfield Trail

With no requests for call up, the Consent Calendar was approved as presented.

FINAL HEARINGS:

- 1) Giller Residence Restoration, Rehabilitation, Addition and Landmarking (MM) PC#2011054, 306 South Ridge Street

Mr. Mosher presented a proposal to restore the exterior of the historic house to an earlier period, landmark the historic house, add a full basement beneath the historic house, and demolish a newer historic addition to the house along with a non-historic shed addition at the back of the site. The property would be used as a residential duplex, with a two-car garage and two-car carport.

Changes since the last Final Hearing on January 17, 2012

1. The proposed vehicle lift has been eliminated from the plans and a car port is proposed in addition to the two-car garage.
2. As a result of the carport, density and mass numbers have adjusted slightly.
3. A draft HERS report by a registered design professional has been completed and will be available the night of the meeting.
4. The courtyard is being snow-melted.

This is the fifth review of this proposal. The applicant and agent have responded to all concerns and direction provided over the last meetings. At this time we have only one question: Does the Commission support assigning negative one (-1) point for heating the internal courtyard for the project? Staff welcomed any other comments from the Commission. Mr. Mosher noted that the draft HERS report was submitted and indicated a score less than 60 and the proposal could receive an additional point under Policy 33 as a result.

Staff recommended approval of the Giller Residence Restoration, Rehabilitation, Addition and Landmarking, PC#2011054 by supporting the presented Point Analysis. Staff recommended approval of the same with the presented Findings and Conditions.

Staff also suggested the Planning Commission recommend that the Town Council adopt an ordinance to Landmark the historic structure based on proposed restoration efforts and the fulfillment of criteria for Architectural and Physical Integrity significance as stated in Section 9-11-4 of the Landmarking Ordinance.

Mr. Giller, Applicant: With 3-point turns, parking is viable and it meets the Code's conditions; provides two spots for the front and for the rear. The rear spots are in the garage. I think the design is really sound. I'm grateful that we corrected the flaws from our meeting in January. Thanked the Commission for the creative input. Apologized for the previous car-lift proposal. Had not really researched it enough to know it really would not work. Changes were for the better. Have provided a HERS report prepared by Matt Wright of High Country Conservation for the positive points. Asked for any additional questions from the Commission.

Commissioner Questions / Comments:

Ms. Dudney: So there is no connection from one unit to the other? (Mr. Mosher: on the upper level, the deck over the carport connects. In addition, the units touch below grade under the carport outside)

Mr. Schroder: I am in support of snow melt point analysis for precedent, but I was wondering if there are any that are less than 300 feet. (Mr. Mosher: No, we have some that are much larger that warranted negative two (-2) points.) The difference between the points is small but the square footage is larger. (Mr. Mosher: It is a small enough that this area and points suggested didn't match with any past developments with proposed snow melt.)

Mr. Pringle: Is there any possibility that these will be divided and sold separately? (Mr. Mosher: This proposal is for a duplex, so yes they will be separate properties.) I don't know how we can look at it with a straight face and call it a duplex. It seems like they are single family homes separated by a wall. (Mr. Mosher: This meets the Code's definition of a duplex. The unit's density actually touches underground.) I wonder if we are going down a path we don't want to be on. It is basically two single family homes on one lot. I think we need to entertain some language changes for the future so this can't happen again. How does the space underground function? (Mr. Giller: It is part of Unit B. It will be a bedroom. There is a party wall between the two duplexes.)

Mr. Schroder: Railing between the carport; weren't we looking into a deck before? (Mr. Mosher: Yes, it is still a deck.)

Mr. Schroder opened the hearing to public comment.

Ms. Carrie Warner, Neighbor: Own and work in the building next door, directly south; just seeing the plans for the first-time today; so this density is ok with the Town? (Mr. Mosher: Yes, according to our Development Code, it is under allowed density and mass and slightly over the above ground density. Mr. Mosher then explained the concept of above ground density and how the house size relates to the lot size for 9 UPA.) We won't have roof shedding snow issues? (Mr. Schroder: The snow-melt in the plaza would aid this a great deal. Mr. Neubecker: There is a small section of roof shedding toward your property, and a slight pitch.) So how many feet is it from your house corner to my garage corner? (Mr. Mosher: Roughly 14-feet point to point, at an angle. There is a retaining wall on your property and this is more like four feet away.) What is the material of the roof nearest my property? (Mr. Neubecker: It is corrugated metal.)

