



**BRECKENRIDGE TOWN COUNCIL WORK SESSION**

Tuesday, February 25, 2014; 3:00 PM

Town Hall Auditorium

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

<b>3:00-3:10pm</b>	<b>I</b>	<b><u>PLANNING COMMISSION DECISIONS</u></b>	<b>2</b>
<b>3:10-3:30pm</b>	<b>II</b>	<b><u>LEGISLATIVE REVIEW*</u></b>	
		Revised Editorial Powers Ordinance	<b>10</b>
		BGV Community Center Library Lease Ordinance	<b>13</b>
		RETT Ordinance	<b>60</b>
<b>3:30-4:00pm</b>	<b>III</b>	<b><u>MANAGERS REPORT</u></b>	
		Public Projects Update	<b>68</b>
		Housing/Childcare Update	
		Committee Reports	<b>72</b>
		Financials	<b>73</b>
<b>4:00-5:00pm</b>	<b>IV</b>	<b><u>OTHER</u></b>	
		Request for Expanded Use at Breckenridge Nordic Center	
		Water Conservation Proposed Strategies	<b>84</b>
<b>5:00-6:00pm</b>	<b>V</b>	<b><u>EXECUTIVE SESSION</u></b>	
<b>6:00pm</b>	<b>VI</b>	<b><u>SITE VISIT - ICE CASTLES</u></b>	

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

**MEMORANDUM**

**To:** Town Council

**From:** Peter Grosshuesch, Director of Community Development

**Date:** February 19, 2014

**Re:** Planning Commission Decisions of the February 18, 2014, Meeting.

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***DECISIONS FROM THE PLANNING COMMISSION AGENDA OF February 18, 2014:***

**CLASS C APPLICATIONS:**

- 1) Daisy Residence (MGT) PC#2014001; 1003 Boreas Pass Road  
Construct a new, single family residence with 4 bedrooms, 4.5 bathrooms, 4,478 sq. ft. of density and 5,188 sq. ft. of mass for a F.A.R. of 1:7.85. Approved
- 2) Haynes Residence (MGT) PC#2014004; 105 North Gold Flake Terrace  
Construct a new, single family residence with 4 bedrooms, 4.5 bathrooms, 5,340 sq. ft. of density and 6,665 sq. ft. of mass for a F.A.R. of 1:5.92. Approved.

**CLASS B APPLICATIONS:**

None.

**CLASS A APPLICATIONS:**

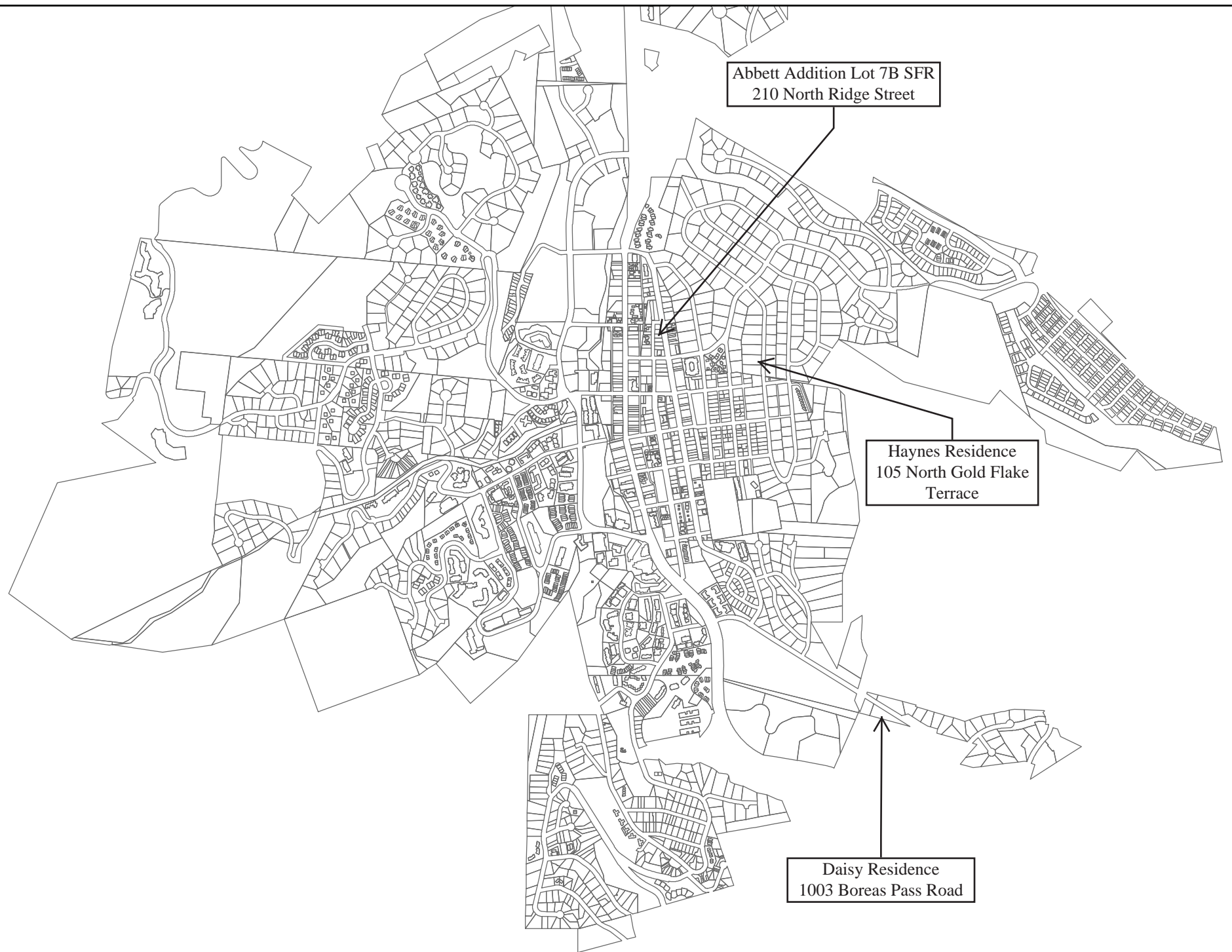
None.

**TOWN PROJECT HEARINGS:**

None.

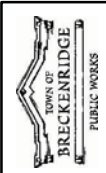
**OTHER:**

None.



# 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 7:00 pm

### ROLL CALL

Eric Mamula	Trip Butler	Gretchen Dudney
Dan Schroder	Kate Christopher	Jim Lamb
Dave Pringle		
Jennifer McAtamney, Town Council Liaison		

### APPROVAL OF AGENDA

Mr. Mosher announced that the Preliminary Hearing for the Abbett Addition, Lot 7B SFR, PC#2013111, 210 North Ridge Street, had been withdrawn by the Applicant and would be presented at a future meeting. With that one change, the February 18, 2014 Planning Commission meeting agenda was approved unanimously (7-0).

Ms. Puester noted that the consent calendar has two homes that are Class C applications; both do not have building envelopes, one has points and one does not.

### APPROVAL OF MINUTES

With no changes, the January 21, 2014, Planning Commission Minutes were approved as presented.

### CONSENT CALENDAR:

- 1) Daisy Residence (MGT) PC#2014001, 1003 Boreas Pass Road
- 2) Haynes Residence (MGT) PC#2014004, 105 North Gold Flake Terrace

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

### TOWN COUNCIL REPORT:

Ms. McAtamney:

- The building code revisions had a second reading and were approved 6-1 by the Council. Mr. Dudick voted against the building code revisions because they do not require sprinkling all homes over 5,000 sq. ft.
- The Council will be undertaking a public outreach project to discuss a new water plant. The current plant is a single point of failure if there would be a fire in Upper Blue. Also, the current plant is quite old. A public process will start with the community. If it was started today, no new plant would be constructed until 2022, it takes a long time. We will be looking to bring in partners with this project. Water will be a big factor for the future of Breckenridge and the whole country.
- Tomorrow night at Riverwalk, the maquette presentation for artists presenting their ideas for sculptures at the roundabout.
- The Town has received the scoping notice from USFS for Breckenridge Ski Resort Summer Activities that include canopy tours and bigger zip lines, additional Jeep tours and climbing tours.
- Construction in the Arts District is on pace. Lots of projects going on around town between Arts District, roundabouts and medians. Looking for local contractors to bid for summer projects.
- April 1 is the day to vote on Town Council members.
- (Ms. Dudney asked about the activity of trees coming down by bike path towards Frisco.) This is part of the Ophir Mountain dead tree removal that has been approved and on going to remediate the beetle kill and fire danger.
- (Mr. Pringle: Is the Council taking any position on supporting the Breck Ski Resort summer activities?) No, not yet. We want BOSAC to comment first. (Mr. Truckey mentioned that there will

be an Open House hosted by USFS on March 5 open to public to understand more of the summer activity proposals at the Breckenridge Ski Area and the Council will be reviewing the proposal at its March 11 meeting.)

- Council approved the Dayton's to have events at the "Oh Be Joyful" Lodge, with staff to add conditions to protect Cucumber Gulch.
- (Ms. Puester noted that the Council had also discussed Condo-Hotels.) Yes we did, we basically agreed with the Planning Commission recommendations except for the size limit. The Council decided that the market would dictate better what would meet the threshold for amenities as long as the covenant was there and persistent rather than the 50 unit cut off. The covenant would ensure if later owners converted things like the registration desk to something else, then they would have to pay TDR's then. We asked for there to be clear examples of how TDR's would work and what it would look like if amenities went away in the covenant. We added that there needs to be an HOA ownership of the unit for rental only and that the Housing Authority must monitor the deed restriction.
- (Mr. Pringle: Want to reiterate, in minority but I'm totally opposed to change anything regarding condo-hotels. This is a Pandora's box situation. I'm opposed to letting them off the hook, because they got all the goodies and bonuses and now they could get off the hook.) We are concerned about the current financing for condo-hotels now and that there are spaces that are going unused. (Mr. Pringle: I'm trying to protect everyone who is currently operating under the terms of approval; we've given so many huge economic benefits in the past.) (Mr. Mamula: But it is done now, times change, these guys are opting to do this is because the spaces aren't used anymore. I think this is a good solution. It is done; the space is empty and useless. The Town may as well use it as affordable housing, dispersed affordable housing.) Rental not sale for these units is the option for these condo-hotels; this is a deed restricted rental unit. (Ms. Dudney: Could they use the proceeds for upgrades/ audits of energy efficiency?) Yes, they could use them for energy audits. There is nothing in effect to have them implement the audit recommendations, but the HOA will have the audit information for the next time they consider a remodel and will hopefully implement some of those recommendations at that time.

#### **WORKSESSIONS:**

##### 1) Policy 80A Connector Elements

Ms. Puester presented. The Connector Policy drawings were inadvertently left out of the packet; therefore, the Commission received them by email and there were also hard copies available at the meeting for the Commission and the public. Staff has reviewed and vetted a proportionality method for connectors to provide another option for Commission consideration as requested after public comment. Typically, residential character areas are limited to 1-1½ story modules. Creating a proportional method exceeding one story is difficult to execute when attached to the typical 1½ story module, and is not applicable when attaching to a 1 story module. Maintaining the distinction between modules is important to the character of the District, ensuring that building masses do not creep and overwhelm the historic character of the area. Staff believes that a connector taller than one story (13 feet measured to the mean per Building Height definition) really doesn't achieve the obvious distinction between modules that is the goal of the policy (Diagram 2) and will lead to uncertainty about the historic context. Architecturally, it is possible to connect floors in two different, two-story modules with a connector having a 13 foot mean, depending on the interior design and floor/plate heights (Diagram 1). Therefore, staff is recommending the one story connector with a simple design.

As shown in Diagram 1 presented, the connector can be designed to connect two stories within the 13 foot mean height with minimal stairs. Diagram 1-A depicts how this may be included in the Handbook of Design Standards for visual reference.

Mr. Mosher discussed Diagram 1 that depicts how to have 2 stories in the 13' mean on roof.

- Mr. Mamula: Typical facades are 26'. Is it possible with a 13' mean to get a roof that is so steep that is still two feet under the height of the two buildings that we need to put a roof pitch limit on this also? (Mr. Mosher: There is enough in the historic standards that are architecturally dictating the roof pitch. For example, we won't see a 12 x 12 pitch in this district.)
- Mr. Mamula: I care about the height so that we don't end up with a steep roof pitch like an A-frame if someone really was trying to force the connector issue. (Ms. Puester: I think there is a way we can address this concern with existing policies.)

Ms. Puester continued. Should the Commission desire to see connectors taller than 13 feet to the mean via a proportionality method, staff would recommend the following to replace the fifth bullet point in the draft policy attached. *"A connector shall not exceed 70 percent of the height of the smaller of the module to be connected. A connector shall not exceed 19 feet in height to the mean (1½ stories). The connector shall be a minimum of 4 feet lower than the modules to be connected."* This, like Diagram 1, would also allow for designs to connect two levels through the connector without much interior design alterations for stairs.

After additional review of the policies, staff recommends changes to Policy 80A, 90, 91, 92 and 95 as presented. The language proposed would ensure a simplistic connector design and clear separation of modules.

The primary changes proposed include:

- Further clarification of the intent of the connector policy;
- Clarification that a connector should be located to the rear or setback from on the side of the façade on a corner lot;
- A required 6 foot minimum connector length;
- A one story connector;
- A simple design and gable roof form.

Staff recommended that connector be limited to one story in height. As shown in Diagram 1, the proposed 13 foot mean height would allow for 2 stories to connect internally while maintaining the differentiation between module sizes and protecting the historical context. The concern of being able to connect 2 stories within the connector is addressed with the proposed language.

Staff would like to get Planning Commission direction on the items above. Staff has presented Diagrams 1, 1-A and 2 in addition to proposed code changes in ~~strike~~ and **bold**.

Mr. Lamb opened the worksession to public comment.

Ms. Janet Sutterley, Architect: Comments I have, item number 1: I totally agree with a minimum of 6' but it might need to be more than that, maybe the "Barry House" the house next to the post office has a connector that is too small, something is not right there proportionally. I suggest we all go a look at it. In diagram 1, the connector looks correct but, I don't see people buying into the stairway. I don't think this is realistic. We are calling these 1 ½ story buildings, but buildings are getting taller. Picture the two pieces on the top diagram going higher, so you will have taller vertical elements where the connector will look strange there, if you went up as high as you could on the two masses as someone approaches the maximum height with the plate heights. I thought the 13' connector was to the plate height not to the mean. So my question is when we are measuring density I use the 14' plate height, so could we look more to the plate height. It can be done but its not ideal. (Mr. Lamb: It is really hard to look at just a two dimensional drawing. Our intention is to make it a connector, not a bathroom with another room.)

There was no further comment, and the worksession was closed.

*Commissioner Questions / Comments:*

- Mr. Pringle: Our thought our policy was working really well until we had the project on Ridge and French. I hate to see us now have the pendulum swing so far back. We don't want to see bedrooms, bathrooms in connectors.
- Mr. Mamula: I like what the Staff has done. The connectors that work are single stories; I like the pendulum swinging back. I like how the historic house in the front and the connector is not a major element and the bigger house in the back is not dominating.
- Mr. Pringle: I think this policy is good for a renovation. The problem is when we have a big lot and there is too much density a one story connector looks odd.
- Mr. Mamula: But it will look way less massive and more appropriate in the historic district. (Ms. Puester showed an example of a big house of the Hermanson residence to depict.)
- Mr. Pringle: I'm not advocating a two story connector element; I just want it to be proportional.
- Ms. Sutterley: In diagram 2, this is more of the solution with the 4', you've got the taller buildings and you've got a bigger drop in the connector. She showed this on the Hermanson Residence with a line of the connector being two more feet down. (Mr. Mamula, Ms. Christopher and Mr. Schroeder said that it doesn't make any difference having the connector be four feet lower on the Hermanson residence. Still doesn't read right, too tall.) (Mr. Grosshuesch: The design standards require that we use roof forms that perform the same function of character in the different neighborhoods such as the East side neighborhood.)
- Mr. Mamula: Could we add language that says we intend them to use the roof forms of the neighborhood?
- Ms. Christopher: I think a one story connector is the solution to make the buildings look like they fit in the historic district.
- Mr. Butler: I agree with Staff.
- Mr. Mamula: I agree with Staff direction.
- Mr. Schroeder: I am heading to the 13' mean on the connector. It maintains the context in the district. It does what a connector should do, step down and break up the modules.
- Mr. Pringle: If I look at the Hermanson drawing, the connector is muddled with too many other elements. Bringing down the height would indicate two different modules, but I still think it is too confusing with architectural features and different roofline coming into the connector.
- Ms. Dudney: I think what you are addressing are found in staff's language about a connector being simpler. I think it needs to say in #5 that we add the words "at least" 2 feet under.
- Mr. Lamb: Let's keep in consideration that I can think of the mother-in-law house like Fish's house and 208 South Harris where you don't need more than a one floor connector. I think that the example of the Hermanson residence has too many details in looking like two different masses. It is a big house. (Ms. Puester: I would like to bring up another subject Dave and yourself just raised. Showed the Hermanson residence as an example: tall roof mass on door entry of a module that blocks the connector element behind it. Elements added in front of the connector make it confusing. Perhaps have a zone around the connector saying that you can't have any architectural elements over one story height in the "connector zone.")
- Mr. Lamb: I think we should continue to say that the connector should be simple.
- Mr. Mamula: But I think the area around the connector should be visible but not defined in detail.
- Mr. Pringle: But let's not tie it to height. I think we should say that it be something that four people agree to, to allow flexibility for proportionality. (Ms. Puester: It sounds like the one story element is acceptable to the majority of Commissioners. Also, that the design is simple and architectural elements should not confuse the connector)
- Mr. Schroeder: I think it is a good point that in some case the connector element has been obscured. (Mr. Mosher: Go to the house by the Community First Bank that has the connector element obscured by a roof element.)
- Ms. Dudney: I don't like the "connector zone" wording; it drives the architecture too much.
- Mr. Lamb: I think we are just tightening it up a little bit.

- Ms. Dudney: Does this mean that there couldn't be a zone? I don't want to legislate every little thing. We should leave some of this open for options.
- Ms. Christopher: I think calling it is already addressed.
- Mr. Mamula: What if we say that the connector must be one story, have a gabled roof, and also "be visible as a connector?" (The majority of the commissioners thought this was a good idea and agreed that the other policies proposed by staff were good. Next step is to take it to Town Council.)

**PRELIMINARY HEARINGS:**

- 1) Abbett Addition Lot 7B SFR (MM) PC#2013111, 210 North Ridge Street (Withdrawn at the request of the applicant.)

**OTHER MATTERS:**

- 1) 2013 SustainableBreck Annual Report (MT)
- Mr. Truckey presented. The Town Council adopted the SustainableBreck Plan in July of 2011, after several years of development and community input. During the adoption process, the Planning Commission reviewed the draft Plan and made recommendations on the Plan to Town Council. One of the key focuses of the Plan was a goal of monitoring the Plan over time to see how the community has progressed on the different topics addressed in the Plan. Thus, a series of "Indicators" were created with baseline data established for each Indicator. Staff has prepared the 2013 Annual Report, with the Indicators being one of the main elements of the report. The report also outlines some key achievements related to different sustainability topics. Attached for the Commission's review is a copy of the draft Annual Report.

As outlined in the Annual Report, a number of actions were undertaken in 2013 to further the Town's sustainability efforts. Some highlights include:

- Installation of 1,000 kilowatts of solar panels at two community solar gardens. About 66 percent of the energy generated is used in Breckenridge, with the remainder being used in other Summit County communities.
- Adoption of the Disposable Bag Fee and implementation of the fee at retail stores in October, along with an extensive public outreach effort that included the distribution of thousands of Breckenridge reusable bags.
- Twenty-five Town businesses are actively participating in the SustainableBreck Business Certification Program and nine of the businesses have been certified to date.

No action was required by the Commission. Mr. Grosshuesch noted that when the Town is drafting ordinances they typically key off of policy documents like the SustainableBreck Plan for policy guidance. These are representing the adopted policies of the Town.