There was no more public comment and the hearing was closed.

Commissioner Questions/Comments:

Mr. Schroder: I would support the point analysis as presented with the additional one (+1) point if the HERS rating comes through under 60.

Mr. Butler: See no problem with the point analysis.

Ms. Christopher: Ok with adding one (+1) point under the Energy Policy as suggested with the HERS rating.

- Mr. Rath: I think adding a point for the HERS rating is ok. Is it ok with the Town that if he sells this to an individual with a larger car that they might have to back this out on the street? (Mr. Mosher: Yes, backing out of a single family home of duplex is allowed by the Code.) What if someone had a pick-up truck? As long as the Town is fine with it, it doesn't bother me.
- Ms. Dudney: Fine here.
- Mr. Pringle: I guess the parking was always the big issue with me. I support the two positive points because it is screened from public view. I think it is going to be a pain but I think we should take a hard look at. We don't want to encourage a non-functional solution. It does meet our Code; I would strongly encourage the Town to enforce the no overnight parking along this street. Other than that I support the point analysis that you have given.
- Mr. Lamb: Support the point analysis. Heating the courtyard will work; support the three points for the 60 HERS rating and the negative one (-1) for the heating the driveway. We need to set a square footage threshold eventually. I like the project and I have learned a lot about historic renovation. This project has gone a long way and I am pleased with it going forward and I support the point analysis.

Mr. Pringle made a motion to change the point analysis for the Giller Residence, PC#2011054, 306 South Ridge Street, regarding Policy 33R from positive two (+2) points to positive three (+3) points. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

Mr. Pringle made a motion to approve the amended point analysis for the Giller Residence, PC#2011054, 306 South Ridge Street, making the new point analysis a total of positive one (+1) point. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

Mr. Pringle made a motion to recommend the Town Council adopt an ordinance to Landmark the historic structure of the Giller Residence, PC#2011054, 306 South Ridge Street, based on proposed restoration efforts and the fulfillment of criteria for Architectural and Physical Integrity significance as stated in Section 9-11-4 of the Landmarking Ordinance. Mr. Lamb seconded, and the motion was carried unanimously (7-0).

Mr. Pringle made a motion to approve the Giller Residence, PC#2011054, 306 South Ridge Street, with the presented findings and conditions (Condition 22). Mr. Lamb seconded, and the motion was carried unanimously (7-0).

PRELIMINARY HEARINGS:

1) Radosevich Residence Remodel (MM) PC#2012032, 213.5 South Ridge Street

Mr. Mosher presented. The applicant is currently remodeling the interior of the building under a separate permit and is seeking approval for some exterior modifications. These modifications include:

1. Adding a full porch with upper level deck over the main entry on the west elevation of the non-historic portion of the house. This proposal encroaches into a platted snow storage easement.
2. Adding a door where a window is currently on the upper level of the non-historic portion of the house to access the proposed deck.
3. Adding four 'Solatubes' (instead of skylights) on the east-facing roof of the historic portion of the house.
4. Enlarging the existing historic openings of the windows (these existing windows are non-historic) on the west elevation of the historic portion of the house. New windows would then be added.
5. Adding a new window on the west elevation of the historic portion of the house.

At this preliminary hearing Staff has found the proposal to be failing Absolute Policy 5, Architectural Compatibility for not being in *substantial compliance with both the design standards contained in the*

"Handbook Of Design Standards" and all specific individual standards for the transition or character area within which the project is located. Specifically, Priority Policies 76 and 77.

In addition, negative points (range from -5 to -10) would be incurred under Relative Policy 5, Architectural Compatibility for “*action which is in conflict with this primary goal or the "Handbook Of Design Standards"*”. Specifically, Policies 23, 39, 56, 75, and 99. With this many conflicts, Staff is suggesting negative ten (-10) points. The house is contributing to the National Historic District and is currently listed as “supporting” as a result of the existing large addition to the north. If this addition were to be removed, the historic portion could be raised to a higher rating.

Suzanne Allen-Guerra, Allen-Guerra Design-Build (Architect-Agent): We made modifications to this house in 2001. (Presented pictures to the Commission.) This property has changed from residential to commercial and is now again into residential. We have been meeting with staff since January about the various proposals for this house. All of the changes we have presented to Staff. Windows are slightly less than six-feet; we would cut between 12-18” of existing historic log. What we are proposing is not modifying the windows themselves, as they aren’t historic, just the openings are historic. The Town needs to define what historic proportions are on windows rather than “vertically oriented double-hung”. We are trying to give it more of a historic look. I think the Code is lacking. We are trying to get more light into the south side. A full skylight would be a very costly choice with all of the fabric in the roof. That is why we ended up with the Solatubes instead. Open to looking at other options with the porch but the post will be a problem with snow-plowing.

Ms. Jan Radosevich, Applicant: I sat on Planning Commission in 1980’s; well aware of historic district and help establish it. I helped hire Rebecca Waugh. The Town has other projects where they have taken a stable and turned it into a house and removed fabric. This is a non-supporting building that is below-average. It is also on an alley. I look at the only dumpster in Town that isn’t covered. I am excited to be living in the Historic District downtown; I just want to make it a livable home. (Ms. Radosevich presented pictures of the current west facing view of her windows in the living room and from the non-historic portion of the house which has larger windows along with pictures of what the snow build up looks like outside.) I’m not increasing the entry deck, just building an upper level porch over it. I don’t feel like the support post will impede with snow storage. The Town has allowed changes to make spaces useable; (she presented examples of other changes within the historic district in Town). I am not changing the shape of my building, I am not adding density. Three buildings along the same alley have porches facing the alley.

Commissioner Questions / Comments:

Ms. Dudney: Regarding the skylight issue, I feel there is not a precedent for these bubble shapes. Do you have a picture? In your mind is it really black-and-white since the code says it must be flat? (Mr. Mosher: They are dome-like and will stand up about 12-inches.)

Ms. Christopher: Is the dome on the roof portion the only option? (Mr. Mosher: Some are flat but they aren’t very directional. 99% of what I have researched are domes. I think it is a noble thing to do to preserve fabric and it is a good solution, but the Policy states that they must be flat and flush.)

Mr. Pringle: What can we agree on? (Mr. Mosher: We have to match on code and precedent. I have tried to be thorough and cite the code specifically, so what is right would be the code.)

Mr. Schroder opened the hearing to public comment.

Mr. Lee Edwards: Ms. Radosevich makes a good point with encouraging people to live in Town. If those windows and the logs have already been cut out and compromised previously, I support taking a couple more logs out and putting them in on the bottom. The fabric has already been compromised; let’s make it livable for someone that wants to live there. That isn’t a huge change to historic fabric that has already been

compromised. I support an upper level deck back there too. I'm not sure about the snow storage with regards to the post; I feel that a column would be just fine inside the easement.

There was no more public comment and the hearing was closed.

Commissioner Questions/Comments:

Ms. Christopher: How far into the snow stack is the post? (Mr. Mosher: About 3.5 feet and the other one at about 3 feet.)

Mr. Pringle: What can we agree to do here? (Mr. Mosher: The best route we can take is base it on what the Development Code states. Staff couldn't find a hardship for any variance regarding the windows and relating to "livability".) Would you say that the windows on the west elevation on the barn are historic? (Mr. Mosher: The openings are historic, the windows are not. Whatever is remaining should be respected as historic fabric. Taking out more fabric at the top to enlarge the openings is prohibited by the code.)

Mr. Schroder: Having a hard time accepting the application because the Code. I understand your interest in light. From my interpretation of the Code, it is definitive and it would fail the project in my mind.

Mr. Lamb: From a Code basis, the upper level deck is a big no. The three examples Ms. Radosevich sighted are not historic buildings although they are in the District. This has a lot of problems in my eye and there is a lot to do in order to get it to be passing. I agree with staff's interpretation.

Ms. Dudney: You have this historic fabric hidden that doesn't contribute to the look of the town. People have to comply with this requirement with something that won't be seen. So the issue is that it is primary façade. (Mr. Schroder: Current code is law; we can't go backwards.) I think it is very important we have consistency with interpretation of the Code and the Code seems to be straightforward. Generally I agree but I am sorry that it is that case.

Ms. Christopher: Design-wise I have no problem with the deck or the look of it. If there is any way figuring out we could do a deck, I would be for that with an angled support inside the snow storage easement. There is nothing in the Code that I know of that addresses change of use. I am disappointed that there is no happy medium. It is a great design but it is nowhere even close to Code.