*Commissioner Questions / Comments:*

- Ms. Christopher: On the SustainableBreck web page the 2013 annual report is shown but what about the 2012 Annual Report? (Mr. Truckey: We will be adding previous year reports on the webpage.)
- Mr. Lamb: One interesting statistic I found was that we are seeing more scrape offs (9%) as new construction.
- Ms. Dudney: The Housing table on page 60 says something to me. It says that the median sales price is so much lower than households at 100% at AMI, even people with 80% of AMI, can afford to purchase at that level. Is the Town policy goal that everyone gets a single family home? There is no longer a gap so this is going to be an issue when the sales tax comes up for re-adoption in 2016.
- Mr. Mamula: The goal is that people can get a single family shelter. At no point did the Town say let's



- build a multifamily structure.
- Ms. Dudney: This is a problem of having discreet funds. The Town Council should get to make this decision every year to decide if the taxes should happen or not.
- Ms. Christopher: I still look at this chart that the green line (single family median prices) is way above all the other lines. (Mr. Grosshuesch: The multi-family stock that we have is in short term housing. That isn't where we want to put families.)
- Ms. Dudney: I thought the argument was that we would have places for families to live, not necessarily that everyone gets a single family home. (Mr. Grosshuesch: They are not all single family homes. Pence Miller would be new multi-family, and Valley Brook is multi-family. Our buy down program targets multi-family units. Those units, we have found are difficult to re-sell, and we believe it's because they are bought out of the short term rental pool and not where most families would desire to live.) That is the issue when you look at the numbers and see that people who are making \$100,000 should be subsidized to buy single family units.
- Ms. Christopher: I commend that affordable units are put into neighborhoods like Wellington and Valley Brook because that grows the community and not just putting them into worker only housing neighborhoods. (Mr. Grosshuesch: We have a long history of covenants being transferred out of multi-family buildings in the bed base into single family neighborhoods because short term rental neighborhoods are undesirable places for families.)
- Mr. Lamb: There have not been huge subsidies in neighborhoods such as Wellington which are seen by many as being very successful.
- Ms. Dudney: Many people might object when people can go out and buy houses at market rate and not need to buy deed restricted houses.
- Mr. Pringle: I remember in the 80's that Council and many others argued that we shouldn't invest in affordable housing.

The Commission thanked Mr. Truckey for the SustainableBreck report and gave kudos to Ms. Puester and Mr. Kulick for helping with the report.

**ADJOURNMENT:**

The meeting was adjourned at 8:34 p.m.

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Jim Lamb, Chair

**MEMO**

TO: Town Council  
FROM: Town Attorney  
RE: Council Bill No. 5 (Town Clerk Editorial Powers Ordinance)  
DATE: February 14, 2014 (for February 25<sup>th</sup> meeting)

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The second reading of the ordinance amending the Town Code concerning the Town Clerk's editorial powers is scheduled for your meeting on February 25<sup>th</sup>. There are no changes proposed to ordinance from first reading.

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

1 ***FOR WORKSESSION/SECOND READING – FEB. 25***

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  
9 COUNCIL BILL NO. 5

10  
11 Series 2014

12  
13 AN ORDINANCE AMENDING SECTION 1-1-4 OF THE BRECKENRIDGE TOWN CODE  
14 CONCERNING THE EDITORIAL DUTIES OF THE TOWN CLERK

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

17  
18 Section 1. Section 1-1-4 of the Breckenridge Town Code is amended to read as follows:

19  
20 1-1-4: EDITORIAL DUTIES OF TOWN CLERK:

21  
22 The town clerk shall compile, edit, arrange and prepare for publication the  
23 Breckenridge town code. In the course of such task, the town clerk, after receiving  
24 the consent of the town manager and the town attorney, shall correct obvious  
25 errors and inconsistencies; eliminate duplications and ordinances repealed directly  
26 or by implication; correct defective section structure in arrangement of the matter  
27 of existing ordinances; ~~and~~ correct obvious errors in the cross referencing of  
28 ordinances; **and correct erroneous, outdated, or incomplete references to state**  
29 **and federal statutes and other laws**. The foregoing duties shall be performed in  
30 such form and manner as to preserve the intent, effect and meaning of any and  
31 every ordinance codified in this code.

32  
33 Section 2. Except as specifically amended hereby, the Breckenridge Town Code, and the  
34 various secondary codes adopted by reference therein, shall continue in full force and effect.

35  
36 Section 3. The Town Council hereby finds, determines and declares that it has the power  
37 to adopt this ordinance pursuant to the authority granted to home rule municipalities by Article  
38 XX of the Colorado Constitution and the powers contained in the Breckenridge Town Charter.

39  
40 Section 4. This ordinance shall be published and become effective as provided by Section  
41 5.9 of the Breckenridge Town Charter.

42  
43 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
44 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2014. A Public Hearing shall be held at the

1 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_ day of  
2 \_\_\_\_, 2014, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
3 Town.

4  
5 TOWN OF BRECKENRIDGE, a Colorado  
6 municipal corporation  
7

8  
9  
10 By \_\_\_\_\_  
11 John G. Warner, Mayor  
12

13 ATTEST:  
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16

17 \_\_\_\_\_  
18 Helen Cospolich  
19 Town Clerk  
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## Memorandum

**TO:** Town Council

**FROM:** Tom Daugherty, Public Works Director

**DATE:** 2/19/2014

**RE:** Library Lease for BGV Community Center

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Attached is the lease for the Summit County South Branch Library that will be located at the BGV Community Center. This lease is called for in the IGA with Summit County in September 2012. The lease closely follows the terms outlined in the IGA.

The lease is a 99 year lease as was intended in the IGA. The lease also generally shares the cost of building maintenance at 35% County and 65% Town which is also specified in the IGA.

Please note that the lease creates an Operational Plan that can be modified from time to time as long as it does not change the terms of the lease. This plan defines how the building will be operated while giving staff some flexibility to make modifications as circumstances change and without having to amend the lease

Staff will be available to discuss the lease at the work session.

1                   ***FOR WORKSESSION/FIRST READING – FEB. 25***

2  
3   COUNCIL BILL NO. \_\_\_\_

4  
5   Series 2014

6  
7                   AN ORDINANCE APPROVING A LONG-TERM LEASE WITH THE BOARD OF  
8                   COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO  
9                   (South Branch of Summit County Library – 103 South Harris Street)

10  
11                   WHEREAS, the Town of Breckenridge owns the real property commonly known as the  
12                   “Breckenridge Grand Vacations Community Center” located at 103 South Harris Street,  
13                   Breckenridge, Colorado (“**BGV Community Center**”); and

14  
15                   WHEREAS, a portion of the BGV Community Center is suitable for use by the Board of  
16                   County Commissioners of Summit County, Colorado (“**County**”) as the location of the new  
17                   South Branch of the Summit County Library; and

18  
19                   WHEREAS, the Town is willing to lease a portion of the BGV Community Center to the  
20                   County for use as the new South Branch of the Summit County Library; and

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

24  
25                   WHEREAS, Section 15.4 of the BreckenridgeTownCharter provides:

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

29  
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 BreckenridgeTownCode 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 Lease between the Town and the Board of County Commissioners of  
43                   Summit County, Colorado, a copy of which is marked **Exhibit “A”**, attached hereto, and  
44                   incorporated herein by reference is approved, and the Town Manager is authorized, empowered,  
45                   and directed to execute such Lease for and on behalf of the Town of Breckenridge.

1           Section 2. The Town Council finds, determines, and declares that it has the power to  
2 adopt this ordinance pursuant to the authority granted to home rule municipalities by Article XX  
3 of the Colorado Constitution and the powers contained in the BreckenridgeTownCharter.  
4

5           Section 3. This ordinance shall be published and become effective as provided by  
6 Section 5.9 of the BreckenridgeTownCharter.  
7

8           INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
9 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2014. A Public Hearing shall be held at the  
10 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
11 \_\_\_\_\_, 2014, at 7:30 P.M., or as soon thereafter as possible in the  
12 MunicipalBuilding of the Town.  
13

14   TOWN OF BRECKENRIDGE, a Colorado  
15   municipal corporation  
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17  
18  
19   By: \_\_\_\_\_  
20   John G. Warner, Mayor  
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22   ATTEST:  
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26 \_\_\_\_\_  
27 Helen Cospolich  
28 Town Clerk  
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**103 South Harris Building Lease  
(South Branch of Summit County Library)**

THIS LEASE (“**Lease**”) is dated \_\_\_\_\_, 2014 (“**Effective Date**”) and is between TOWN OF BRECKENRIDGE, a Colorado municipal corporation (“**Town**”) and the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO (“**County**”). Town and County are sometimes referred individually as a “**Party**”, and together as the “**Parties.**”

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**ARTICLE 1 - BASIC LEASE PROVISIONS**

1.1 **Intent and Purpose.** Pursuant to the “Intergovernmental Agreement (103 South Harris Street - Library)” attached as **Exhibit “A”**, dated September 11, 2012 Town and County agreed to jointly remodel Town’s property at 103 South Harris Street in Breckenridge, Colorado for uses that include County’s public library. The IGA also contemplated that the Parties will enter into a perpetual lease authorizing County to use a portion of Town’s property for the South Branch of the Summit County Library. This Lease is entered into pursuant to the IGA.

1.2 **Leased Premises.** In consideration of County’s payment of the sums due to Town under this Lease, and the keeping of the promises, covenants, and conditions required of County by this Lease, Town leases to County, and County leases from Town, for the Term (as defined in Section 1.7) and upon the conditions of this Lease, a portion of the Town’s building located at 103 South Harris Street, Breckenridge, Colorado (“**Building**”). The portion of the Building leased by Town to County, pursuant to this Lease, is depicted on the attached **Exhibit “B”**, and is referred to in this Lease as the “**Leased Premises.**” County has no interest in, or right to use or occupy, any portion of the Building except for the Leased Premises and the Shared Use Areas described in this Lease, or pursuant to any other agreement between the Parties that may exist from time to time.

1.3 **Shared Use Areas.** As part of this Lease, County also has the right to use the Shared Use Areas of the Building (“**Shared Use Areas**”), as depicted on the attached **Exhibit “C”**, subject to Town’s rules concerning the use of such areas. The Shared Use Areas of the Building include consist of the following:

- 31 (a) the two Multi-Purpose Rooms;
- 32 (b) the kitchen;
- 33 (c) the entryways and corridors, circulation space;
- 34 (d) the public restrooms;
- 35 (e) the parking areas and walkways;
- 36 (f) landscaped areas and yard; and



1 (g) other spaces mutually agreed upon by the Town and County.

2 1.4 **Use of Leased Premises.** County may use the Leased Premises only as a “county  
3 library” as defined in Section 24-90-103, C.R.S., as amended from time to time throughout the  
4 Term. County will not use the Leased Premises for any other purpose without Town’s prior  
5 written consent.

6 1.5 **Other Uses and Tenants.** The Town will consult with the County with respect to  
7 potential future uses of the Building, and other tenants, Town will not allow uses or tenants in  
8 the Building that conflict with the County’s use of the Leased Premises as a public library,  
9 except in exceptional circumstances where the Town reasonably determines that a particular use  
10 or tenant will not substantially interfere with the County’s use of the Leased Premises as a public  
11 library.

12 1.6 **Multi-Purpose Rooms.** The two Multi-Purpose Rooms located in the Building  
13 are part of the Shared Use Areas and may be used by Tenant subject to the following terms and  
14 conditions:

15 (a) The Operational Plan described in Section 5.1 (“**Operational Plan**”)  
16 describes the Town’s and County’s rights and responsibilities with respect to the use of the  
17 Multi-Purpose Rooms.

18 (b) The policy described in the Operational Plan includes, without limitation, a  
19 mutually acceptable policy for reserving, monitoring, and using the Multi-Purpose Rooms. As of  
20 the date of this Lease, the Parties anticipate that the Multi-Purpose Rooms will be open for use  
21 approximately 84 hours each week (8 A.M. to 8 P.M., seven days a week). Based upon this  
22 assumption, County will have priority scheduling for up to 25% (21 hours) of the weekly use of  
23 the Multi-Purpose Rooms, and Town will have priority scheduling for use of the Multi-Purpose  
24 Rooms the remainder of the available hours.

25 (c) The policy described in the Operational Plan includes an agreed rate structure  
26 for fees to be charged to third parties for the use of the Multi-Purpose Rooms.

27 (d) The policy described in the Operational Plan includes a mutually acceptable  
28 policy related to the care, maintenance, repair and/or replacement of technical infrastructure and  
29 equipment within the Multi-Purpose Rooms.

30 1.7 **Term.** The term of this Lease (“**Term**”) commences on the Effective Date and  
31 ends, unless sooner terminated as hereafter provided, at 11:59 P.M., local time, on  
32 \_\_\_\_\_, 2113.

33 1.8 The Town and County agree to meet at least once per year to review this Lease  
34 and the operation of the Building.

35 1.9 **Surrender of Leased Premises.**

1 (a) Upon the expiration or earlier termination of this Lease County will surrender  
2 the Leased Premises to Town broom clean and in good condition, ordinary wear and tear  
3 excepted. Not later than the last day of the Term, County will remove its personal property and  
4 fixtures (including, but not limited to, trade fixtures) from the Leased Premises. The cost of such  
5 removal will be borne by County, and County will repair all injury or damage done to the Leased  
6 Premises in connection with the installation or removal of County's personal property and trade  
7 fixtures. All of County's fixtures (including, but not limited to, trade fixtures) that are so attached  
8 to the Leased Premises that they cannot be removed without material injury to the Leased  
9 Premises will, at Town's option, become the property of Town upon installation and remain with  
10 the Leased Premises upon surrender.

11 (b) Town may retain or dispose of any personal property, fixtures (including, but  
12 not limited to, trade fixtures), alterations, or improvements left remaining by County at or upon  
13 the Leased Premises following the expiration or earlier termination of this Lease, and Town is  
14 not accountable to County for any damages for the loss or destruction thereof, or for any part of  
15 the proceeds of sale, if any, realized by Town. County waives all claims against Town for any  
16 damages suffered by County resulting from Town's retention or disposition of such personal  
17 property, fixtures (including, but not limited to, trade fixtures), alterations or improvements.  
18 County is liable to Town for Town's costs for storing, removing and disposing of any such  
19 personal property, fixtures (including trade fixtures), or alterations.

20 **ARTICLE 2 - RENT AND SECURITY**

21 2.1 **Rent.** There is no periodic rent to be paid by County for the lease of the Leased  
22 Premises. However, County will pay to Town any amount required to be paid by County under  
23 this Lease as and when due.

24 2.2 **Interest on Past Due Amounts.** County will pay interest to Town on any sum  
25 due to Town under this Lease that is 60 days or more past due at the rate of 12% per annum from  
26 the date due until the date such payment is fully paid.

27 2.3 **Due Date, Place, and Manner of Payments.**

28 (a) Unless otherwise provided in this Lease, all sums payable to Town under this  
29 Lease are due 30 days after County's receipt of Town's properly documented invoice. County  
30 will notify Town of any objection within 14 days of the invoice date, identifying the reasons for  
31 such objection in writing and timely paying that portion of the invoice not in dispute. Invoices  
32 will be considered acceptable to County if no such objections are made. If objections to an  
33 invoice are made by County, the dispute will be resolved in accordance with Article 12.

34 (b) Sums due to Town under this Lease will be paid to:

35 Town of Breckenridge  
36 Clerk & Finance Division  
37 Attn: Accounts Receivable

1 P. O. Box 168  
2 Breckenridge, CO 80424  
3

4 or at such other place as Town Manager of Town may hereafter designate by written notice  
5 provided to County in accordance with Section 15.1 of this Lease.  
6

7 2.4 **Late Charge.** County will pay to Town a late charge of 5% on any amount due  
8 under this Lease that is not received by Town within 60 days of the due date.

9 **ARTICLE 3- TOWN’S DISCLAIMERS AND EXCULPATORY PROVISIONS**

10 3.1 **“As Is” Condition of Leased Premises.** County acknowledges that it had  
11 adequate and fair opportunity to inspect the Leased Premises prior to taking possession. The  
12 Leased Premises are leased by Town to County, and accepted by County, in **“AS IS”** condition.  
13 County’s act of taking possession of the Leased Premises is conclusive evidence that County  
14 accepted the Leased Premises in then **“AS IS”** condition, and that the Leased Premises were in  
15 satisfactory condition and working order at the time of commencement of County’s possession.

16 3.2 **Delay In Delivery of Possession of Leased Premises.** Town is not liable to  
17 County for any delay in delivery of possession of the Leased Premises to County.

18 3.3 **Town’s Non-liability.** As a material part of the consideration to be received by  
19 Town under this Lease, County assumes all risk of damage to property or injury to persons in or  
20 upon the Leased Premises from any cause other than Town’s negligence or intentional wrongful  
21 act, and County waives all claims in respect thereof against Town.

22 3.4 **Limitation of Remedies. IN NO EVENT WILL TOWN BE LIABLE FOR**  
23 **ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT**  
24 **NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, OR SAVINGS,**  
25 **BUSINESS INTERRUPTION, GOVERNMENT DISRUPTION, LOSS OF CONFIDENCE**  
26 **IN GOVERNMENT, OR ANY OTHER CLAIM OF WHATEVER KIND, ARISING**  
27 **FROM TOWN’S BREACH OF THIS LEASE, EVEN IF TOWN HAS BEEN ADVISED**  
28 **OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY**  
29 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY**  
30 **LIMITED REMEDY.**

31 **ARTICLE 4 - COUNTY’S AFFIRMATIVE OBLIGATIONS**

32 4.1 **Damages to Leased Premises and Building.** County will pay for any damage to  
33 the Leased Premises caused by County or resulting from County’s use of the Leased Premises  
34 pursuant to this Lease. County will also pay for any damage to other portions of the Building  
35 caused by County’s negligence or intentional wrongful act. County will pay for any such damage  
36 within 30 days of receipt of notice from Town.

1           4.2     **Taxes.** Because both Town and Country are tax-exempt entities under Colorado  
2 law, the Parties anticipate that the Leased Premises will be tax-exempt throughout the Term.  
3 However, if any taxes are lawfully assessed against the Leased Premises as a result of County’s  
4 use of the Leased Premises County will pay such taxes before they become delinquent.

5           4.3     **Signs.** With the exception of temporary signage within the Leased Premises and  
6 Shared Use Areas, and signage consistent with existing Building signage, County will not post,  
7 place, affix, erect, or display any sign within or outside of the Leased Premises without Town’s  
8 prior approval. County will maintain all signs located within or outside of the Leased Premises in  
9 good, clean, and attractive condition. County will remove all signs placed by it within or outside  
10 of the Leased Premises at the expiration or earlier termination of this Lease, and repair any  
11 damage or injury caused thereby. If not so removed by County, Town may remove such sign(s)  
12 at County’s expense.

13           4.4     **Inspection and Entry.** Town and Town’s authorized representatives may enter  
14 the Leased Premises at all times during reasonable hours to inspect the Leased Premises. County  
15 further agrees that Town may go upon the Leased Premises at all times and:

16                   (a) perform any work therein that may be necessary to comply with any laws,  
17 ordinances, rules or regulations of any public authority or that Town may deem necessary to  
18 prevent waste or deterioration of the Leased Premises;

19                   (b) post any notice provided for by law; or

20                   (c) otherwise protect any and all rights of Town,

21 all without any liability to County for damages.

22 Nothing in this Section implies or creates any duty on the part of Town to do any work that  
23 under this Lease County may be required to do, nor will it constitute a waiver of County’s  
24 default in failing to do such work. No reasonable exercise by Town of any of the reserved rights  
25 will entitle County to any damage or compensation of any kind from Town for any injury, loss,  
26 damage, or inconvenience occasioned by the exercise of such reserved right.

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28           4.5     **Compliance With Laws.** County, at its sole cost and expense, will comply with  
29 all laws, ordinances, orders, and regulations of all governmental authorities with respect to the  
30 use of the Leased Premises. A judgment of any court or the admission of County in any action or  
31 proceeding against County, whether Town is a party thereto or not, that County has violated any  
32 law, ordinance, requirement or order in the use of the Leased Premises will be conclusive of the  
33 fact as between Town and County.

34                                   **ARTICLE 5 – UTILITIES AND MAINTENANCE**

35           5.1     **Operational Plan.** The initial Operational Plan describing how the Leased  
36 Premises and the Building will operate is attached to this Lease as **Exhibit “D”**. The

1 Operational Plan may be changed from time to time if mutually agreeable to both Parties. The  
2 Operational Plan is not intended to change the terms of this Lease and changes to the Operational  
3 Plan are intended to allow flexibility in operation of the Building without substantially changing  
4 this Lease.

5           **5.2 Utilities.** Town will contract for, and obtain in its name, water, sewer, gas and  
6 electrical utility service for the Leased Premises. County will periodically reimburse Town for  
7 the water, sewer, gas and electric service used at the Leased Premises as follows:

8                   (a) 35% of the total electric and gas charges for the Building (less the electric  
9 demand charge);

10                   (b) 35% of the total electric demand charge for the Building;

11                   (c) 35% of the total sewer charges for the Building; and

12                   (d) 35% of the total water charges for the Building.

13                   (e) 35% of the total recycling and trash removal.

14 County will reimburse Town for these costs in accordance with Section 2.3.

15           **5.3 Other Utility Service To Leased Premises.** County will initiate, contract for, and  
16 obtain in its name, all other required utilities and services in connection with its use of the  
17 Leased Premises, including, without limitation, telephone, cable and internet. County will pay all  
18 charges for such services as they become due.

19           **5.4 Security System and Key Management.** The Town will provide the Building  
20 security and key/access system. Town will provide the necessary keys, devices, or codes to  
21 County to allow it to manage the Shared Use Areas pursuant to the Operational Plan.

22           **5.5 Cleaning and Maintenance.**

23                   (a) During the Term, County will, at its sole expense, keep the Leased Premises  
24 in a neat, clean, and sanitary condition. This includes incidental items such light bulb  
25 replacement and minor repairs pursuant to the Operational Plan.

26                   (b) County will manage and perform the cleaning and routine maintenance of the  
27 Shared Use Areas described in subsections 1.3(a-d). The definition of cleaning and routine  
28 maintenance is described in the Operational Plan. The Town will pay 65% of the actual and  
29 necessary costs of cleaning and maintaining the Shared Use Areas. The County will notify the  
30 Town of those costs monthly and those costs will be accounted for monthly as a set-off from  
31 those amounts otherwise owed to the Town by the County under this Lease.

32           **5.6 Snow Plowing and Snow Removal.**

1 (a) The Town and County currently have an agreement to park County  
2 Courthouse employees in the north parking lot of the property on which the Building is located.  
3 As long as that agreement stays in place the County will continue to plow and remove snow in  
4 the north parking lot. If that agreement is terminated then the County will continue to have the  
5 responsibility to plow and remove snow from the north lot or some other arrangement as agreed  
6 by the Parties.

7 (b) Snow removal for the remainder of the parking areas of the property on which  
8 the Building is located not addressed in subsection (a) above, the walkways, entrance ways and  
9 handicap access ramps will be contracted for by the Town for the benefit of the entire Building.  
10 The County will pay for 35% of those snow removal expenses. Snow will be removed once per  
11 day per snow event. If the Town or County requires additional snow removal in these areas the  
12 requesting Party will make arrangements to perform and pay for that work unless modified  
13 pursuant to the Operational Plan.

#### 14 5.7 Major Maintenance

15 (a) Unless otherwise agreed to by the Parties, the County will pay for 35% and  
16 the Town will pay for 65% of any major maintenance or emergency repairs to the Building.  
17 “major maintenance” includes the roof, foundation, exterior walls and windows, heating and  
18 cooling systems, plumbing systems, electrical systems and exterior walkways and parking lots or  
19 any additional item defined in the Operational Plan. Interior finishes and carpet in the Leased  
20 Premises are not included as major maintenance and are the responsibility of the County in the  
21 Leased Premises. Any work needed inside the Leased Premises that is not defined as Major  
22 Maintenance or Emergency Repairs, or otherwise addressed by the Operational Plan, will be  
23 performed by the County. “Emergency repairs” include the substantial repair or replacement of  
24 any structural or non-structural component of the Building that must be performed immediately  
25 in order to maintain the Building in a safe and usable condition.

26 (b) The Town will be responsible for performing or contracting for all non-  
27 routine maintenance including, without limit to, structural repairs, replacement and repair of  
28 roofs, replacement and repair of HVAC systems, painting of the Building excluding the Leased  
29 Premises, flooring replacement excluding the Leased Premises, replacement and repair of  
30 parking areas and exterior walkways, and all “major maintenance” and “Emergency repairs”.

31 (c) The Town will provide maintenance support and on-call contact information  
32 for County to notify if “Major maintenance” or “Emergency repairs” are required outside of  
33 normal Town operating hours.

### 34 ARTICLE 6 - COUNTY’S NEGATIVE OBLIGATIONS

#### 35 6.1 Alterations and Improvements.

36 (a) “**Alteration**” means any material alteration, addition, substitution, installation,  
37 change, and improvement to the Leased Premises but excludes cosmetic items such as painting

1 and alterations that do not impact Building systems, i.e. electrical, plumbing, HVAC, and  
2 structural.

3 (b) County is responsible for constructing and paying for all Alterations.

4 (c) However, County will not make any Alteration to the Leased Premises  
5 without the prior written consent of Town, which will not be unreasonably withheld.

6 (d) County will provide Town with plans for the construction or installation of  
7 any proposed Alteration at least 60 days prior to the planned commencement of construction.  
8 County will also provide any supplemental information requested by Town. County will not  
9 make any Alteration that has not been approved by Town.

10 (e) The following will be conditions of Town's consent to the construction of any  
11 Alteration to the Leased Premises by County:

12 (i) The work will be performed and completed:

13 (A) In accord with the submitted plans and specifications;

14 (B) In a workmanlike manner.

15 (C) In compliance with Town's building and technical codes, and may  
16 be inspected by Town's Building Official to determine compliance with the  
17 applicable codes.

18 (D) In compliance with all applicable laws, rules, regulations,  
19 ordinances, and other requirements of governmental authorities.

20 (E) Using new materials, unless otherwise agreed by Town.

21 (F) With due diligence.

22 (ii) County will propose a contractor that is qualified to perform the proposed  
23 work to the Town to review and approve or disapprove based on the contractor's  
24 qualifications. County will not use any contractor that Town does not approve.

25 (iii) County will modify plans and specifications because of reasonable  
26 conditions set by Town after reviewing the plans and specifications.

27 (iv) County's contractors will carry builders risk insurance in an amount then  
28 customarily carried by prudent contractors, and workers' compensation insurance for its  
29 employees complying with applicable law.

30 (v) Upon request, County will give Town evidence that it complied with any  
31 condition set by Town.

1 (f) Any Alteration made by County to the Leased Premises will become the  
2 property of Town; will be considered as part of the Leased Premises; and will not be removed  
3 from the Leased Premises by County upon the expiration or earlier termination of this Lease  
4 unless removal is ordered by Town.

5 (g) County will not make any Alteration without first having obtained a  
6 development permit from Town, acting in Town's governmental capacity.

7 **6.2 Assignment and Subletting.**

8 (a) County will not assign, sublet, license, pledge, encumber, any or all of the  
9 Leased Premises without first obtaining Town's prior written consent. Any assignment, sublease,  
10 license, pledge or encumbrance without Town's prior written consent is voidable by Town and,  
11 at Town's election, will constitute a default under this Lease. Provided, however, the Parties  
12 recognize and agree that the library is currently managed and operated by the Summit County  
13 Library Board of Trustees pursuant to the Colorado Library Law in Title 24, Article 90, and Title  
14 30 of the Colorado Revised Statutes, and that such organizational structure as it currently exists,  
15 or as it may be amended during the Term in accordance with applicable law, will not violate this  
16 Section. No consent by Town to any of the above acts will constitute a further waiver of the  
17 provisions of this Section.

18 (b) **Costs.** If Town consents to an assignment, sublease, or license County may be  
19 required, as a condition of granting consent, to pay Town's reasonable costs incurred in  
20 considering the proposed assignment, sublease, or license including, but not limited to, legal fees  
21 and credit checks.

22 (c) **Waste or Nuisance.** County will not commit or permit to be committed upon  
23 the Leased Premises any waste, any public or private nuisance, or any other act or thing  
24 prohibited by law.

25 **ARTICLE 7 – INSURANCE**

26 7.1 **County's Liability Insurance.** Throughout the Term County will, at its expense,  
27 continuously maintain comprehensive general liability insurance with limits of liability not less  
28 than the limits of liability for local governments established from time to time by the Colorado  
29 Governmental Immunity Act, Section 24-10-101, et seq., C.R.S. ("**Act**"), which limits are as of  
30 the effective date of this Lease \$350,000 for injuries or damages sustained to one person in any  
31 single occurrence and \$990,000 for injuries or damages sustained to two or more persons in any  
32 single occurrence. County's liability insurance policy will be endorsed to include Town as an  
33 additional insured.

34 7.2 **Worker's Compensation Insurance.** County will maintain at all times  
35 throughout the Term worker's compensation insurance as required by Colorado law insuring the  
36 payment of compensation to all its employees engaged in the performance of work at the Leased  
37 Premises.



1           7.3     **Property and Casualty Insurance.**

2                   (a) Town will provide property (casualty) insurance for the Building.

3                   (b) County will provide its own property (casualty) insurance for its personal  
4 property and equipment located from time to time in the Leased Premises.

5           7.4     **Additional Insurance Provisions.** Every insurance policy required by this  
6 Article to be carried by County will be primary insurance, and any insurance carried by Town, its  
7 officers, or its employees, or carried by or provided through any insurance pool of which Town  
8 is a member, will be excess and not contributory insurance to that provided by County. County is  
9 solely responsible for any deductible losses under its required insurance policies.

10           7.5     **Insurance Criteria.** Insurance polices required of County by this Lease will:

11                   (a) be issued by insurance companies licensed to do business in the State of  
12 Colorado with general policyholder's ratings of at least A and a financial rating of at least XI in  
13 the most current Best's Insurance Reports available at the time such insurance is to be procured  
14 or a governmental insurance pool; and

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

17           7.6     **Evidence of Insurance.** Prior to the commencement of this Lease, and on each  
18 subsequent renewal or replacement of the required insurance policies during the Term, County  
19 will give to Town a certificate of insurance evidencing compliance with the requirements of this  
20 Article. All required insurance policies will be renewed or replaced and maintained by County  
21 throughout the Term to assure continuous coverage. If County fails to give the required  
22 insurance certificate within 20 days after notice or demand for it, such action will constitute a  
23 default under this Lease, and Town may then proceed as provided in Article 11 of this Lease,  
24 and/or Town may obtain and pay for that insurance and receive reimbursement from County,  
25 together with interest thereon at the rate of 12% per annum.

26   **ARTICLE 8 - INDEMNIFICATION**

27           8.1     **Indemnification by County.** To the extent permitted by law, and subject to any  
28 applicable limits of the Act and any applicable constitutional provision prohibiting or limiting  
29 indemnification by a local government entity, County will indemnify and defend Town, its  
30 officers, employees, insurers, and self-insurance pool from all liability, claims, and demands, on  
31 account of injury, loss, or damage, including, without limitation, claims arising from bodily  
32 injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any  
33 kind whatsoever, arising out of or in any manner connected with County's use or possession of  
34 the Leased Premises pursuant to this Lease, except to the extent that such liability, claim, or  
35 demand arises through the negligence or intentional wrongful act of Town, its officers,  
36 employees, or agents, or Town's breach of this Lease. If indemnification is required under this

1 Section, County will investigate, handle, respond to, and to provide defense for and defend  
2 against, any such liability, claims, or demands at its expense, and bear all other costs and  
3 expenses related thereto, including court costs and attorney fees.

4 8.2 **Survival.** The obligations of this Article will survive the expiration or earlier  
5 termination of this Lease.

## 6 **ARTICLE 9 - EMINENT DOMAIN**

### 7 **9.1 Eminent Domain.**

8 (a) **Definitions.** The terms “**eminent domain**,” “**condemnation**”, and “**taken**”  
9 and related terms as used in this Article include any taking for public or quasi-public use and  
10 private purchases in place of condemnation by any authority authorized by applicable law to  
11 exercise the power of eminent domain.

12 (b) **Entire Taking.** If the entire Leased Premises are taken by eminent domain,  
13 this Lease will automatically end on the earlier of:

14 (i) the date title vests; or

15 (ii) the date County is dispossessed by the condemning authority.

16 (c) **Partial Taking.** If the taking of a part of the Leased Premises materially  
17 interferes with County’s ability to continue its business operations in substantially the same  
18 manner then County may terminate this Lease on the earlier of:

19 (i) the date when title vests;

20 (ii) the date County is dispossessed by the condemning authority; or

21 (iii) 60 days following notice to County of the date when vesting or  
22 dispossession is to occur.

23 If the taking of a part of the Leased Premises does not materially interfere with County’s ability  
24 to continue its library operations in substantially the same manner, then this Lease will terminate  
25 only as to part of the Leased Premises taken.

26  
27 (d) **Awards and Damages.** Sixty five percent (65%) of any compensation or  
28 damages paid by a condemning authority, whether as a result of a judgment or settlement, will be  
29 the property of the Town, and thirty five percent (35%) of any compensation or damages paid by  
30 a condemning authority, whether as a result of a judgment or settlement, will be the property of  
31 the County.

32 (e) **Attorneys’ Fees and Costs.** The Town will pay sixty five percent (65%) of  
33 all attorneys’ fees, appraiser/expert witness fess, and other litigation costs in connection with any

1 eminent domain action affecting the Leased Premises, and the County will pay thirty five percent  
2 (35%) of all attorneys' fees, appraiser/expert witness fess, and other litigation costs in connecting  
3 with any such action.

#### 4 **ARTICLE 10- HAZARDOUS MATERIALS**

5 **10.1 Hazardous Materials - Defined.** As used in this Article the term "**Hazardous**  
6 **Materials**" means any chemical, material, substance, or waste:

7 (a) exposure to which is prohibited, limited, or regulated by any federal, state,  
8 county, regional or local authority, or other governmental authority of any nature; or

9 (b) that, even if not so regulated, may or could pose a hazard to the health or  
10 safety of the occupants of the Leased Premises including, without limitation, any petroleum,  
11 crude oil (any fraction thereof), natural gas, natural gas liquids, and those substances defined as  
12 "hazardous substances", "hazardous materials", "hazardous wastes" or other similar designations  
13 in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as  
14 amended, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Act, 49 U.S.C.  
15 Section 1801 et seq., and any other governmental statutes, laws, ordinances, rules, regulations,  
16 and precautions.

17 **10.2 Hazardous Materials - Prohibited.** County will full comply with all statutes,  
18 laws, ordinances, rules, regulations, and precautions now or hereafter mandated or advised by  
19 any federal, state, local, or other governmental agency with respect to the use, generation,  
20 storage, or disposal of Hazardous Materials. With the exception of those substances used for  
21 typical cleaning, maintenance and repairs of the Leased Premises, County will not cause, or  
22 allow anyone else to cause, any Hazardous Materials to be used, generated, stored, or disposed of  
23 on or about the Leased Premises without the prior written consent of Town, which consent may  
24 be revoked at any time. County's indemnification of Town pursuant to this Lease extends to all  
25 liability, including all foreseeable and unforeseeable consequential damages, directly or  
26 indirectly arising out of the use, generation, storage, or disposal of Hazardous Materials at the  
27 Leased Premises by County, or any person claiming under County, including, without limitation,  
28 the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any  
29 closure or other required plans, whether such action is required or necessary prior to or following  
30 the termination of this Lease, to the full extent that such action is attributable, directly or  
31 indirectly, to the use, generation, storage, or disposal of Hazardous Materials by County or any  
32 person claiming under County; provided, however, the written consent by Town to the use,  
33 generation, storage, or disposal of Hazardous Materials will excuse County from County's  
34 obligation of indemnification. In the event County is in breach of the covenants herein, after  
35 notice to County and the expiration of the earlier of:

36 (a) the cure period provided in Section 11.1(d);

37 (b) the cure period permitted under applicable law, regulation, or order,

1 then Town may, in its sole discretion, declare a default under this Lease and/or cause the Leased  
2 Premises to be freed from the Hazardous Material and the cost thereof will be due and payable  
3 from County. The obligations of County under this Section will survive the expiration or earlier  
4 termination of this Lease.

5  
6 **ARTICLE 11 - DEFAULT**

7 **11.1 Default by County.** The occurrence of any one or more of the following events  
8 will constitute a default and breach of the Lease by County:

9 (a) The failure to open the library in the Leased Premises to the general public for  
10 a period of more than 14 consecutive days without Town's prior consent, unless it is due to  
11 maintenance or repairs.

12 (b) The vacating or abandonment of the Leased Premises by County.

13 (c) The failure by County to make any payment due from County hereunder as  
14 and when due, when such failure will continue for a period of 30 days after service of written  
15 notice thereof by Town to County.

16 (d) The failure by County to observe or perform any of the other covenants,  
17 conditions, or provisions of this Lease to be observed or performed by County, or to obey rules  
18 promulgated by Town, within 30 days after service of written notice thereof by Town to County.  
19 In the event of a non-monetary default that is not capable of being corrected within 30 days,  
20 County will not be default if it commences correcting the default within 30 days of service of a  
21 demand for compliance notice and thereafter corrects the default with due diligence.

22 (e) The filing by or against County of a petition to have County adjudged  
23 bankrupt.

24 **11.2 Exceptions to Cure Periods.** The cure period provided in Section 11.1(d) does  
25 not apply to:

26 (a) Emergencies;

27 (b) County's failure to maintain the insurance required by Article 7.

28 **11.3 Town's Remedies Upon Default.** If County is in default under this Lease, Town  
29 has all of the remedies provided for in such circumstances by Colorado law; provided, however,  
30 Town will comply with dispute resolution provisions of Article 12. Town's exercise of any of its  
31 remedies or its receipt of County's keys will be not an acceptance of County's surrender of the  
32 Leased Premises. A surrender must be agreed to in writing and signed by both Parties.

33 **11.4 Default by Town.** Town will be in default under this Lease if Town fails to  
34 comply with any of the terms, provisions, or covenants of this Lease within 30 days following  
35 service of written notice thereof by County. In the event of a non-monetary default that is not

1 capable of being corrected within 30 days, Town will not be default if it commences correcting  
2 the default within 30 days of receipt of notification thereof and thereafter corrects the default  
3 with due diligence.

4 11.5 **County’s Remedies Upon Default.** If Town is in default under this Lease,  
5 County has all of the remedies provided for in such circumstances by Colorado law; provided,  
6 however, County will comply with dispute resolution provisions of Article 12.

7 **ARTICLE 12 – DISPUTE RESOLUTION**

8 12.1 **Negotiation.** The Parties will attempt in good faith to resolve any dispute arising  
9 out of or relating to this Lease not resolved promptly by negotiations between persons who have  
10 authority to settle the controversy (“**Executives**”). Any Party may give the other Party written  
11 notice of any dispute not resolved in the normal course of business. Within five days after receipt  
12 of said notice, Executives of the Parties will meet at a mutually acceptable time and place, and  
13 thereafter as often as they reasonably deem necessary, to exchange relevant information and to  
14 attempt to resolve the dispute. If the matter has not been resolved within ten days of the notice  
15 of dispute, or if the Parties fail to meet within five days, either Party may initiate mediation of  
16 the controversy as provided in Section 12.2.

17 12.2 **Mediation.** If the dispute has not been resolved by negotiation as provided above,  
18 the Parties will endeavor to settle the dispute by mediation with a neutral third Party. If the  
19 Parties encounter difficulty in agreeing on a neutral third Party, they may each appoint a neutral  
20 third Party, such third Parties to appoint a neutral third Party to mediate. Each Party will pay  
21 their own attorneys’ fees incurred in connection with a mediation.

22 12.3 **Judicial Action.** Any dispute arising out of or relating to this Lease or the breach,  
23 termination or validity of this Lease, which has not been resolved by the methods set forth above  
24 within 30 days of the initiation of mediation, may be finally resolved by appropriate judicial  
25 action. The Parties agree to exclusive venue in the courts of Summit County, Colorado with  
26 respect to any dispute arising out of or relating to this Lease. **BOTH PARTIES WAIVE THE RIGHT**  
27 **TO A JURY TRIAL IN ACTION TO ENFORCE, INTERPRET, OR CONSTRUE THIS LEASE.**

28 12.4 **Attorneys’ Fees** If any action is brought in a court of law by either Party to this  
29 Lease concerning the enforcement, interpretation or construction of this Lease, the prevailing  
30 Party, either at trial or upon appeal, will be entitled to reasonable attorneys’ fees, as well as costs,  
31 including expert witness’ fees, incurred in the prosecution or defense of such action.

32 12.5 **Equitable Relief.** Nothing in this Article prevents a Party from seeking to obtain  
33 from a court of competent jurisdiction a temporary restraining order, preliminary injunction,  
34 permanent injunction, or other appropriate form of equitable relief, to enforce the provisions of  
35 this Lease if such action is authorized by applicable law.

36 **ARTICLE 13 - NO DISTURBANCE**

1           13.1 **Quiet Enjoyment.** Subject to the terms and conditions of this Lease, Town  
2 covenants that so long as the amounts due to Town under this Lease are paid as and when due,  
3 and there is no default in any of the other covenants, conditions, or provisions of this Lease to be  
4 performed, observed or kept by County, County will lawfully, quietly and peacefully have, hold,  
5 enjoy, possess, use and occupy the Leased Premises and Shared Use Areas as provided herein  
6 during the Term, or any extension thereof, without any hindrance or disturbance from Town.  
7 Town will defend County against the claims of all persons to the Leased Premises. Town  
8 reserves the right to grant additional restrictions or encumbrances affecting the Leased Premises  
9 and Shared Use Areas so long as such restriction or encumbrances do not materially interfere  
10 with the use of the Leased Premises, Shared Use Premises or the improvements on the Leased  
11 Premises by the County. The Town will consult with the County before they make additional  
12 restrictions or encumbrances and will coordinate them with the County.