Mr. Pringle: The barn historically relates to the building off of Ridge Street. (Mr. Mosher, yes, it was built with that building.) This barn has subsequently been added onto. (Mr. Mosher: The property has also been subdivided.) Subdivision is just a line on paper. I am trying to figure out where we could go forward with this. If the barn was subordinate to the historic building on Ridge Street and now we are interpreting it as a primary façade. (Mr. Lamb: When you split the lot you change the use of the property and that is a repercussion of splitting that lot. You do end up with a different primary façade.) I am trying to look at the property in its historical context not as subdivided. There has been so much done to it that it barely resembles a barn anymore. (Mr. Mosher: Overall, the proposal seems more like like a 'want' instead of a 'need'. You can see the mountains in the current windows if you sit down in the living room. We have to think about preserving the historic fabric of the walls.)

Mr. Rath: This snow-storage stacking thing is ridiculous. I think that this is a place to start. It isn't good for the structure. If we can get people to change their mind about stacking snow in the alley that then it would give them some room for improvement. (Mr. Mosher: It is platted easement and the Street Department needs every bit of storage in this tight alley. We don't know what was created first, the addition or the easement.) From a practical standpoint, somebody approved something that isn't legitimate. (Mr. Neubecker: The Streets Department wants to have the legal right for the snow to continue to be there if need be. It is an existing platted easement and it is near a curve. We have talked to the Streets Department about it and it is very important to have that in that location.)

1. As proposed, enlarging the windows would result in failing Priority Policy 77 and would be incur negative points under Policies 23, 56, and 75. Staff cannot support the proposal to enlarge the windows. Did the Commission concur with Staff's interpretation of these Policies?
 - a. Mr. Schroder: Concur with Staff's presentation. Policy 77 is not met.
 - b. Mr. Lamb: Agree with Staff; would set bad precedent if we allowed this.
 - c. Mr. Pringle: Not happy about how it doesn't meet policy; confused on this whole deal; I don't even know if those windows were original; we are protecting something that isn't even original; I don't know that there is a solution out there without violating our policy.
 - d. Ms. Dudney: Concur with Staff.
 - e. Mr. Rath: Agree with Staff.
 - f. Ms. Christopher: Agree with Mr. Pringle; it doesn't meet the policy but I am disappointed that we can't find a solution. I want to help make this space happily livable to the applicant; the missing fabric, how come we can't replace it and put it back into the structure somewhere else?
 - g. Mr. Butler: Looking for a solution but I have to concur with Staff's interpretation with this policy.
2. Priority Policy 69 addresses the visual impacts of adding skylights, not the impacts to the historic fabric. Hence, Staff believes that the proposed "Solatubes" do not meet this Policy. Did the Commission concur?
 - a. Mr. Schroder: Solatubes do not meet priority policy of 69.
 - b. Mr. Lamb: No grey area of code; agree with Staff.
 - c. Mr. Pringle: Yes; agree with Staff.
 - d. Ms. Dudney: Yes; agree with Staff.
 - e. Mr. Rath: Yes.
 - f. Ms. Christopher: Yes.
 - g. Mr. Butler: Yes.
3. Priority Policy 76 specifically identifies avoiding adding new windows to contributing historic buildings. In this case, Staff believes the alley is the 'street' facing the primary façade. Staff believes this proposal fails Priority Policy 77. Did the Commission concur?
 - a. Mr. Schroder: Concur with Staff's interpretation; since alley is primary façade.
 - b. Mr. Lamb: Support Staff since alley is primary façade; adding new windows to historic fabric changes what the building is supposed to look like with the historic district; concerned about look it will bring to district.
 - c. Mr. Pringle: After all of the historic buildings we have made additions to, why can't we go somewhere with this one? I don't know why we can't go forward.
 - d. Ms. Dudney: I'd like to see an attempt to allow this; it seems that what is implied in policy would be taking away historic fabric but since we aren't taking anything away I don't see a problem with this; I am not certain.
 - e. Mr. Butler: Catch 22 with this one is that it is now the primary façade. I concur because it is still code.
 - f. Mr. Rath: Concur with Staff.
 - g. Ms. Christopher: Leaning toward Ms Dudney's view; if there isn't anything there why can't we put something there? It depends if there is actually fabric there or not.
4. Staff is suggesting negative ten (-10) points. Did the Commission concur?
 - a. Mr. Schroder: Do support Staff's conclusion that negative ten (-10) points will be warranted with being in conflict with the handbook.
 - b. Mr. Lamb: Concur with Mr. Schroder's comment.
 - c. Mr. Pringle: Compelled to concur.
 - d. Ms. Dudney: Concur with Staff.
 - e. Mr. Rath: Concur with Staff on negative ten (-10) points.
 - f. Ms. Christopher: Concur with Staff.

Mr. Butler: Concur with Staff.

2) Dabl House Shed and Solar Panels (MM) PC#2009036, 108 North French Street

Mr. Mosher presented a proposal to construct a new outbuilding, with full basement, at the rear of the lot. This building will function as an apartment. The required parking for the residence is located in the front yard off of French Street. An array of 12 photovoltaic solar panels is proposed on the main historic building and the non-historic building.

An application to place a shed and fence on this property was first reviewed by the Commission on September 2, 2003. Including the 2003 date, this application, with modifications, has been before the Planning Commission six times as a preliminary hearing. The most recent review was September 1, 2009.

At this review, the key issue for this proposal is the lapse between reviews by the Planning Commission and the Code changes that have been implemented since. At this time, the proposal is failing Absolute Policy 81 for the massing of the out building being larger than the historic structure. We anticipate changes being submitted for the next hearing to avoid this failure.

As presented, the proposal is failing Priority Policies 81, 86, 90, 95, and 115 of the Handbook of Design Standards. In addition, the proposal is not meeting Design Standards / Policies 9, 80, Character of historic development, Outbuildings, 91, and 92.

Mr. Edwards, Applicant: This is a very small building that we are talking about. The width of the building is 12' x 16'; it is a 'doll house'. It is using up the remaining density on the property. I want to get everything I am allowed on the property. Explained the width of the property and the narrowness of the house. Explained the initial submittal as a simple storage shed. Does the density matter on use? (Mr. Mosher, yes) (Mr. Edwards reviewed the layout of the project with the Commission.) Garage door is made to look like it was used as a barn; the building is pretty simple. On Priority Policy 81, there is no justification for that policy. It is not an accurate statement to say that every secondary structure is shorter. I want to see the justification for that. The Brown Hotel barn has metal on it. (Mr. Mosher: The Barn predates the hotel.) It has vertical windows that will work; given the use of this and the fact that other buildings have been proposed using half-lights I don't think that it is inappropriate. Would like to revisit the parking issue: originally asked Staff why we couldn't do a tandem parking spot on the Bank Property next door; how come I won't have a hardship for parking because I don't have an alley? Don't agree with the ordinance (Policy 81); I need to move forward with this project. Six years has been long enough.

Mr. Schroder opened the hearing to public comment. There was no public comment and the hearing was closed.

Commissioner Questions/Comments:

Mr. Pringle: Are we looking at only the outbuilding? Are the solar panels that are going on the existing building going to benefit the outbuilding? (Mr. Lee Edwards, Applicant: Yes, Xcel Energy will only allow one meter and it will be under one name for the entire property.) This is all one application then.

Ms. Christopher: When we went on a walking tour of outbuildings, did Ms. Sutterley's barn have wainscoting on it? (Mr. Lamb: No, it did not.)

However, Staff would like to provide the applicant with additional direction on the following:

1. Did the Commission find the metal wainscoting supports the Character of historic development in this Character Area? (Priority Policy 90.)
 - a. Mr. Lamb: Would like to see it go away but I am not too firm on that.
 - b. Mr. Pringle: Luke warm on this issue; compelled to follow policy.