13 **ARTICLE 14 - TOWN'S RULES**

14           14.1 **Rules.** County will faithfully observe and comply with any rules and regulations  
15 promulgated by Town with respect to the Leased Premises so long as such rules and regulations  
16 do not materially interfere with the use of the Leased Premises as provided by the agreements  
17 between the Parties or the improvements on the Leased Premises by the County. The Town will  
18 consult with the County before they make additional rules and regulations affecting the Leased  
19 Premises and will attempt in good faith to coordinate them with the County. Town's rules and  
20 regulations must be reasonable, and may not unilaterally change or significantly alter the  
21 material terms and conditions of this Lease. The rules and regulations, and any amendments  
22 thereto, will be binding upon County upon delivery to County. At the time of this Lease no rules  
23 have been established. Any rules established in the future may be set forth in the Operational  
24 Plan.

25 **ARTICLE 15 - MISCELLANEOUS**

26           15.1 **Notices.** All notices required or permitted under this Lease must be given by  
27 registered or certified mail, return receipt requested, postage prepaid, or by hand or commercial  
28 carrier delivery, or by telecopies, directed as follows:

29           If intended for Town to:  
30  
31           Town of Breckenridge  
32           P.O. Box 168  
33           150 Ski Hill Road  
34           Breckenridge, Colorado 80424  
35           Attn: Timothy J. Gagen, Town Manager  
36           Telecopier number: (970)547-3104  
37           Telephone number: (970)453-2251  
38

39           with a copy in each case (that will not constitute notice) to:  
40

1 Timothy H. Berry, Esq.  
2 Timothy H. Berry, P.C.  
3 131 West 5th Street  
4 P. O. Box 2  
5 Leadville, Colorado 80461  
6 Telecopier number: (719)486-3039  
7 Telephone number: (719)486-1889  
8

9 If intended for County to:

10  
11 Board of County Commissioners  
12 P.O. Box 68  
13 Breckenridge, Colorado 80424  
14 Attn: Gary Martinez, County Manager  
15 Telephone number: (970)453-3401  
16 Telecopier number: (970)453-3535  
17

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

19  
20 Jeff Huntley, Esq.  
21 Summit County Attorney  
22 P.O. Box 68  
23 Breckenridge, Colorado 80424  
24 Telephone number: (970)453-3407  
25 Telecopier number: (970)454-3535  
26

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

39  
40 15.2 **“Day” Defined.** Unless otherwise indicated, the term **“day”** means a calendar  
41 (and not a business) day.

1           15.3   **“Will” or “Will Not” Defined.** “Will” or “will not” indicates a mandatory  
2 obligation to act or to refrain from acting as specifically indicated in the context of the sentence  
3 in which such word is used.

4           15.4   **Complete Agreement.** It is understood and agreed that this Lease, and the  
5 Intergovernmental Agreement referred to in Section 1.1, contain the complete and final  
6 expression of the agreement between the Parties regarding the County’s use of the Leased  
7 Premises, and there are no promises, representations, or inducements except as are herein  
8 provided. All negotiations, considerations, representations, and understandings between the  
9 Parties related to this Lease are contained herein.

10          15.5   **Amendment.** This Lease may not be modified except by a written Lease signed  
11 by both Town and County. Oral modifications of this Lease are not permitted.

12          15.6   **Captions.** The headings of the sections and paragraphs contained in this Lease are  
13 for convenience only and do not define, limit, or construe the contents of the Articles, Sections  
14 and Paragraphs.

15          15.7   **Waiver.** The failure of either Party to exercise any of such Party’s rights under  
16 this Lease is not a waiver of those rights. A Party waives only those rights specified in writing  
17 and signed by the Party waiving such rights.

18          15.8   **Severability.** If any provision of this Lease is held to be invalid, illegal, or  
19 unenforceable in any respect, the validity, legality and enforceability of the remaining provisions  
20 contained in this Lease will not in any way be affected or impaired thereby.

21          15.9   **Survival.** All indemnification obligations required under this Lease will survive  
22 the expiration or earlier termination of this Lease.

23          15.10 **Force Majeure.** Neither Party is liable to the other for any failure, delay, or  
24 interruption in the performance of any of the terms, covenants, or conditions of this Lease due to  
25 causes beyond the control of that Party including, without limitation, strikes, boycotts, labor  
26 dispute, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of  
27 superior governmental authority, weather conditions, floods, riots, rebellion, terrorism, sabotage  
28 or any other circumstance for which such Party is not responsible or that is not in its power to  
29 control.

30          15.11 **Advances by Town For County.** If County fails to do anything required to be  
31 done by it under the terms of this Lease (other than a failure to make the payments to Town  
32 herein required) Town may, at its sole option, but without any obligation to do so, do or perform  
33 such act or thing on behalf of County, and in doing so Town will not be deemed to be a  
34 volunteer; provided, however, that before exercising its rights under this Section Town must give  
35 notice to County as provided in Section 15.1, and afford County not less than five days from the  
36 giving of such notice within which to do or perform the act required by County. Upon  
37 notification to County of the costs incurred by Town County will promptly pay to Town the full



1 amount of costs and/or expenses incurred by Town pursuant to this Section, together with  
2 interest thereon at the rate of 12% per annum.

3       15.12 **Governmental Immunity.** Both Town and County are relying on, and do not  
4 waive or intend to waive by any provision of this Lease, the monetary limitations (presently  
5 \$350,000 per person and \$990,000 per occurrence) or any other rights, immunities, and  
6 protections provided by the Act, as from time to time amended, or any other limitation, right,  
7 immunity or protection otherwise available to Town or County, or their respective elected  
8 officials, officers, or employees.

9       15.13 **No Adverse Construction Based On Authorship.** Each Party had the  
10 opportunity to participate in the drafting of this Lease. This Lease is not to be construed against  
11 either Party by virtue of such Party having drafted this Lease.

12       15.14 **Town's Consent.** Except as otherwise expressly provided to the contrary in this  
13 Lease, wherever in this Lease it is provided that some act requires Town's prior consent, such  
14 consent will not be unreasonably withheld by Town.

15       15.15 **Third Parties.** There are no third party beneficiaries of this Lease.

16       15.16 **Lease To Be Recorded.** This Lease **SHALL BE RECORDED** with the Clerk  
17 and Recorder of Summit County, Colorado.

18       15.17 **Time of Essence.** Time is of the essence of this Lease.

19       15.18 **Non-Discrimination; Compliance with Applicable Laws.** County:

20               (a) will not discriminate against any employee or applicant for employment to  
21 work at the Leased Premises because of race, color, creed, sex, sexual orientation, religion,  
22 national origin, or disability;

23               (b) will insure that applicants who are to work at the Leased Premises are  
24 employed and that employees are treated during employment without regard to their race, color,  
25 creed, sex, sexual orientation, religion, national origin, or disability;

26               (c) will in all solicitations or advertisements for employees to be engaged in the  
27 performance of work at the Leased Premises state that all qualified applicants will receive  
28 consideration for employment without regard to race, color, creed, sex, sexual orientation,  
29 religion, national original or disability; and

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

1           15.19 **No Partnership.** Town is not a partner, associate, or joint venturer of County in  
2 the conduct of County’s business at the Leased Premises. County is an independent contractor  
3 without the right or authority to impose tort or contractual liability upon Town.

4           15.20 **Binding Effect.** The covenants, conditions, and obligations contained in this  
5 Lease extend to, bind, and inure to the benefit of, not only the Parties, but their respective  
6 successors and permitted assigns.

7           15.21 **Annual Appropriation.**

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

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

26           15.22 **Incorporation of Exhibits.** The attached Exhibits “A”, “B”, “C” and “D” are  
27 incorporated into this Lease by reference.

28   TOWN OF BRECKENRIDGE, a Colorado  
29   municipal corporation  
30

31  
32  
33   By \_\_\_\_\_  
34   Timothy J. Gagen, Town Manager  
35

36 ATTEST:  
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\_\_\_\_\_  
Helen Cospolich  
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, COLORADO

By:

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Clerk and Recorder, and ex-officio  
clerk to the Board of the County Commissioners

1500-72\Library Lease (02-17-14)

Exhibit "A" of Public Library Lease  
Intergovernmental Agreement  
(Attached in the following pages)

1 INTERGOVERNMENTAL AGREEMENT  
2 (103 South Harris Street - Library)  
3

4 This Intergovernmental Agreement (this "Agreement") is dated SEPTEMBER 11,  
5 2012 (the "Effective Date") and is between the TOWN OF BRECKENRIDGE, a Colorado  
6 municipal corporation (the "Town") and SUMMIT COUNTY, COLORADO, acting by and  
7 through the BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY, COLORADO  
8 (the "County"). The Town and the County are sometimes referred to individually as a "Party",  
9 and together as the "Parties."

10  
11 **Background**  
12

13 The County operates a county library system within Summit County pursuant to Section  
14 24-90-101, et. seq., C.R.S. As part of its library system, the County owns and operates the South  
15 Branch of the Summit County Library located at 504 Airport Road, Breckenridge, Colorado  
16 80424. The Town owns the real property commonly known as 103 South Harris Street,  
17 Breckenridge, Colorado 80424. There is currently located on the Town's property a historic  
18 structure which, if renovated, will be suitable for uses that include the Library, as defined below.  
19 The Parties have agreed to jointly pay to design and then renovate the Town's property so that it  
20 will be suitable for uses that include the Library, all as more fully set forth in this Agreement. The  
21 Parties desire that the Library be relocated from its current location to the Town's Property, as  
22 defined below, subject to the terms and conditions of this Agreement.  
23

24 **Agreement**  
25

26 For and in consideration of the mutual promises and covenants contained herein, and intending to  
27 be legally bound, the Parties agree as follows:  
28

- 29 1. Authority. This Agreement is entered into pursuant to the authority granted by Article  
30 XIV, Section 18(2)(a) of the Colorado Constitution and Part 2 of Article 1 of Title 29,  
31 C.R.S.
- 32 2. Definitions. As used in this Agreement, the following terms have the following meanings,  
33 unless the context clearly requires otherwise:

ACT:	The Colorado Governmental Immunity Act, Part 1 of Article 10 of Title 24, C.R.S., as amended from time to time.
BUILDING:	The improvements located upon the Property.
DEFAULTING PARTY:	A Party alleged to be in default under this Agreement.
EXISTING LIBRARY SITE:	The site of the South Branch of the Summit

INTERGOVERNMENTAL AGREEMENT

County Library as of the date of this Agreement, which property is commonly known as at 504 Airport Road, Breckenridge, Colorado and is more fully described on the attached Exhibit "B".

- FOUNDATION: The Summit County Library Foundation, a Colorado nonprofit corporation formed in 1990.
- LEASE: The 99 year lease agreement between the Town and the County described in Section 6.
- LIBRARY: The South Branch of the Summit County Library to be relocated to a portion of the Building as provided in this Agreement.
- NON-DEFAULTING PARTY: The Party asserting that the other Party is in default under this Agreement.
- PLANS: The plans for the Project approved by the Town and the County, as amended from time to time in accordance with this Agreement.
- PRIOR LIBRARY IGA: The Intergovernmental Agreement between the Parties dated March 1, 1995, as amended by the First Amendment to Intergovernmental Agreement dated October 1, 2001.
- PROJECT: The work of designing and renovating the Building as described in this Agreement.
- PROPERTY: The real property owned by the Town as described on the attached Exhibit "A".
- 1  
2 SHARED USE AREAS: Two multi-purpose rooms, a kitchen, the  
3 circulation space, the public restrooms, and the  
4 parking areas of the Building.  
5
- 6 3. Renovation of the Building.  
7 A. The Building will be renovated by the Town in accordance with the Plans.  
8 B. The Town and the County must each approve the Plans. Once approved, the Plans  
9 will not be changed without the Parties' consent.

## INTERGOVERNMENTAL AGREEMENT

- 1 C. The Town and the County will work cooperatively and in good faith with each  
2 other throughout the design and construction of the Project.
- 3 D. The Town is responsible for the performance of all of the work required to  
4 complete the Project. To that end, the Town will select the general contractor to  
5 perform the work described in the Plans, and will enter into all necessary contracts  
6 for the design and construction of the Project, with construction/demolition  
7 anticipated to begin no later than July 15, 2013. The Town will consult with the  
8 County before selecting the general contractor. The Town will not change the  
9 general contractor without first consulting with the County.
- 10 E. The Town will complete the Project with due diligence. Subject to the force  
11 majeure conditions described in Section 9, the Town will use its best efforts to  
12 complete the Project and make the County's leased space in the Building, including  
13 the Library, ready for the County's occupancy not later than August 15, 2014, or  
14 such other date as may be agreed to by the Town and the County after the selection  
15 of the contractor who will renovate the Building; provided, however, as provided in  
16 Section 8, the Town is not liable to the County for any delay in the completion of  
17 the Project.

18 4. Cost of the Project.

- 19 A. As of the date of this Agreement, the best information available to the Parties is that  
20 the total cost of the Project will be approximately \$7,400,000. Any increase in the  
21 cost of the Project must be reviewed and approved by both the Town and the  
22 County
- 23 B. The County will pay \$2,675,000 toward the cost of the Project. Such sum will be  
24 paid upon request of the Town in pro rata payments (using an estimated 35%  
25 County share of costs subject to final adjustment as provided herein) based on the  
26 percentage of work completed as the construction progresses.
- 27 C. Subject to the remainder of this Section, the Town will pay the balance of the cost  
28 of the Project.
- 29 D. If the actual cost to complete the Project is:
  - 30 i. less than \$7,400,000 but greater than \$6,000,000, the difference between  
31 \$7,400,000 and the actual cost to complete the Project will be credited to the  
32 Town's financial obligation as described in Section 4(C).
  - 33 ii. \$6,000,000 or less, \$1,400,000 will first be credited to the Town's financial  
34 obligation as described in Section 4(C), and the remaining savings will then  
35 be credited equally to the Town and the County.

36 5. Fundraising

INTERGOVERNMENTAL AGREEMENT

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- A. The Town and the County will work cooperatively, expeditiously, and in good faith to attempt to raise funds to help pay the cost of the Project. Such efforts will include, without limitation, private donations, public and private grants, and similar awards. It is expected that the Foundation will serve as the lead organization in raising funds for the Library, Shared Use Areas and other common elements of the Building. Such funds will be segregated from the all other ongoing operational fund raising efforts of the Foundation.
  
- B. The Foundation will develop a plan to raise funds through the sale of naming rights on the Library and Shared Use Spaces. The Town and the County have the right to review and approve the proposed naming plan, as well as the right to review and approve the proposed name(s) of the Library and Shared Use Spaces, and the duration of the naming rights to be granted. The proposed naming plan may include the Building name with the approval of the Town.
  
- C. It is anticipated the Foundation's fundraising effort for the Library will cease 120 days following the County's occupancy of the Library portion of the Building.
  
- D. Funds raised through joint fundraising efforts of the Parties and the Foundation will be applied as follows:
  - i. the first \$575,000 will be paid to the County to offset the costs incurred or to be incurred by the Town to assist with the Library construction and complete the Shared Use Areas and common elements.
  
  - ii. any amount between \$575,001 and \$675,000 will be paid to the County into a separate Library account and used for special enhancements to the Library, which may include items such as the book/resource collection, equipment, or other Library personal property, to be designated by the County. Any funds described in this Subsection that are not spent will be credited for construction of the Library, Shared Use Areas and common elements as described in Subsection (iii) below.
  
  - iii. any amount in excess of \$675,000 will be paid to the County to offset the costs incurred or to be incurred by the Town to assist with the Library construction and complete the Shared Use Areas and common elements, until the Town's share of the cost to complete the Project has been reduced to \$2,675,000 (the amount of the County's share of the cost to complete the Project as described in Section 4(B)).
  
  - iv. any amount in excess of that required to reduce the costs as described above shall be paid to the County and credited equally to both Parties.
  
- E. The Parties agree that if the Foundation raises more than \$675,000 for the cost of the Project, the Foundation may retain ten percent of any amount in excess of

INTERGOVERNMENTAL AGREEMENT



1 \$675,000 and used, in the Foundation's discretion, for special enhancements to the  
2 Library, which may include items such as the book/resource collection, equipment,  
3 or other Library personal property, to be designated by the Foundation. Such  
4 enhancement funds may be expended by the Foundation pursuant to this Section  
5 once the final plans and budget for the special enhancements has been prepared and  
6 approved by both the County and the Town.

7 6. Lease. Within 90 days of the acceptance of building plans by each Party, the Town and the  
8 County will negotiate a mutually acceptable 99 year lease for the County's use of the  
9 Library portion of the Building, as well as the Shared Use Areas, as defined above. The  
10 lease will include, without limitation, the following provisions:

- 11 A. The County will be required to pay 35% of the annual total cost of providing gas,  
12 electricity, water, sewer, and trash removal/recycling for the Building.
- 13 B. The County will manage the Library and Shared Use Areas and, in connection with  
14 such management, will pay for and provide required cleaning and routine  
15 maintenance of the Library and the Shared Use Areas.
- 16 C. The Town will reimburse the County for 65% of the cleaning and routine  
17 maintenance of the Shared Use Areas that the County manages as described in B,  
18 above.
- 19 D. The Town will manage the remainder of the Building and, in connection with such  
20 management, will pay for and provide required cleaning and routine maintenance  
21 of the remainder of the Building.
- 22 E. The Town will be responsible for performing all non-routine maintenance of the  
23 Building, such as structural repairs, the replacement of the roof or boiler, and the  
24 painting of the Building
- 25 F. The Parties will agree on a mutually acceptable mechanism for paying for major or  
26 emergency repairs of the Building. Unless otherwise agreed by the Parties, the  
27 County will pay for 35% of the cost of major or emergency repairs of the Building,  
28 and the Town will pay 65% of such costs. "Major repairs" include the substantial  
29 repair or replacement of the Building's roof, foundation, exterior walls and glass,  
30 plumbing system, heating and ventilation systems, electrical system, and the  
31 painting of the exterior of the Building. "Emergency repairs" include the  
32 substantial repair or replacement of any structural or non-structural component of  
33 the Building that must be performed immediately in order to maintain the structure  
34 in a safe and useable condition.
- 35 G. Each Party will budget and set aside in its annual budget funds to be accumulated  
36 and used to pay the cost of major or emergency repairs of the Building. The amount  
37 of funds annually set aside to pay the cost of major or emergency repairs of the  
38 Building will be in the sound discretion of each of the Parties. Each Party will

## INTERGOVERNMENTAL AGREEMENT

1 annually report to the other Party the amount of funds that have been set aside to  
2 pay the cost of major or emergency repairs to the Building, and the Parties will  
3 meet and confer at least once each fiscal year to discuss the condition of the  
4 Building, anticipated repairs to the Building, and the adequacy of the Parties'  
5 reserves for major or emergency repairs of the Building.

6 7. Use of Remainder of Building.

7 A. The Town will retain ownership of the Building, and will have sole and exclusive  
8 use and control over those portions of the Building that are not subject to the Lease.  
9 The County has no right to use or control any portion of the Building that is not  
10 subject to the Lease.

11 B. To attempt to avoid uses that conflict with the County's use of the Building as the  
12 Library, the Town will consult with the County with respect to potential uses and  
13 future tenants of the portion of the Building that is not subject to the Lease, and will  
14 not allow future tenants or Building uses that conflict with the Library except on a  
15 rare or special occasion.

16 8. **Exclusion of Remedies. IN NO EVENT WILL THE TOWN BE LIABLE FOR ANY**  
17 **INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT**  
18 **NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS, REVENUE, OR**  
19 **SAVINGS, BUSINESS INTERRUPTION, GOVERNMENT DISRUPTION, LOSS**  
20 **OF CONFIDENCE IN GOVERNMENT, OR ANY OTHER CLAIM OF**  
21 **WHATEVER KIND, ARISING FROM THE DELAY IN THE COMPLETION OF**  
22 **THE PROJECT, EVEN IF THE TOWN HAS BEEN ADVISED OF THE**  
23 **POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY**  
24 **NOTWITHSTANDING THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY**  
25 **LIMITED REMEDY.**

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

33 10. Insurance.

34 A. Required Insurance. Until the Project has been completed the Town and the County  
35 will each procure and maintain the following minimum insurance coverages:

- 36 i. workers' compensation insurance to cover obligations imposed by  
37 applicable laws for any employee of the Town or the County (as  
38 applicable).

INTERGOVERNMENTAL AGREEMENT

1           ii.    general liability insurance with limits of liability not less than the limits of  
2                    liability established from time to time by the Act. The policy must include  
3                    coverage for bodily injury, broad form property damage (including  
4                    complete operations), personal injury (including coverage for contractual  
5                    and employee’s acts), blanket contractual, products, and completed  
6                    operations.

7                    Such coverages will be procured and maintained with forms and insurers  
8                    reasonably acceptable to the other Party. All coverage will be continuously  
9                    maintained until the Project has been completed. In the case of any claims-made  
10                   policy, the necessary retroactive dates and extended reporting periods will be  
11                   procured to maintain such continuous coverage.

12  
13        B. Deductibles. The Town and the County are each solely responsible for any  
14        deductible amounts required to be paid under their own required insurance policies  
15        described in Subsection A.

16        C. Insurance Certificate. Each Party will provide the other Party with a certificate of  
17        insurance evidencing that policies providing the required coverages, conditions,  
18        and minimum limits are in full force and effect. Such certificates will be provided  
19        within 10 days of the Effective Date of this Agreement, and on each renewal or  
20        replacement of the required insurance policies throughout the term of this  
21        Agreement. The completed insurance insurances will be sent to the Parties at the  
22        addresses provided in Section 14.

23    11.   Mutual Indemnification.

24        A. Indemnification By the Town. The Town will indemnify and defend the County, its  
25        officers, employees, insurers, and self-insurance pool against all liability, claims,  
26        and demands, on account of injury, loss, or damage, including, without limitation,  
27        claims arising from bodily injury, personal injury, sickness, disease, death,  
28        property loss or damage, or any other loss of any kind whatsoever, arising out of or  
29        in any manner connected with this Agreement, to the extent that such injury, loss,  
30        or damage is caused by:

31            i.    the negligence or intentional wrongful act of the Town, or any officer,  
32                    employee, representative or agent of the Town; or

33            ii.   the Town’s breach of this Agreement,

34                    except to the extent such liability, claim or demand arises through the negligence or  
35                    intentional wrongful act of the County, its officers, employees, or agents, or the  
36                    County’s breach of this Agreement. To the extent indemnification is required under  
37                    this Agreement, the Town agrees to investigate, handle, respond to, and to provide  
38                    defense for and defend against, any such liability, claims, or demands at its

1 expense, and to bear all other costs and expenses related thereto, including court  
2 costs and attorney fees.

3  
4 B. Indemnification By the County. The County will indemnify and defend the Town,  
5 its officers, employees, insurers, and self-insurance pool against all liability,  
6 claims, and demands, on account of injury, loss, or damage, including, without  
7 limitation, claims arising from bodily injury, personal injury, sickness, disease,  
8 death, property loss or damage, or any other loss of any kind whatsoever, arising  
9 out of or in any manner connected with this Agreement, to the extent that such  
10 injury, loss, or damage is caused by:

11 i. the negligence or intentional wrongful act of the County, or any officer,  
12 employee, representative or agent of the County; or

13 ii. the County's breach of this Agreement,

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

21  
22 C. Indemnity Subject To Applicable Law. The obligation of a Party to indemnify and  
23 defend the other Party pursuant to this Section is expressly subject to any applicable  
24 limitation or provision of the Act or any other law providing similar limitations or  
25 protections, as well as to any applicable constitutional prohibition against a Party  
26 indemnifying the other Party.

27 D. Indemnity For Worker's Compensation Claims.

28 i. The Town will indemnify and defend the County with respect to any claim,  
29 damage, or loss arising out of any worker's compensation claim of any  
30 employee of the Town.

31 ii. The County will indemnify and defend the Town with respect to any claim,  
32 damage, or loss arising out of any worker's compensation claim of any  
33 employee of the County.

34 E. Survival. The obligation of a Party to indemnify and defend the other Party  
35 pursuant to this Section will survive the termination of this Agreement, and will  
36 continue to be enforceable thereafter until such obligations are fully performed.

37 12. Prior Library IGA.

## INTERGOVERNMENTAL AGREEMENT

- 1 A. The Prior Library IGA is terminated. The recording of this Agreement with the  
2 Summit County Clerk and Recorder constitutes the notice of termination of the  
3 prior Intergovernmental Agreement as required by Section 6(D) of the Prior  
4 Library IGA.
- 5 B. Notwithstanding the termination of the Prior Library IGA, it is agreed that upon the  
6 first to occur of:
- 7 i. the transfer of legal title to the Existing Library Site by the County;
  - 8 ii. any use of the Existing Library Site after the commencement of the Lease  
9 other than as a County, Judicial System, or District Attorney's office; or
  - 10 iii. the termination of the Lease for any reason,
  - 11 iv. the County does not operate a library in the vicinity of the Town for a  
12 continuous period of two years unless both Parties agree that continued  
13 operation of a library is no longer necessary,

14 then the County will pay to the Town: (1) a sum equal to 92% of the then-current  
15 fair market value of the land (but not the improvements) comprising the Existing  
16 Library Site, and (2) 100% of the then-current cost of the Plant Investment Fee for  
17 the Existing Library Site that the Town deferred payment of pursuant to the Prior  
18 Library IGA. The value of the Existing Library Site will be determined by  
19 agreement of the Parties, or if the Parties cannot agree, then by the determination of  
20 a qualified, impartial real estate appraiser employed and paid equally by the Parties.  
21 The selection of the appraiser will be made by mutual agreement of the Parties, but  
22 if the Parties cannot agree, then the appraiser will be selected by the then-President  
23 of the Continental Divide Bar Association, or successor organization. The fair  
24 market value for the Existing Library Site will be paid in cash to Town by the  
25 County within 30 days of the Parties' receipt of the appraiser's determination of  
26 value.

27  
28 13. Default; Resolution Of Disputes.

- 29 A. Default. A default exists under this Agreement if any Party violates any covenant,  
30 condition, or obligation required to be performed under this Agreement. If a  
31 Defaulting Party fails to cure such default within 30 business days after the other  
32 Non-Defaulting Party gives written notice of the default to the Defaulting Party  
33 then, at the Non-Defaulting Party's option, the Non-Defaulting Party may  
34 terminate this Agreement. In the event of a default not capable of being cured  
35 within 30 business days, a Defaulting Party will not be in default if it commences  
36 curing the default within 30 business days after receipt of written notice of default  
37 from the Non-Defaulting Party, and thereafter cures such default with due diligence  
38 and in good faith. Notwithstanding any Party's right to terminate this Agreement

INTERGOVERNMENTAL AGREEMENT

1 for an uncured default, this Agreement is subject to the rights of any Party to invoke  
2 the remaining provisions of this Section.

3 B. Negotiation. Either Party may give the other Party written notice of any dispute  
4 arising out of or related to this Agreement that is not resolved in the normal course  
5 of business. The Parties will attempt in good faith to resolve any such dispute  
6 promptly by negotiations between the Parties' Authorized Representatives. Within  
7 15 business days after receipt of said notice, Authorized Representatives will meet  
8 at a mutually acceptable time and place, and thereafter as often as they reasonably  
9 deem necessary, to exchange relevant information and to attempt to resolve the  
10 dispute. If the matter has not been resolved within 60 business days of the notice of  
11 dispute, or if the Parties fail to initially meet within 15 business days, either Party to  
12 the dispute may initiate mediation of the controversy as provided below.

13 C. Mediation. If the dispute has not been resolved by negotiation as provided above,  
14 the Parties will endeavor to settle the dispute by mediation with a neutral third  
15 Party. If the Parties encounter difficulty in agreeing on a neutral third Party, they  
16 may each appoint a neutral third Party to mediate.

17 D. Judicial Action. Any dispute arising out of or relating to this Agreement or the  
18 breach, termination, or validity hereof, which has not been resolved by the methods  
19 set forth above within 30 days of the initiation of mediation, may be finally  
20 resolved by appropriate judicial action commenced in a court of competent  
21 jurisdiction. The partiesParties agree to venue in the courts of Summit County,  
22 Colorado with respect to any dispute arising out of or relating to this Agreement.  
23 Both parties waive the right to a jury trial in action to enforce, interpret, or construe  
24 this Agreement.

25 E. Provisional Remedies. The procedures specified in this Section are the sole and  
26 exclusive procedures for the resolution of disputes among the Parties arising out of  
27 or relating to this Agreement; provided, however, that a Party may seek a  
28 preliminary injunction or other provisional judicial relief if, in its judgment, such  
29 action is necessary to avoid irreparable damage or to preserve the status quo.  
30 Despite such action, the Parties will continue to participate in good faith in the  
31 procedures specified in this Section.

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

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

37 H. Costs. Each Party will pay its own costs with respect to negotiation and mediation.  
38 The prevailing Party in any judicial action is entitled to reimbursement from the

## INTERGOVERNMENTAL AGREEMENT

1                   other Party for all reasonable costs and expenses, including attorney fees in  
2                   connection with such judicial action.

- 3   14.   Notices. All notices required or permitted under this Agreement must given by registered  
4           or certified mail, return receipt requested, postage prepaid, or by hand or commercial  
5           carrier delivery, or by telecopies directed as follows:

6           If intended for the Town to:

7  
8           Town of Breckenridge  
9           P.O. Box 168  
10          150 Ski Hill Road  
11          Breckenridge, Colorado 80424  
12          Attn: Timothy J. Gagen, Town Manager  
13          Telecopier number: (970)547-3104  
14          Telephone number: (970)453-2251  
15

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

17  
18          Timothy H. Berry, Esq.  
19          Town Attorney  
20          Timothy H. Berry, P.C.  
21          131 West 5th Street  
22          P. O. Box 2  
23          Leadville, Colorado 80461  
24          Telephone number: (719)486-1889  
25          Telecopier number: (719)486-3039  
26

27          If intended for the County, to:

28  
29          Board of the County Commissioners  
30          P.O. Box 68  
31          Breckenridge, Colorado 80424  
32          Attn: Gary Martinez, County Manager  
33          Telephone number: (970)453-3401  
34          Telecopier number: (970)453-3535  
35

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

37  
38          Jeff Huntley, Esq.  
39          Summit County Attorney  
40          P.O. Box 68  
41          Breckenridge, Colorado 80424  
42          Telephone number: (970)453-3407  
43          Telecopier number: (970)454-3535

INTERGOVERNMENTAL AGREEMENT

1  
2 Any notice delivered by mail in accordance with this Section is effective on the third  
3 business day after being deposited in any post office or postal box regularly maintained by  
4 the United States postal service. Any notice delivered by telecopier in accordance with this  
5 Section is effective upon receipt if concurrently with sending by telecopier receipt is  
6 confirmed orally by telephone and a copy of said notice is sent by certified mail, return  
7 receipt requested, on the same day to that intended recipient. Any notice delivered by hand  
8 or commercial carrier is effective upon actual receipt. Either Party, by notice given as  
9 above, may change the address to which future notices may be sent. E-mail is not a valid  
10 method for the giving of notice under this Agreement.  
11

12 15. Pledged Cash Reserves. Both the Town and the County covenant and agree to appropriate  
13 during their respective current (2012) fiscal years sufficient funds to allow them to perform  
14 and pay for their respective obligations under Section 4 of this Agreement. Such funds will  
15 constitute present cash reserves pledged irrevocably for the payment of the Parties'  
16 financial obligations under this Agreement in accordance with Section 20(4)(b) of Article  
17 X of the Colorado Constitution. Unspent funds appropriated during the current fiscal year  
18 will be carried over to the next fiscal year until all appropriated funds have been spent in  
19 accordance with this Agreement.

20 16. Governmental Immunity. The Parties are each relying on, and do not waive or intend to  
21 waive by any provision of this Agreement, the monetary limitations of the Act, which  
22 limitations are as of the date of this Agreement \$150,000 per person and \$600,000 per  
23 occurrence, or any other limitation, right, immunity, defense or protection otherwise  
24 available to the Town and the County, and their respective officers, representatives, agents  
25 and employees.

26 17. Third Parties. This Agreement does not confer upon or grant to any third party any right to  
27 claim damages or to bring suit, action, or other proceeding against either the Town or the  
28 County because of any breach of this Agreement, or because of any of the terms,  
29 covenants, agreements, and conditions contained in this Agreement.

30 18. Waiver. The failure of either Party to exercise any of its rights under this Agreement is not  
31 a waiver of those rights. A Party waives only those rights specified in writing and signed  
32 by either Party waiving its rights.

33 19. Independent Contractor. In connection with this Agreement each of the Parties acts as an  
34 independent contractor (and not an agent or employee of the other Party), without the right  
35 or authority to impose tort or contractual liability upon the other Party.

36 20. Applicable Law. This Agreement is to be interpreted in all respects in accordance with the  
37 laws of the State of Colorado.

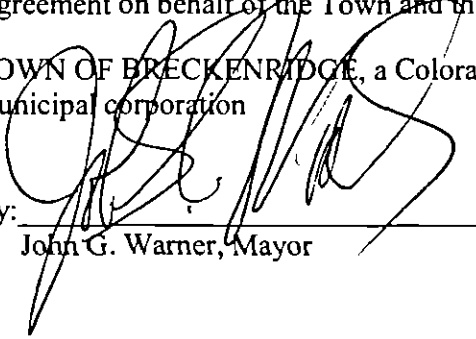
38 21. Entire Agreement. This Agreement constitutes the entire agreement and understanding  
39 between the Parties as to the subject matter of this Agreement, and supersedes any prior  
40 agreement or understanding relating thereto.

## INTERGOVERNMENTAL AGREEMENT



- 1 22. Amendment. This Agreement may be modified or amended only by a duly authorized  
 2 written instrument executed by the Parties. No oral amendment or modification of this  
 3 Agreement is allowed.
- 4 23. Severability. If any of the provisions of this Agreement are declared by a final.  
 5 non-appealable judgment court of competent jurisdiction to be invalid, illegal or  
 6 unenforceable in any respect, the validity, legality and enforceability of the remaining  
 7 provisions of this Agreement will not in any way be affected or impaired thereby.
- 8 24. Section Headings. Section and subsection headings are inserted for convenience only and  
 9 in no way limit or define the interpretation to be placed upon this Agreement.
- 10 25. Authority. The individuals executing this Agreement on behalf of each of the Parties  
 11 represent to the other Party that they have all requisite powers and authority to cause the  
 12 Party for whom they have signed to enter into this Agreement, and to bind such Party to  
 13 fully perform its obligations as set forth in this Agreement.
- 14 26. No Adverse Construction. Both Parties acknowledge having had the opportunity to  
 15 participate in the drafting of this Agreement. This Agreement is not to be construed against  
 16 either Party based upon authorship.
- 17 27. Will and Will Not Defined. The terms “will” and “will not” as used in this Agreement  
 18 indicate a mandatory obligation to act or to refrain from acting, respectively, as described in  
 19 this Agreement.
- 20 28. Incorporation of Exhibits. All exhibits referred to in this Agreement are attached to and  
 21 incorporated by reference into this Agreement.
- 22 29. Binding Effect. This Agreement is binding upon, and inures to the benefit of, the Parties  
 23 and their respective successor governing boards.
- 24 30. Approval By Governing Boards or Other Authority. In accordance with Section  
 25 29-1-203(1), C.R.S., this Agreement will not become effective unless and until it has been  
 26 approved by the governing bodies of both the Town and the County, or by such persons as  
 27 has the power to approve this Agreement on behalf of the Town and the County.

28 TOWN OF BRECKENRIDGE, a Colorado  
 29 municipal corporation

30  
 31  
 32 By:   
 33 John G. Warner, Mayor  
 34

35 ATTEST:  
 36  
 37

INTERGOVERNMENTAL AGREEMENT

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Linda A. Copen  
Town Clerk

BOARD OF COUNTY COMMISSIONERS OF  
SUMMIT COUNTY, COLORADO

By: Don Alb  
Chair



ATTEST:

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

EXHIBIT "A"  
TO  
INTERGOVERNMENTAL AGREEMENT  
(103 South Harris Street – Library)

---

**Legal Description of the Property**

LOTS 1 THROUGH 9, BLOCK 2, YINGLING & MICKLES ADDITION, AND THAT PORTION OF THE KLACK GULCH PLACER, U.S. MINERAL SURVEY NO. 1224 SITUATE BETWEEN WASHINGTON AVENUE AND LINCOLN AVENUE AND BOUNDED ON THE WEST BY BLOCK 4, ABBETT ADDITION AND ON THE EAST BY BLOCK 2, Y & M ADDITION, ALL IN THE TOWN OF BRECKENRIDGE, COUNTY OF SUMMIT, STATE OF COLORADO.

EXHIBIT "B"  
TO  
INTERGOVERNMENTAL AGREEMENT  
(103 South Harris Street – Library)

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**Legal Description of the Existing Library Site**

Lot C, Block 1, Parkway Center Subdivision Amended

Exhibit "B" of Public Library Lease  
**DEPICTION OF LEASED PREMISES**

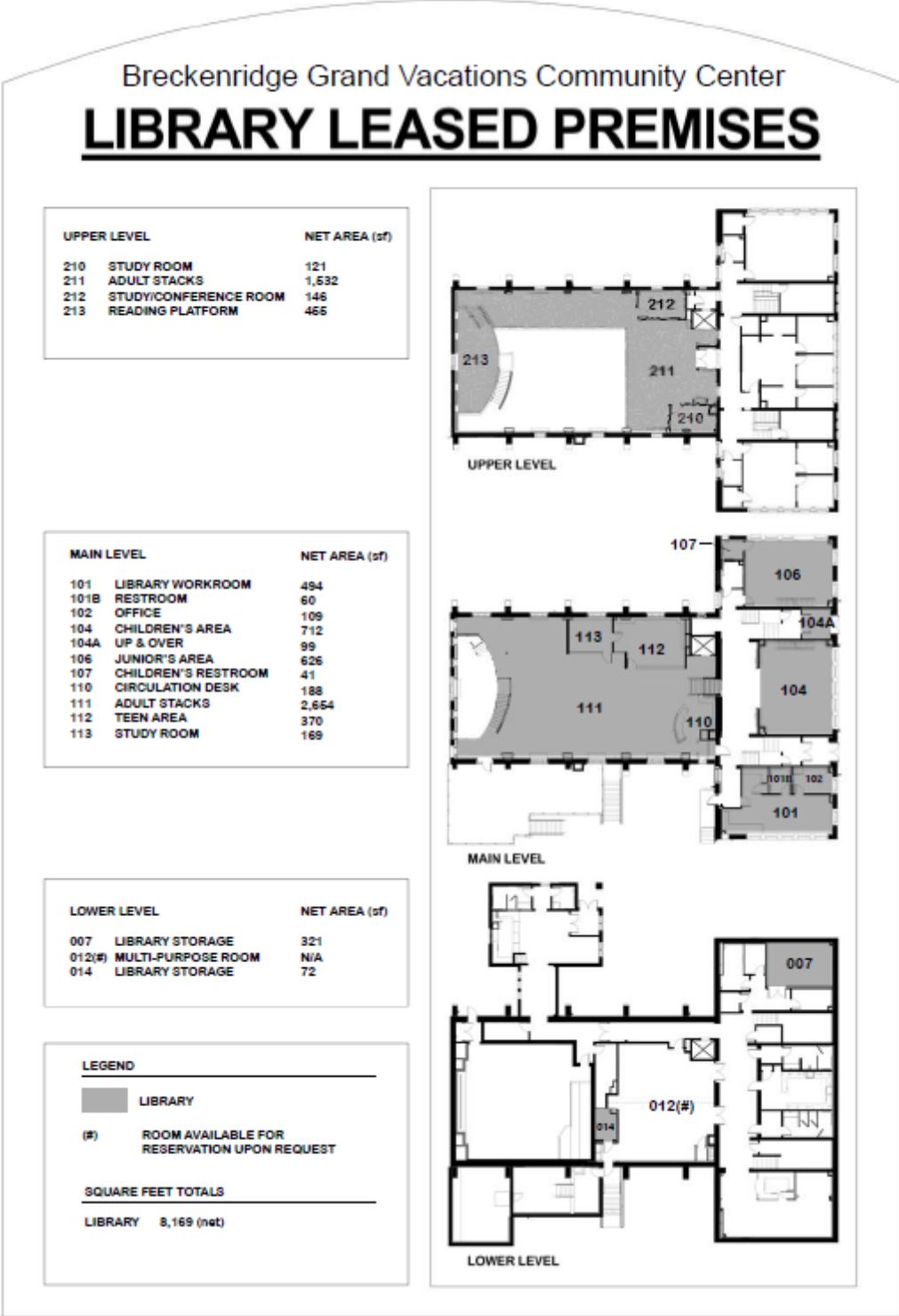
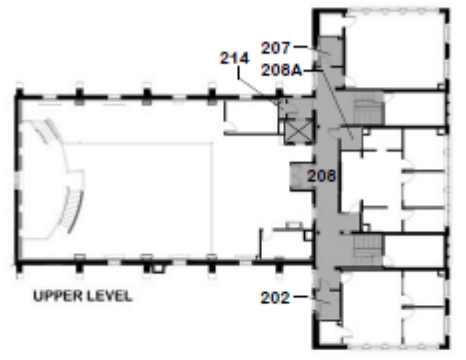


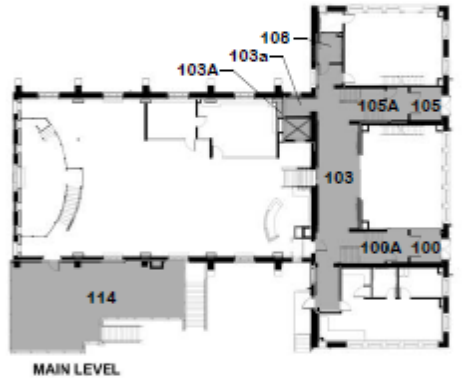
Exhibit "C" of Public Library Lease  
**DEPICTION OF SHARED USE AREAS**

**Breckenridge Grand Vacations Community Center  
 SHARED USE (TOWN & COUNTY) PREMISES**

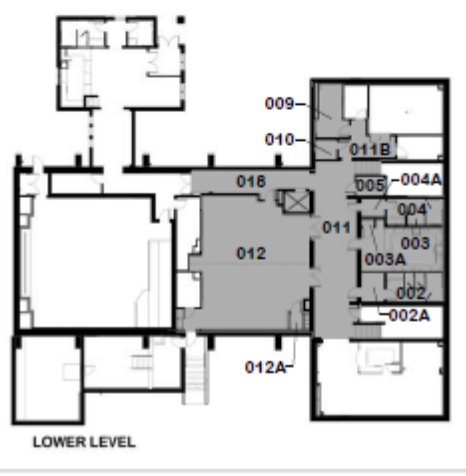
UPPER LEVEL		NET AREA (sf)
202	RESTROOM	66
207	RESTROOM	64
208	HALLWAY	90
208A	JANITORS CLOSET	38
214	IT	12



MAIN LEVEL		NET AREA (sf)
100	MAIN ENTRY	84
100A	MAIN ENTRY LANDING	62
103	LOBBY	572
103a	ELEVATOR LOBBY	100
103A	IT CLOSET	6
105	VESTIBULE	86
105A	VESTIBULE LANDING	64
108	RESTROOM	61
114	READING DECK (1,130 sf OUTDOOR)	N/A



LOWER LEVEL		NET AREA (sf)
002	WOMEN'S RESTROOM	141
002A	VESTIBULE	68
003	KITCHEN	304
003A	CLOSET	8
004	MEN'S RESTROOM	131
004A	VESTIBULE	40
005	ELEVATOR MACH.	43
009	TELECOMM	121
010	JANITOR'S CLOSET	41
011	LOBBY	1078
011B	HALLWAY	138
012	MULTI-PURPOSE ROOM	1221
012A	MULTI-PURPOSE STORAGE	17
018	HALLWAY	232




LEGEND	
	SHARED USE (TOWN & COUNTY)
<b>SQUARE FEET TOTALS</b>	
SHARED USE SPACES	4,867 (net)

Exhibit “D” of Public Library Lease  
Operational Plan  
(Attached in the following pages)

1 **South Branch of the Summit County Library at the Breckenridge Grand**  
2 **Vacations Community Center**

3 **Operational Plan**

4 **February 19, 2014**

5 **Intent of Operational Plan**

6 This document is the Parties' Operational Plan ("Plan") to define how the Building will be  
7 operated and maintained. Because circumstances for each Party may change, the Plan can be  
8 amended from time to time if each Party agrees to the amendments. This document will define  
9 who will be responsible for the various maintenance activities as defined in this Plan. Nothing in  
10 this Plan is meant to change the content of the Lease. Any term used in this Operational Plan that  
11 is defined in the Lease will have the meaning provided in the Lease.