- c. Ms. Dudney: Policy is vague and it doesn't specifically forbid metal wainscoting; if you can prove secondary structures have it I wouldn't have a problem.
- d. Mr. Rath: Agree with Ms. Dudney.
- e. Ms. Christopher: I feel like I have seen it around Town. If we can prove that we can use it, I am all for it. For the wainscoting but I don't like the entire wall of metal; that doesn't have any precedent in Town.
- f. Mr. Butler: I would get rid of it.
- g. Mr. Schroder: Policy 90 identifies that as inappropriate; doesn't pass in my book.
2. The drawings show that the outbuilding will have a gable dormer on the west elevation with a full porch below. The windows are large double hung and vertically orientated. The door is about 1/2 glass and not typically seen in outbuildings. Did the Commission find the form, detailing, and finishes are appropriate for an outbuilding?
 - a. Mr. Lamb: Don't think they are appropriate for an outbuilding; want to tone it down a little bit. Agree with Staff comment.
 - b. Mr. Pringle: Agree with Mr. Lamb; tone it down and comply with code.
 - c. Ms. Dudney: Agreed with Staff.
 - d. Mr. Rath: Agreed with Staff.
 - e. Ms. Christopher: Agreed with Staff.
 - f. Mr. Butler: Agreed with Staff.
 - g. Mr. Schroder: Agreed with Staff; tone it down.
3. Did the Commission believe the solar panels are set back enough and are compatible in color to the roof?
 - a. Mr. Lamb: I think it is set back enough; hard to say yes or no with no colors in front of me.
 - b. Mr. Pringle: Agree with Mr. Lamb.
 - c. Ms. Dudney: Not enough information; would like to see how visible it is and more color contrast.
 - d. Mr. Rath: Agree.
 - e. Ms. Christopher: I think the panels are set back enough; in my mind the colors don't matter.
 - f. Mr. Butler: I am looking forward to more information; don't have a problem with the solar panels.
 - g. Mr. Schroder: I feel they are setback enough that it does blend itself into the building; I think they will blend so I will support the solar panels.
4. Priority policy 81, 86: Does not meet Code according to Staff.
 - a. Mr. Lamb: It does not meet the policy. The issue is the height that really kills it. It is small but it towers above the Historic District, it looks more like a tower than a house to me. A little re-design would go a long way.
 - b. Mr. Pringle: The height is out of scale for the width and the depth of the structure. It does not meet these policies.
 - c. Ms. Dudney: I agree with the Staff.
 - d. Mr. Rath: It doesn't meet the height requirement.
 - e. Ms. Christopher: Agree with the Staff.
 - f. Mr. Butler: Agree with Staff.
 - g. Mr. Schroder: Current code of design standards is not larger outbuildings. I would not support the proposed outbuilding because it is exceeding the height of the initial building.
5. Priority Policy 115: Parking in Front Yard
 - a. Mr. Lamb: Hardship created by desire to create density. I think this project could figure out a way to not have parking in the front. I think that should be a last resort. It is functioning as it is so I see the hardship is created by the applicant.
 - b. Mr. Pringle: It doesn't comply with policy and applicant is creating hardship.
 - c. Ms. Dudney: No hardship. I hope you can solve this with the bank.
 - d. Mr. Rath: Agreed with Staff.
 - e. Ms. Christopher: Agreed with Staff.

- f. Mr. Butler: Agreed with Staff.
- g. Mr. Schroder: Priority policy says avoid parking in front yards. Should be a last resort. Does not meet priority policy 115.

OTHER MATTERS:

None

ADJOURNMENT:

The meeting was adjourned at 10:12 p.m.

Dan Schroder, Chair



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, unless otherwise noted.

MAY 2012

Saturday, May 19; Riverwalk Center	Town Clean-up
Tuesday, May 22; 3:00/7:30 p.m.	Second Meeting of the Month
Tuesday, May 29; 8:00 a.m.; Mountain Thunder Lodge	Council Retreat

JUNE 2012

Tuesday, June 12; 3:00/7:30 p.m.	First Meeting of the Month
Friday, June 8; Cuppa Joe	Coffee Talk
Saturday, June 16; 4:30 p.m.; Riverwalk Center	Town Party
Tuesday, June 26; 3:00/7:30 p.m.	Second Meeting of the Month

OTHER MEETINGS

1 st & 3 rd Tuesday of the Month; 7:00 p.m.	Planning Commission; Council Chambers
1 st Wednesday of the Month; 4:00 p.m.	Public Art Commission; 3 rd floor Conf Room
2 nd & 4 th Tuesday of the Month; 1:30 p.m.	Board of County Commissioners; County
2 nd Thursday of every other month (Dec, Feb, Apr, June, Aug, Oct) 12:00 noon	Breckenridge Heritage Alliance
2 nd & 4 th Tuesday of the month; 2:00 p.m.	Housing/Childcare Committee
2 nd Thursday of the Month; 5:30 p.m.	Sanitation District
3 rd Monday of the Month; 5:30 p.m.	BOSAC; 3 rd floor Conf Room
3 rd Tuesday of the Month; 9:00 a.m.	Liquor Licensing Authority; Council Chambers
4 th Wednesday of the Month; 9:00 a.m.	Summit Combined Housing Authority
4 th Wednesday of the Month; 8:30 a.m.	Breckenridge Resort Chamber; BRC Offices
4 th Thursday of the Month; 7:00 a.m.	Red White and Blue; Main Fire Station
TBD (on web site as meetings are scheduled)	Breckenridge Marketing Advisory Committee; 3 rd floor Conf Room

Other Meetings: CAST, CML, NWCCOG, RRR, QQ, I-70 Coalition