12 This Operational Plan is based on the fact that the Town of Breckenridge (Town) is the owner of  
13 the overall Building and has invested substantial public money in the Building's rehabilitation,  
14 and the fact that Summit County (County) has also invested a substantial amount of money to the  
15 rehabilitation of the Building similar to what it would have paid for a new library building. The  
16 space that the Library occupies will be treated like the County owns and maintains that space.  
17 The common spaces will be jointly operated and maintained by the Town and County. The Town  
18 will maintain those spaces that it leases to parties other than the County. The IGA dated  
19 September 1, 2012 specified that the Town would fund the operation and maintenance of the  
20 common space at 65% and Summit County at 35%.

21 The Shared Areas are described in the Lease. The Lease specifically describes how the  
22 maintenance will be performed and paid by each Party.

23 The items listed below are not specifically mentioned in the Lease but are intended to be within  
24 the intent of the Lease.

25 The Town and County will meet approximately three months after the County takes possession  
26 of the Leased Premises to review operational issues with the Building. The Town and County  
27 will meet annually, or as necessary, to review operational issues. During these meetings, this  
28 Plan can be revised as agreed upon by both the Town and County.

29 **Important phone numbers:**

30 Emergency Facility Request: 970-453-3386.



1 **Multi-Purpose Room.**

2 As stated in the Lease in Section 1.6, the Library reserves the right to reserve this room 25% of  
3 the time based on using this space from 8 A.M. to 8 P.M. seven days a week (84 hours per  
4 week). The following describes how the multipurpose room will be managed and reserved for  
5 use by different parties

6 1. Booking priority timelines.

- 7 a. The County staff will maintain a list of the reserved bookings for the  
8 multipurpose room.
- 9 b. The County staff will answer requests for bookings during normal library hours as  
10 they are set by the Library. Requests for bookings will be done by phone, email  
11 or other online means available to the Library. The method for booking the space  
12 will be provided to the Town and made available to the public through the web  
13 sites of the Town and County.
- 14 c. Library will have the first priority for booking the multipurpose room beginning 8  
15 months prior to the event date. This is intended to give the Library the ability to  
16 book events in the multipurpose room that fall under the 25% described in the  
17 IGA.
- 18 d. The Town will be able to book the multipurpose room beginning 7 months prior  
19 to the event date.
- 20 e. All other entities will be able to book the multipurpose room 6 months prior to the  
21 event date.
- 22 f. At any time within their respective booking time frame the County and Town will  
23 be able to reserve the multipurpose room if it is available.
- 24 g. The County will be flexible with the times it has already booked if the  
25 multipurpose rooms are needed by the Town for significant events such as an all  
26 day training or Council retreat.
- 27 h. The space will not be leased to, or reserved for the use of, any business for the  
28 purpose of engaging in commercial, profit-making activities.

29 2. Management of multipurpose room. Because the Library staff is in the Building on a  
30 daily basis, they will manage the booking of the multipurpose room.

- 31 a. Deposit – If the Town and County use the multipurpose room then no deposit is  
32 required. If an entity other than the Town or County use the multipurpose room a  
33 deposit will be taken and managed as follows:
  - 34 i. The deposit will be taken at the time of the event reservation.
  - 35 ii. The County will inspect the space after each user and assure that no  
36 damage has occurred before returning the deposit
  - 37 iii. Once the space is accepted the remaining deposit will be returned to the  
38 leasing entity.
- 39 b. The cleaning of the multipurpose room will be managed by the County. The  
40 room will be cleaned daily and made available for the users each day.

- c. Cleaning company – Bids will be taken from cleaning companies from time to time to clean the multipurpose room. The Town and County will determine when this is necessary.
    - d. Lease of the space after hours. County will book and manage the keys to access the multipurpose room for the hours outside of the Library’s normal hours.
  3. Rate for the multipurpose room – The rates for leasing the multipurpose room will be as follows:
    - a. No charge –
      - i. Town or County
      - ii. Town or County funded organization
      - iii. Organizations who Lease space in the Building
    - b. \$25 per hour
      - i. Community or Civic organizations
      - ii. Non-profit organizations located in Summit County
    - c. \$50 per hour – All other organizations.
    - d. The money collected will be accounted for by the County and used to offset the costs of maintenance for the Shared Use Areas.

**Other Shared Areas**

1. Cleaning Schedule – As described in Article 5 of the Lease, the County will manage the cleaning and routine maintenance of the Shared Use Areas described in subsections 5.5 (a-d). “Other shared areas” as that term is used in Section 5.5 (g) refers to the public bathrooms and common hallways within the Building. The multipurpose rooms are addressed in the previous section of this operating Plan. The Town and County will hire an outside party to clean the shared areas as follows:
  - a. A schedule for cleaning will be developed as the facility opens and will be reviewed at the three month review.
  - b. During the course of its routine business the library staff will inspect and pick up any litter in the shared areas during the hours of operation of the library.
  - c. County staff will attempt to unclog toilets with a plunger that will be stocked within each bathroom. If the toilet cannot be unclogged with a plunger then the County staff will call for assistance from the Town Facilities staff.
  - d. Spills and messes - Any messes or spills made in the shared areas will be picked up or cleaned by whichever Party discovers the spill. If the spill is not cleanable by staff then other arrangements can be made – typically notice will be made to the janitorial staff for cleaning during their contracted cleaning times or on a call-in basis if deemed necessary by Town or County Facilities staff.
2. Security Key System – As stated in the Lease, Section 5.4, the Town will provide the key system. The following describes the key system.

- 1 a. The key system is for the common entrance to the Building and the main entrance  
2 to the kitchen and multipurpose room.  
3 i. County staff will manage the key access to the multipurpose room and  
4 common entrance so that the multipurpose room can be utilized after  
5 hours.  
6 ii. A computer program and card maker will be provided by the Town to  
7 manage the key system  
8 b. The Library will have a separate key system from the multipurpose room, kitchen  
9 and common entrance to enter library that will be provided by the Town.  
10 i. Each key will be assigned to an individual as requested by the library.  
11 ii. The County will immediately notify the Town’s Facility Division contact  
12 person when library personnel leave the County’s employment.  
13 iii. The Town’s Facilities Division of Public Works will issue the keys.  
14 iv. The Town’s Facility Contact person is Matt Pellant and can be reached at  
15 970-453-3366.  
16 v. The other spaces rented by the Town that are not part of the County Lease  
17 will have a separate lock system that are managed by the Town any  
18 additional locks inside the leased spaced are managed by the renter.
- 19 3. Coordination between tenants – The Town will lease the other spaces in the Building to  
20 other entities which may cause the need for coordination of operations from time to time.  
21 The Speakeasy Theater is anticipated to operate in the movie theater space on the lowest  
22 floor and will operate primarily in the evening after 5:00. These additional uses may  
23 require additional communication and coordination between the Town, County, and all  
24 other tenants, and will be required for all renters.
- 25 4. Routine maintenance will include any prescribed yearly maintenance by the manufacturer  
26 of equipment attached to or part of the Building by the responsible Party of that area. It  
27 also includes biannual cleaning of carpet and windows. The changing of light bulbs as  
28 well as refinishing or resealing wood and tile floors will be completed as needed.

29

### 30 **Major Maintenance**

- 31 1. Currently the items considered “major maintenance” are listed in the Lease under  
32 section 5.7. If any additional items need to be listed they will be done under this  
33 section.

### 34 **Rules**

- 35 1. Currently rules have not been established but will be done under this section if  
36 necessary.

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MEMORANDUM

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TO: TOWN COUNCIL  
CC: TOWN MANAGER, TIM GAGEN; ASSISTANT TOWN MANAGER, RICK HOLMAN  
FROM: TAX AUDITOR, LESLIE FISCHER  
SUBJECT: TOWN TRANSFER TAX CODE REVISIONS  
DATE: 7/16/2013

---

**Purpose:**

This memo details changes proposed to the Town of Breckenridge Real Estate Transfer Tax Code in the ordinance that follows this memo. This need occurs from time to time in order to “clean up” issues that have come to light since the code was written. Therefore, Staff has closely examined the code in relation to these matters in order to align the language of the code with the intent of the code. It is important to note that these revisions will not garner new net tax revenues for the Town and are not intended to tax transactions that the code does not presently tax.

**Proposed Modifications:**

Exemption of Transfers to/from an Entity – 3-3-6(F) is unclear in the manner that it currently reads. Staff believes that this exemption is meant to address two separate situations and wishes to make this intent more evident.

Entities Addressed in the Code - It should also be made clear that the intent was not to restrict sections of the code to only address certain types of entities. Therefore additional entity types have been added to the language, such as a corporation, limited liability company, partnership, limited partnership, joint venture, business trust, etc.

Public Trustee & Sheriff Deeds – Staff believes that it was the intent of the Council to apply the exemption relating to Public Trustee & Sheriff confirmation deeds to all transactions except for the case of an overbid by a third party. As the exemption currently reads, it applies only to the foreclosing parties, and would not exempt a junior lienholder or other parties with rights in the Public Trustee or Sheriff’s process. A successful bid by a third party at the Public Trustee or Sheriff sale would still be subject to transfer tax on the entire purchase price.

Deeds in Lieu of Foreclosure – This language should also be amended to agree with the Public Trustee and Sheriff process.

Certificate of Exemption – The code currently calls for a separate exemption certificate to be issued. So as to not require an extra page and additional recording fees for the cost of recording that extra page, the practice of Staff has been to stamp the deed reflecting that the transfer tax has either been paid or exempted. We would like to adjust the code to match this practice.

Waiver of Penalty & Interest - In an effort to be consistent with other sections of our code, such as the sales tax chapter, Staff wishes to add a provision allowing for a waiver of the penalty and interest charges, when good cause is shown. This provision would also allow for the implementation of future amnesty periods which Staff expects to assist in clean up and collection of outstanding revenue.

Recording of Liens - The single most significant reason for Staff presenting this ordinance is for this purpose. Staff desires the addition of the option to record a lien on the property with the Summit County Clerk & Recorder. The option to make the lien of record eases the burden on the title companies to discover the outstanding lien on the property.

Foreclosing on Liened Properties - Staff wishes to change the language that currently states that we “shall” foreclose on such liens, to “may” foreclose or take other action to collect. Making the foreclosure process optional and based on a case by case basis would ease a heavy burden on the Town.

Violations – Adds language to make it a misdemeanor offense to violate any portion of the chapter.

Other Housekeeping Matters – Staff recommends repealing sections of the ordinance that are no longer applicable. Staff also recommends making slight alterations to the appeal process.

**Recommended Action:**

It is requested that Council review the attached ordinance. Staff will be present during the February 25th Work Session to respond to any questions that Council may have. This item is up for first reading in the evening meeting.

1 **FOR WORKSESSION/FIRST READING – FEB. 25**

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

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2014

9  
10 AN ORDINANCE AMENDING CHAPTER 3 OF TITLE 3 OF THE BRECKENRIDGE  
11 TOWN CODE, KNOWN AS THE “BRECKENRIDGE REAL ESTATE TRANSFER TAX  
12 ORDINANCE”

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

16  
17 Section 1. Section 3-3-6(F) of the Breckenridge Town Code is amended to read as  
18 follows:

19  
20 F. 1. Transfers made pursuant to reorganization, merger or consolidation of  
21 corporations, or by a subsidiary to a parent corporation for no consideration other  
22 than cancellation or surrender of the subsidiary’s stock; ~~or~~

23  
24 2. ~~Transfers made to a corporation, **limited liability company**, partnership,~~  
25 ~~limited partnership, joint venture, business trust, or other association or~~  
26 ~~organization, if that association or organization~~

27 1) the transferee corporation, limited liability company, partnership, limited  
28 partnership, joint venture, business trust, or other association or  
29 organization is owned by the persons by whom such transfer was made,

30 2) if such owners have the same relative interests in said association or  
31 ~~organization~~ the transferee corporation, limited liability company,  
32 partnership, limited partnership, joint venture, business trust, or other  
33 association or organization as they had in the real property immediately prior to  
34 said transfer; and

35 3) there is no consideration other than their respective interests in the new  
36 ~~association or organization~~ the transferee corporation, limited liability  
37 company, partnership, limited partnership, joint venture, business trust, or  
38 other association or organization.

39  
40 Section 2. Section 3-3-6(O) of the Breckenridge Town Code is amended to read as  
41 follows:

42  
2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

1 O. Any transfer by deed in lieu of foreclosure; ~~provided, that:~~

2  
3 1. ~~Such transfer shall be exempt only if the grantee in such deed is the person~~  
4 ~~holding the obligation or instrument which is being canceled, in whole or in part,~~  
5 ~~in exchange for the transfer; and~~

6 2. ~~Such transfer shall be exempt only to the extent of the amount of the obligation~~  
7 ~~which is being canceled, in whole or in part, in exchange for the transfer.~~

8  
9 Section 3. Section 3-3-6(P) of the Breckenridge Town Code is amended to read as  
10 follows:

11  
12 P. Any transfer by sheriff's deed, trustee's deed or other conveyance of real  
13 property in connection with an execution sale; foreclosure sale by the public  
14 trustee under a power of sale; court decree foreclosing a mortgage, deed of trust  
15 or other security instrument; or court decree of lien foreclosure; ~~provided, that:~~

16 1. ~~Such transfer shall be exempt only if the grantee is the person holding the~~  
17 ~~obligation or instrument upon which the proceeding is based; and~~

18 2. ~~Such transfer shall be exempt only to the extent of the obligation to be satisfied~~  
19 ~~at the execution or foreclosure sale and any obligations to prior lienholders paid~~  
20 ~~from the sale.~~ **provided, that if such transfer is made to a person who**  
21 **submitted an "overbid" as defined by Section 38-38-100.3(17.3), C.R.S., or**  
22 **any successor statute, such transfer shall be taxable to the full extent of the**  
23 **amount paid by the person who submitted the overbid.**

24  
25 Section 4. Section 3-3-6(R) of the Breckenridge Town Code is repealed.

26  
27 Section 5. Section 3-3-6(S) of the Breckenridge Town Code is repealed.

28  
29 Section 6. Section 3-3-7 of the Breckenridge Town Code is amended to read as follows:

30  
31 3-3-7: APPLICATION FOR EXEMPTION

32  
33 A. In the event of any transfer claimed to be exempt from the real estate transfer  
34 tax herein imposed, the grantor or purchaser shall apply for and obtain from the  
35 Town Manager a certificate of exemption **or exemption stamp,** which may be  
36 affixed to the deed or instrument of transfer. **The certificate of exemption or**  
37 **exemption stamp shall be in a form approved by the Town Manager.** The  
38 burden of proving any exemptions shall in all cases be upon the one claiming it.  
39 Provided further, that the exemption provided in section 3-3-6 of this chapter shall  
40 be allowed only with a certificate of exemption **or exemption stamp** issued by  
41 the Town Manager prior to the date that the transfer tax is payable to the town.  
42 ~~The certificate of exemption shall be in substantially the following form:~~

43  
2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

1 EXEMPTION FROM REAL ESTATE TRANSFER TAX

2  
3 —The undersigned, as purchaser pursuant to a deed or other instrument of  
4 transfer from to dated, hereby applies for exemption from the payment of the  
5 real estate transfer tax, imposed by Title 3, Chapter 3 of the Town Code. The  
6 basis for such exemption is as follows:

7  
8 —(State briefly grounds for exemption, including applicable section and  
9 subdivision of Title 3, Chapter 3 of the Town Code)

10  
11 —I hereby certify this day of, 19 under penalty of perjury that the foregoing  
12 statements are true and correct.

13  
14 —Purchaser

15  
16 Certificate of Exemption

17  
18 —I hereby certify this day of 19 that the above described transfer of real  
19 property is exempt from the payment of real estate transfer tax under Title 3,  
20 Chapter 3 of the Town Code.

21  
22 —Town Manager

23  
24 B. Any person whose claim of exemption duly applied for under the provisions of  
25 this section is denied by the Town Manager may immediately appeal to the Town  
26 Council for a determination of such exemption and such appeal shall be  
27 considered by the Town Council within thirty (30) days of receipt of the same,  
28 **unless the appellant and the Town Attorney agree to a later hearing date.** In  
29 the event of a determination by the Town Council favorable to the appellant, any  
30 amount previously deposited, or so much thereof as may be allowed by the Town  
31 Manager, shall be promptly refunded to the person paying or depositing the same.  
32 If a decision is not made by the Town Council within thirty (30) days of the  
33 receipt **date of the Town Council's hearing** of the appeal, the decision will be  
34 deemed favorable to the appellant, ~~unless appellant has obtained a continuance of~~  
35 ~~the matter, in which case the Town Council shall make its decision within six (6)~~  
36 ~~months after receipt of the appeal.~~

37  
38 Section 7. Section 3-3-10(A) of the Breckenridge Town Code is amended to read as  
39 follows:

40  
41 A. The tax imposed under this chapter is due and payable at the time of the  
42 transfer, and is delinquent if it remains unpaid for thirty (30) days thereafter. In



1 the event that the tax is not paid prior to becoming delinquent, a delinquency  
2 penalty of ten percent (10%) of the amount of tax due shall accrue.  
3

4 In the event a portion of the tax is paid prior to becoming delinquent, the penalty  
5 shall only accrue as to the portion which is delinquent. Interest shall accrue at the  
6 rate of one and one-half percent (1.5%) per month, or fraction thereof, on the  
7 amount of tax, exclusive of penalties, from the date the tax becomes delinquent to  
8 the date of payment. Interest and penalty accrued shall become part of the tax.

9 **For good cause shown, the Town Manager may waive all or part of the**  
10 **penalty and interest provided for in this section.**

11  
12 Section 8. Section 3-3-10(C) of the Breckenridge Town Code is amended to read as  
13 follows:  
14

15 C. Notwithstanding the provisions of section 3-3-6 of this chapter, if an artifice or  
16 device is employed in connection with the transfer of real property, which term  
17 “artifice or device” means a transaction or transactions a substantial purpose of  
18 which was to evade the provisions of this chapter and the imposition of the tax  
19 hereunder, then such transfer will nevertheless be subject to the real estate transfer  
20 tax. “Artifice or device” includes, but is not limited to: 1) a transfer to a  
21 corporation, **limited liability company**, partnership, limited partnership, joint  
22 venture, business trust, or other association or organization, followed within three  
23 (3) years by an assignment of the controlling interest in such ~~association or~~  
24 ~~organization~~ **transferee corporation, limited liability company, partnership,**  
25 **limited partnership, joint venture, business trust, or other association or**  
26 **organization**, or 2) such a transfer plus the intent to ultimately assign the  
27 controlling interest in such ~~association or organization~~ **transferee corporation,**  
28 **limited liability company, partnership, limited partnership, joint venture,**  
29 **business trust, or other association or organization.**  
30

31 Section 9. Section 3-3-11(C) of the Breckenridge Town Code is amended to read as  
32 follows:  
33

34 C. Unpaid Tax: If the tax is unpaid and delinquent, the Town Manager shall give  
35 written notification to the purchaser or person to whom the transfer is made at the  
36 address shown on any deed of instrument evidencing the transfer, or his last  
37 known address, of said delinquency. Said notification shall be mailed certified or  
38 registered mail, postage prepaid, return receipt requested, and shall be effective on  
39 the date of mailing. If the tax, penalty and interest are not paid within thirty (30)  
40 days of the effective date of the notification, the Town Manager shall **may, but is**  
41 **not required to, record a confirmation lien statement with the Clerk and**  
42 **Recorder of Summit County, Colorado and then** commence foreclosure of the  
43 lien for said tax in the same manner as the foreclosure of a mortgage in

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

1 accordance with Colorado law, **or take such other action to collect the tax,**  
2 **penalty and interest as may be appropriate.**

3  
4 Section 10. Section 3-3-11(E) of the Breckenridge Town Code is amended to read as  
5 follows:

6  
7 E. Violations; Penalties: **It is a misdemeanor offense for any person to violate**  
8 **any portion of this Chapter.** Every person convicted of a violation of any  
9 provision of this chapter shall be punished as provided in section 1-4-1 of this  
10 code.

11  
12 Section 11. Except as specifically amended hereby, the Breckenridge Town Code, and  
13 the various secondary codes adopted by reference therein, shall continue in full force and effect.

14  
15 Section 12. The adoption of this ordinance does not result in a new tax, a tax rate  
16 increase, or a tax policy change directly causing a net tax revenue gain to the Town within the  
17 meaning of Article X, §20 of the Colorado Constitution.

18  
19 Section 13. If this ordinance, or any part of this ordinance, is declared to be invalid for  
20 any reason those provisions of Chapter 3 of Title 3 of the Breckenridge Town Code amended by  
21 this ordinance, as such provisions existed immediately prior to the adoption of this ordinance,  
22 shall be revived, and as revived shall continue in full force and effect.

23  
24 Section 14. The Town Council hereby finds, determines and declares that it has the  
25 power to adopt this ordinance pursuant to the authority granted to home rule municipalities by  
26 Article XX of the Colorado Constitution and the powers contained in the Breckenridge Town  
27 Charter.

28  
29 Section 15. This ordinance shall be published and become effective as provided by  
30 Section 5.9 of the Breckenridge Town Charter.

31  
32 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
33 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2014. A Public Hearing shall be held at the  
34 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
35 \_\_\_\_\_, 2014, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
36 Town.

37  
38 TOWN OF BRECKENRIDGE, a Colorado  
39 municipal corporation

40  
41  
42 By \_\_\_\_\_  
43 John G. Warner, Mayor

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

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ATTEST:

\_\_\_\_\_  
Helen Cospolich, Town Clerk

400-1\RETT Amendment Ordinance (02-14-14)(First Reading)

2014 REAL ESTATE TRANSFER TAX AMENDMENT ORDINANCE

## Memorandum

**TO:** TOWN COUNCIL  
**FROM:** Dale Stein, Assistant Town Engineer  
**DATE:** February 19, 2014  
**RE:** Public Projects Update

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### **Contractor Open House**

We have scheduled an Open House on February 21<sup>st</sup> to advertise our 2014 construction projects and increase interest among local contractors. Projects featured at the Open House include: Main Street, Asphalt Overlay, Lincoln Heated Sidewalk, SH9 Median Landscaping, Skate Park Demo, Main Street Pocket Park, and the Old Masonic Hall Rehabilitation.

### **Arts District Campus Build Out**

Work is progressing on schedule on the Arts District project. Staff has been finalizing interior fixtures, finishes and colors for each building. We are excited to see each studio begin to take shape as the rough-ins progress.



View of the new Ceramics Studio and Burro Barn restrooms.



View corridor between Robert Whyte House and Metal Smithing.



Above: Interior framing of Ceramics Studio and view looking into the monitor feature. The monitor allows natural light into the studio from above.



Right: Interior framing and HVAC installation in the Mikolitis Barn Printmaking Studio. The historic trusses (dark brown) will be reinstated as non-structural members.



### **Breckenridge Grand Vacations Community Center**

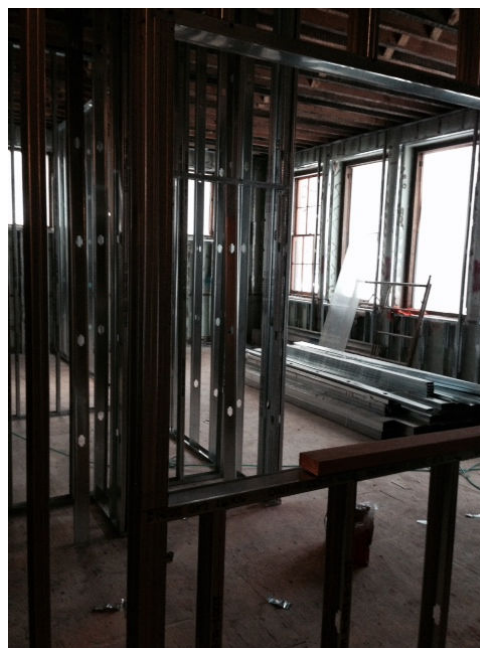
Recent work on the rehabilitation project includes the placement of roof insulation, rough-in plumbing, and rough-in electrical and framing in the 1909 structure. The mechanical subcontractor has recently mobilized on site and has begun work on the installation of the underground duct in the 1921 basement along with hanging the new HVAC ducts in the attic of

the 1921 building. The opening from the 1909 building to the 1921 building addition was recently formalized within the installation of the steel structure and framing of the new stairs to the library main level.

Also included in this packet is a current exhibit showing the floor plans for the building and proposed uses of the rooms for your information.



New stairs to Library main level.

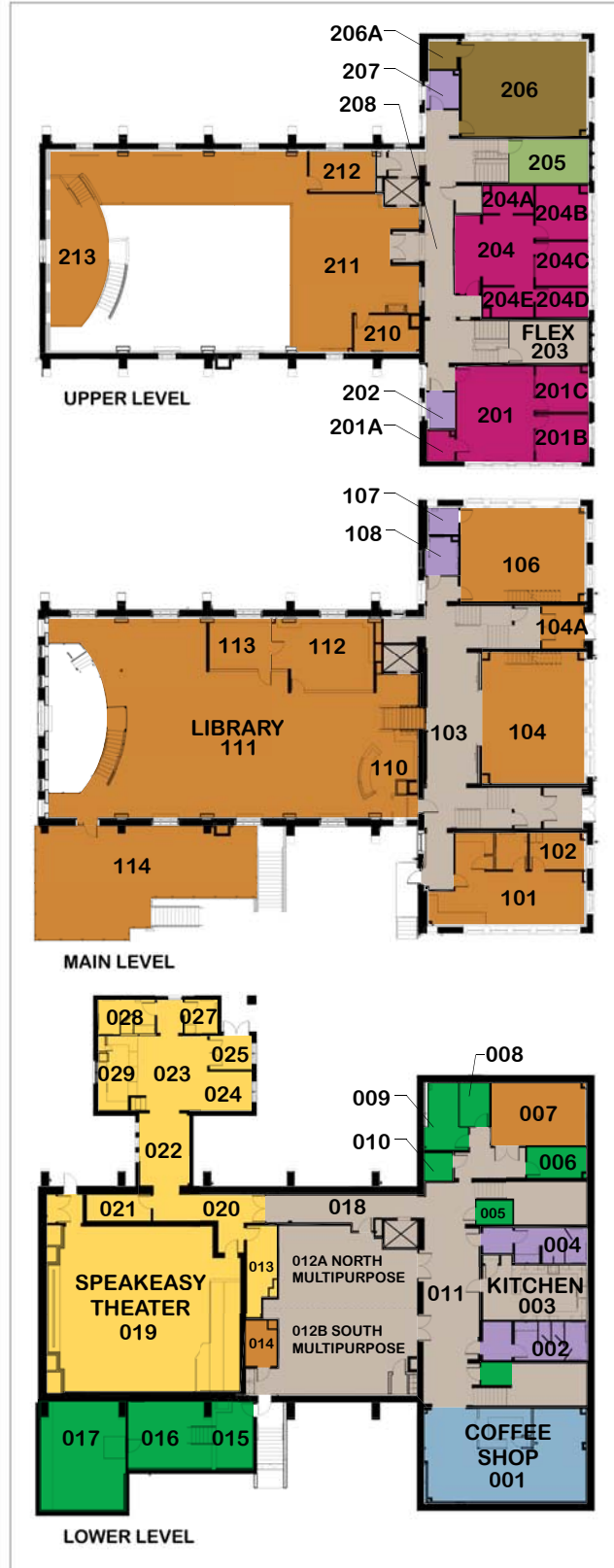


Framing for the library work room # 101.



Installation of new insulation in the 1909 attic.

# Breckenridge Grand Vacations Community Center USE DIRECTORY



COMMUNITY CENTER SQUARE FEET TOTALS	
TOTAL INTERIOR SPACE	20,573 (net)
EXTERIOR DECK	1,130
BUILDING	26,352 (gross)

COLOR LEGEND	
<span style="display: inline-block; width: 15px; height: 10px; background-color: #90EE90; border: 1px solid black;"></span>	BRECKENRIDGE FESTIVAL OF FILM
<span style="display: inline-block; width: 15px; height: 10px; background-color: #8B4513; border: 1px solid black;"></span>	BRECKENRIDGE HERITAGE ALLIANCE
<span style="display: inline-block; width: 15px; height: 10px; background-color: #ADD8E6; border: 1px solid black;"></span>	COFFEE SHOP
<span style="display: inline-block; width: 15px; height: 10px; background-color: #D2691E; border: 1px solid black;"></span>	LIBRARY
<span style="display: inline-block; width: 15px; height: 10px; background-color: #D3BFD3; border: 1px solid black;"></span>	HALLWAYS & PUBLIC SPACE
<span style="display: inline-block; width: 15px; height: 10px; background-color: #9370DB; border: 1px solid black;"></span>	PUBLIC RESTROOMS
<span style="display: inline-block; width: 15px; height: 10px; background-color: #FFD700; border: 1px solid black;"></span>	SPEAKEASY THEATER
<span style="display: inline-block; width: 15px; height: 10px; background-color: #DC143C; border: 1px solid black;"></span>	SUMMIT FOUNDATION
<span style="display: inline-block; width: 15px; height: 10px; background-color: #008000; border: 1px solid black;"></span>	MECHANICAL / IT

**MEMO**

**TO:** Mayor & Town Council  
**FROM:** Tim Gagen, Town Manager  
**DATE:** February 20, 2014  
**SUBJECT:** Committee Reports for 2-25-2014 Council Packet

*No committee reports were submitted at this time.*

<b>Committees</b>	<b>Representative</b>	<b>Report Status</b>
CAST	Mayor Warner	Verbal Report
CDOT	Tim Gagen	No Meeting/Report
CML	Tim Gagen	No Meeting/Report
I-70 Coalition	Tim Gagen	No Meeting/Report
Mayors, Managers & Commissions Meeting	Mayor Warner	Verbal Report
Summit Leadership Forum	Tim Gagen	No Meeting/Report
Liquor Licensing Authority*	Taryn Power	No Meeting/Report
Wildfire Council	Matt Thompson	No Meeting/Report
Public Art Commission*	Jenn Cram	No Meeting/Report
Summit Stage Advisory Board*	James Phelps	No Meeting/Report
Police Advisory Committee	Chief Haynes	No Meeting/Report
Housing/Childcare Committee	Laurie Best	Verbal Report
CMC Advisory Committee	Tim Gagen	No Meeting/Report

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

*\* Minutes to some meetings are provided in the Manager's Newsletter.*





## December 31, 2013 Financial Report



Year End Results

Finance & Municipal Services Division

# Executive Summary

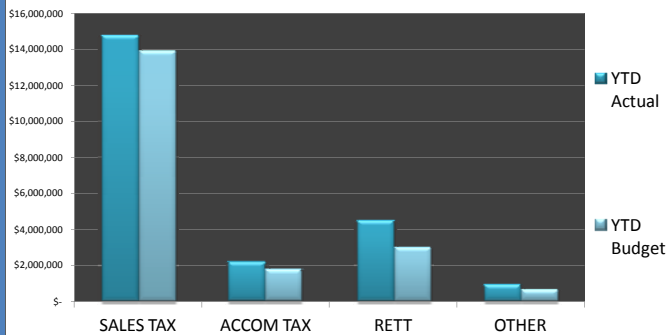
December 31, 2013

Final (pre-audit) 2013 results:

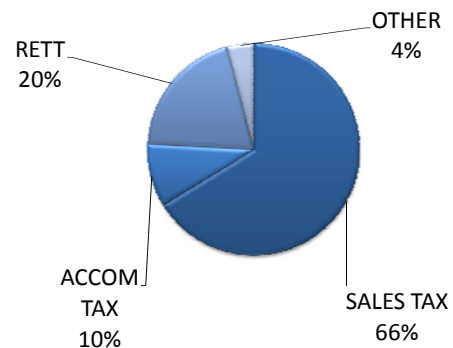
- 115% of budgeted revenue in the Excise fund (\$2.98M over budget)
- December sales taxes (received in January) up from the prior year in all categories
- RETT ended the year at 154% of the 2013 budget and exceeded the prior year's total by over 20%
- General Fund revenues at 104% of budget and expenses slightly below YTD budget at 96%.
- Other funds performed according to budget with exceptions noted in the All Funds report narrative

Graphs below show YTD tax revenues vs. budget, total Excise revenues broken out by type, and sales tax revenues (both sales and accommodation taxes) from the Lodging Sector as compared to the Sales Tax revenues received from all other sectors for the YTD 2006-2013.

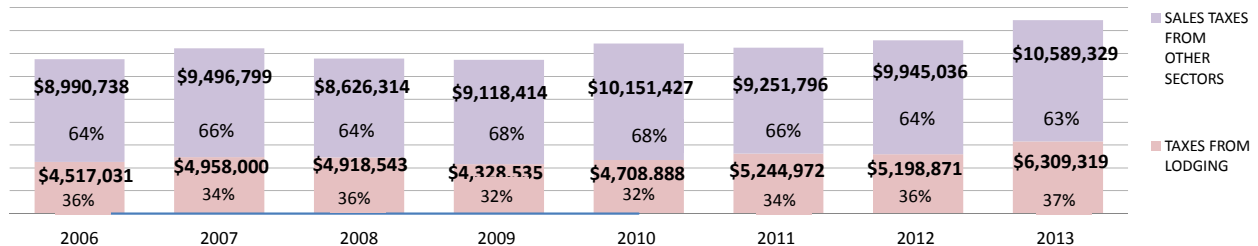
**Excise YTD Actual vs. Budget - by Source**



**YTD Actual Revenues - Excise**



**YTD Taxes Received from Lodging Sector - Excise**



	YTD Actual	YTD Budget	% of Budget	Annual Budget	Prior YTD Actual	Prior Annual Actual
SALES TAX	\$ 14,745,297	\$ 13,887,999	106%	\$ 13,887,999	\$ 13,369,549	\$ 13,369,549
ACCOMMODATIONS TAX	2,153,351	1,757,401	123%	1,757,401	1,774,359	1,774,359
REAL ESTATE TRANSFER	4,462,232	3,000,501	149%	3,000,501	3,691,087	3,691,087
OTHER*	911,271	648,101	141%	648,101	841,322	841,322
<b>TOTAL</b>	<b>\$ 22,272,152</b>	<b>\$ 19,294,002</b>	<b>115%</b>	<b>\$ 19,294,002</b>	<b>\$ 19,676,316</b>	<b>\$ 19,676,316</b>

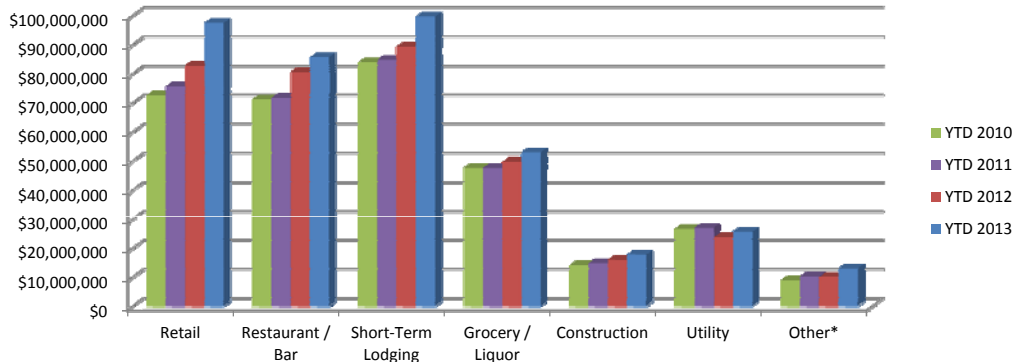
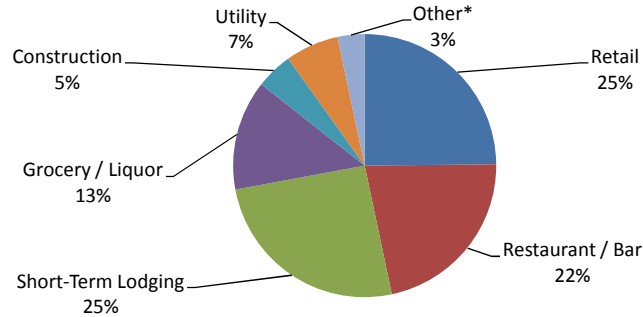
\* Other includes Franchise Fees (Telephone, Public Service and Cable), Cigarette Tax, and Investment Income

## The Tax Basics

### Net Taxable Sales by Industry-YTD

Description	YTD 2010	YTD 2011	YTD 2012	YTD 2013	2012/2013 \$ Change	2012/2013 % Change	2013 % of Total
Retail	\$72,638,720	\$75,694,894	\$82,884,748	\$97,479,576	\$14,594,828	17.61%	24.84%
Restaurant / Bar	\$71,176,128	\$71,763,637	\$80,674,467	\$85,652,868	\$4,978,401	6.17%	21.83%
Short-Term Lodging	\$83,866,013	\$84,810,225	\$89,296,780	\$99,658,773	\$10,361,992	11.60%	25.40%
Grocery / Liquor	\$47,700,028	\$47,700,028	\$49,690,652	\$53,058,631	\$3,367,978	6.78%	13.52%
Construction	\$14,055,920	\$14,888,842	\$15,983,720	\$17,815,526	\$1,831,806	11.46%	4.54%
Utility	\$26,761,994	\$27,075,720	\$23,776,616	\$25,722,496	\$1,945,880	8.18%	6.55%
Other*	\$8,900,406	\$10,273,217	\$10,022,072	\$13,037,961	\$3,015,889	30.09%	3.32%
<b>Total</b>	<b>\$325,099,208</b>	<b>\$332,206,563</b>	<b>\$352,329,056</b>	<b>\$392,425,831</b>	<b>\$40,096,774</b>	<b>11.38%</b>	<b>100.00%</b>

\* Other includes activities in Automobiles and Undefined Sales.



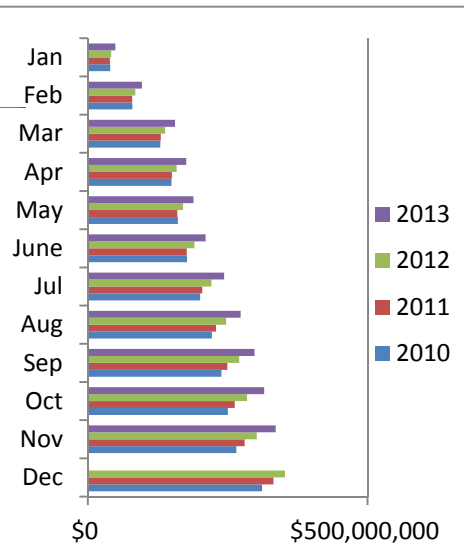
#### New Items of Note:

- December net taxable sales are currently up from 2012 by 12.74% for the month. 2013 ended at 11.38% over 2012 for the year.
- Retail, Short-Term Lodging, and Construction sectors all exceeded prior year by a greater percentage than Total Net Taxable Sales for the year.
- Every category exceed prior year sales.
- 2013 set a new all time high for Net Taxable Sales. All categories (except for Utilities and Construction) each set a new all time high for that sector.

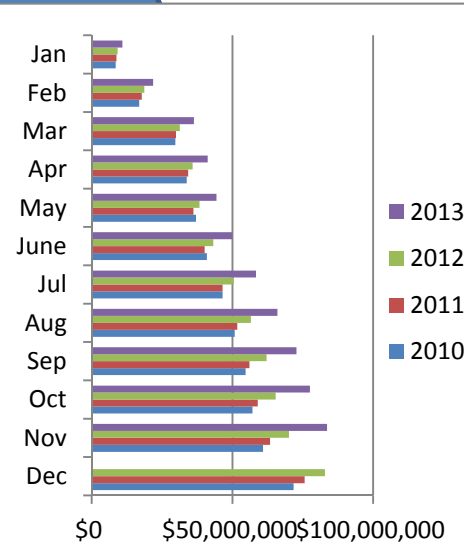
#### Continuing Items of Note:

- Taxes collected from the customer by the vendor are remitted to the Town on the 20<sup>th</sup> of the following month.
- Quarterly taxes are reported in the last month of the period. For example, taxes collected in the first quarter of the year (January – March), are included on the report for the period of March.
- Net Taxable Sales are continually updated as late tax returns are submitted to the Town of Breckenridge. Therefore, you may notice slight changes in prior months, in addition to the reporting for the current month.

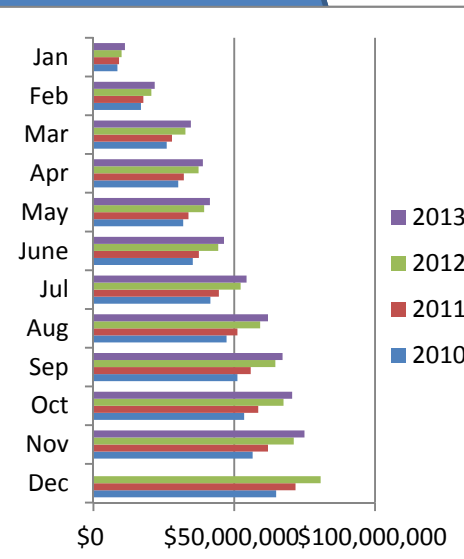
## Net Taxable Sales by Sector - Town of Breckenridge Tax Base



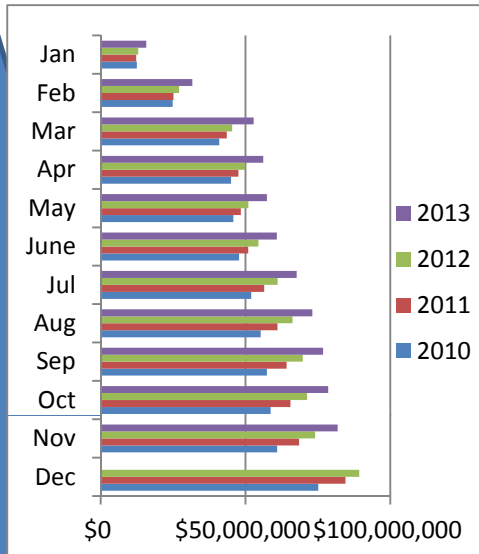
Total Net Taxable Sales					
	2010	2011	2012	2013	% change
					from PY
Jan	\$40,110,228	\$39,458,390	\$41,718,482	\$49,212,300	17.96%
Feb	\$39,472,293	\$39,800,228	\$43,272,003	\$47,502,382	9.78%
Mar	\$50,006,174	\$51,130,458	\$53,068,463	\$59,220,316	11.59%
Apr	\$19,917,465	\$19,743,401	\$20,550,689	\$19,784,790	-3.73%
May	\$11,425,462	\$9,611,782	\$11,552,549	\$13,018,410	12.69%
Jun	\$16,219,027	\$17,062,992	\$20,161,932	\$21,793,477	8.09%
Jul	\$23,624,523	\$27,602,363	\$30,306,091	\$33,049,607	9.05%
Aug	\$20,834,028	\$24,678,734	\$26,378,253	\$29,542,892	12.00%
Sep	\$17,062,327	\$20,248,599	\$23,534,713	\$24,960,715	6.06%
Oct	\$11,637,368	\$13,185,469	\$14,052,583	\$17,102,781	21.71%
Nov	\$14,957,071	\$17,669,724	\$17,500,298	\$20,603,924	17.73%
Dec	\$46,198,390	\$51,587,451	\$50,233,000	\$56,634,237	12.74%
<b>Total</b>	<b>\$311,464,356</b>	<b>\$331,779,590</b>	<b>\$352,329,056</b>	<b>\$392,425,831</b>	



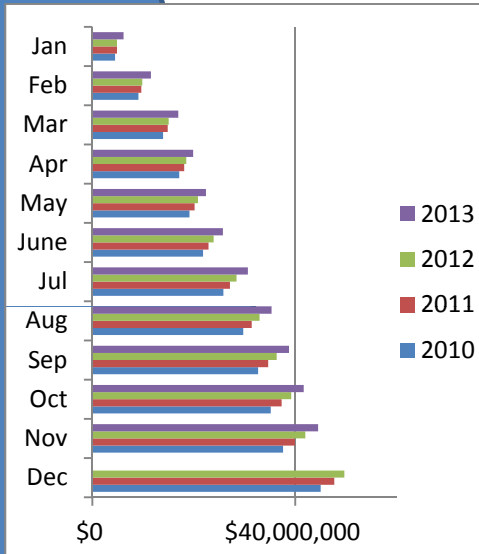
Retail					
	2010	2011	2012	2013	% change
					from PY
Jan	\$8,530,276	\$8,804,920	\$9,220,717	\$10,910,194	18.32%
Feb	\$8,378,341	\$8,972,613	\$9,459,511	\$10,920,910	15.45%
Mar	\$12,850,864	\$12,184,150	\$12,638,060	\$14,475,122	14.54%
Apr	\$4,031,843	\$4,299,060	\$4,564,888	\$4,890,074	7.12%
May	\$3,251,038	\$1,876,216	\$2,444,796	\$3,139,628	28.42%
Jun	\$3,895,330	\$3,973,630	\$4,864,310	\$5,651,663	16.19%
Jul	\$5,582,057	\$6,407,381	\$7,266,795	\$8,392,578	15.49%
Aug	\$4,301,609	\$5,207,972	\$6,113,573	\$7,610,044	24.48%
Sep	\$3,847,858	\$4,344,035	\$5,530,262	\$6,771,861	22.45%
Oct	\$2,452,634	\$2,946,071	\$3,274,787	\$4,768,422	45.61%
Nov	\$3,763,526	\$4,370,374	\$4,709,433	\$6,052,122	28.51%
Dec	\$10,823,585	\$12,275,994	\$12,797,616	\$13,896,956	8.59%
<b>Total</b>	<b>\$71,708,960</b>	<b>\$75,662,415</b>	<b>\$82,884,748</b>	<b>\$97,479,576</b>	



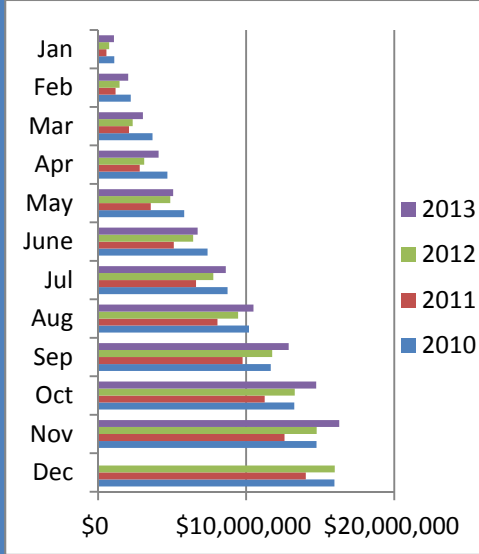
Restaurant / Bar					
	2010	2011	2012	2013	% change
					from PY
Jan	\$8,514,996	\$9,083,327	\$10,000,475	\$11,210,890	12.10%
Feb	\$8,342,961	\$8,660,328	\$10,576,852	\$10,529,654	-0.45%
Mar	\$9,185,595	\$10,169,762	\$12,086,391	\$12,880,787	6.57%
Apr	\$4,041,861	\$4,204,314	\$4,662,012	\$4,249,474	-8.85%
May	\$1,811,793	\$1,618,782	\$1,975,658	\$2,506,094	26.85%
Jun	\$3,397,497	\$3,724,982	\$5,006,301	\$4,967,871	-0.77%
Jul	\$6,222,078	\$7,106,056	\$7,964,540	\$8,048,195	1.05%
Aug	\$5,728,881	\$6,594,385	\$6,905,724	\$7,576,454	9.71%
Sep	\$3,882,885	\$4,683,989	\$5,423,426	\$5,206,502	-4.00%
Oct	\$2,420,192	\$2,662,113	\$2,924,663	\$3,411,178	16.63%
Nov	\$3,006,237	\$3,476,935	\$3,613,665	\$4,336,091	19.99%
Dec	\$8,351,439	\$9,776,293	\$9,534,760	\$10,729,676	12.53%
<b>Total</b>	<b>\$64,906,415</b>	<b>\$71,761,267</b>	<b>\$80,674,467</b>	<b>\$85,652,868</b>	



Short-Term Lodging					
	2010	2011	2012	2013	% change from PY
Jan	\$12,493,479	\$12,273,406	\$12,980,188	\$15,743,055	21.29%
Feb	\$12,368,672	\$12,861,701	\$14,098,863	\$15,915,662	12.89%
Mar	\$16,099,458	\$18,399,939	\$18,334,344	\$21,173,981	15.49%
Apr	\$4,079,901	\$4,053,070	\$4,477,551	\$3,294,639	-26.42%
May	\$773,209	\$832,715	\$1,088,308	\$1,271,351	16.82%
Jun	\$2,010,085	\$2,532,271	\$3,498,126	\$3,467,573	-0.87%
Jul	\$4,188,735	\$5,513,083	\$6,619,464	\$6,845,177	3.41%
Aug	\$3,229,826	\$4,612,218	\$5,172,991	\$5,408,870	4.56%
Sep	\$2,162,726	\$3,118,560	\$3,501,612	\$3,670,437	4.82%
Oct	\$1,270,196	\$1,351,146	\$1,495,331	\$1,780,797	19.09%
Nov	\$2,298,412	\$2,981,024	\$2,764,095	\$3,256,233	17.80%
Dec	\$14,187,765	\$16,009,018	\$15,265,907	\$17,830,998	16.80%
Total	\$75,162,464	\$84,538,151	\$89,296,780	\$99,658,773	



Grocery / Liquor					
	2010	2011	2012	2013	% change from PY
Jan	\$4,472,454	\$4,853,813	\$4,857,276	\$6,142,115	26.45%
Feb	\$4,590,195	\$4,803,009	\$4,962,402	\$5,407,026	8.96%
Mar	\$4,877,466	\$5,179,766	\$5,219,990	\$5,386,799	3.20%
Apr	\$3,186,035	\$3,261,348	\$3,469,430	\$2,938,151	-15.31%
May	\$2,023,538	\$2,053,046	\$2,309,947	\$2,511,410	8.72%
Jun	\$2,682,462	\$2,757,191	\$3,097,820	\$3,351,678	8.19%
Jul	\$3,999,077	\$4,219,220	\$4,489,506	\$4,907,793	9.32%
Aug	\$3,896,409	\$4,271,490	\$4,540,829	\$4,683,350	3.14%
Sep	\$2,955,420	\$3,278,161	\$3,404,220	\$3,434,560	0.89%
Oct	\$2,487,769	\$2,647,930	\$2,855,324	\$2,908,882	1.88%
Nov	\$2,422,067	\$2,598,982	\$2,778,270	\$2,837,469	2.13%
Dec	\$7,431,683	\$7,776,073	\$7,705,640	\$8,549,397	10.95%
Total	\$45,024,575	\$47,700,028	\$49,690,652	\$53,058,631	



Construction					
	2010	2011	2012	2013	% change from PY
Jan	\$1,094,954	\$561,988	\$752,255	\$1,072,239	42.54%
Feb	\$1,111,091	\$619,675	\$703,811	\$964,673	37.06%
Mar	\$1,469,445	\$903,899	\$881,518	\$996,930	13.09%
Apr	\$1,005,902	\$721,817	\$779,206	\$1,055,938	35.51%
May	\$1,138,209	\$752,424	\$1,761,256	\$978,334	-44.45%
Jun	\$1,569,090	\$1,552,324	\$1,540,822	\$1,653,588	7.32%
Jul	\$1,351,864	\$1,500,224	\$1,366,520	\$1,903,161	39.27%
Aug	\$1,444,489	\$1,450,106	\$1,670,785	\$1,870,078	11.93%
Sep	\$1,468,840	\$1,697,142	\$2,297,356	\$2,378,395	3.53%
Oct	\$1,594,643	\$1,486,042	\$1,521,388	\$1,858,158	22.14%
Nov	\$1,495,098	\$1,339,040	\$1,482,393	\$1,555,679	4.94%
Dec	\$1,211,382	\$1,435,591	\$1,226,412	\$1,528,353	24.62%
Total	\$15,955,006	\$14,020,272	\$15,983,720	\$17,815,526	

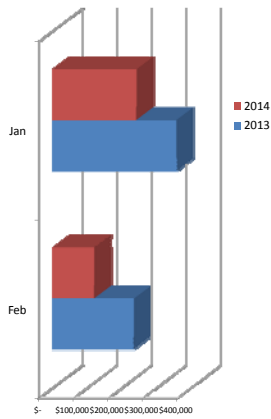
## Real Estate Transfer Tax

### New Items of Note:

- Revenue for the month of January fell short of prior year by 32.37%, and fell short of monthly budget by \$62,914.
- We lag behind the prior year churn by an even greater amount - resulting in a decrease of 48.27% in the churn of prior year.
- Timeshares accounted for the majority of the sales (38.23%), with condominiums coming in second (32%).

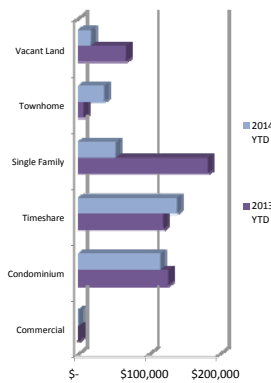
### Continuing Items of Note:

- 2014 Real Estate Transfer Tax budget is based upon the monthly distribution for 2013. The reasoning is that we should compare to a year with a "normal distribution."



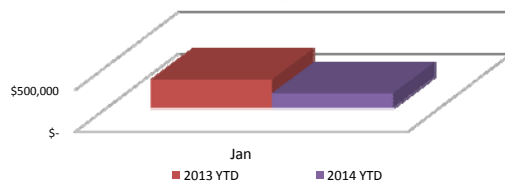
Total RETT						
	2012	2013	2014	% change	2014 Budget	+/- Budget
Jan	\$132,557	\$358,948	\$242,770	-32.37%	\$305,684	-\$62,914
Feb	\$234,630	\$234,357	\$119,955	-48.82%	\$199,581	-\$79,626
Mar	\$114,921	\$281,202	\$0	n/a	\$239,475	n/a
Apr	\$174,514	\$380,279	\$0	n/a	\$323,850	n/a
May	\$292,708	\$446,840	\$0	n/a	\$380,534	n/a
Jun	\$251,397	\$259,659	\$0	n/a	\$221,128	n/a
Jul	\$252,104	\$373,510	\$0	n/a	\$318,085	n/a
Aug	\$388,749	\$393,194	\$0	n/a	\$334,848	n/a
Sep	\$311,285	\$496,379	\$0	n/a	\$422,722	n/a
Oct	\$387,028	\$506,334	\$0	n/a	\$431,199	n/a
Nov	\$389,275	\$403,015	\$0	n/a	\$343,212	n/a
Dec	\$761,919	\$328,416	\$0	n/a	\$279,683	n/a
<b>Total</b>	<b>\$3,691,087</b>	<b>\$4,462,133</b>	<b>\$362,725</b>		<b>\$3,800,000</b>	<b>-\$142,540</b>

\*February #s are as of 2/17/2014



by Category					
Description	2013 YTD	2014 YTD	\$ change	% change	% of Total
Commercial	\$ -	\$ 975	975	n/a	0.27%
Condominium	127,151	116,064	(11,086)	9.55%	32.00%
Timeshare	120,282	138,675	18,393	-13.26%	38.23%
Single Family	183,059	52,975	(130,084)	245.56%	14.60%
Townhome	7,520	36,350	28,830	-79.31%	10.02%
Vacant Land	66,709	17,685	(49,024)	277.21%	4.88%
<b>Total</b>	<b>\$ 504,721</b>	<b>\$ 362,725</b>	<b>(141,996)</b>	<b>39.15%</b>	<b>100.00%</b>

### YTD Churn Analysis



# General Fund Revenues Summary

December 31, 2013

**General Fund Revenue:** Revenues ended the year at 104% of YTD budget (total of \$23.5M vs. \$22.6M budget). Results are consistent with the year to date, prior year and budget. The variances explained below are all fairly minor.

**Variance Explanations:**

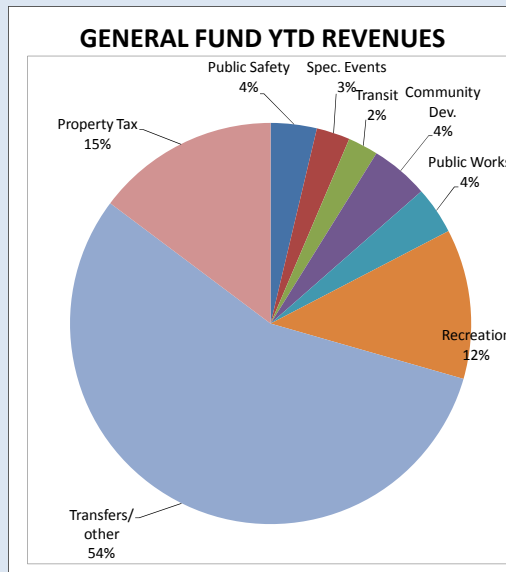
Special Events over budget due to NRO/BMF and third party revenue (pass throughs).

Public Safety over budget due to Pay Parking and Parking Tickets.

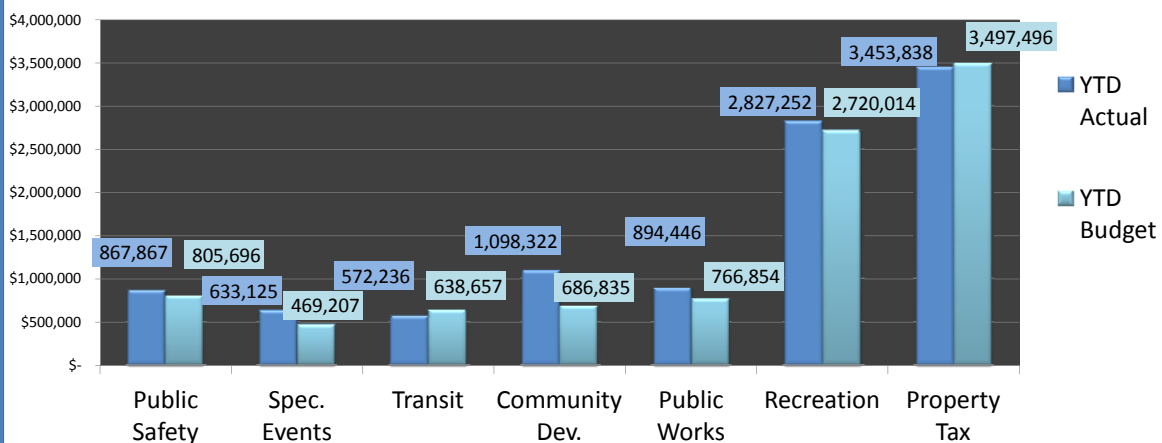
Comm. Dev. over budget due to Building permits plan check and Planning Fees (Class A, B, C, etc.).

Public Works over budget due to Insurance Recoveries and the sale of crushed asphalt.

Recreation over budget due to resident passes.



Gen. Fund YTD Revenue Act vs. Bud - by Program



General Fund Expenditures Summary

December 31, 2013

The General Fund 2013 actual expenditures ended 2013 under budget at 96% or \$24.9M vs. budgeted expenses of \$25.9.

**Variance Explanations:**

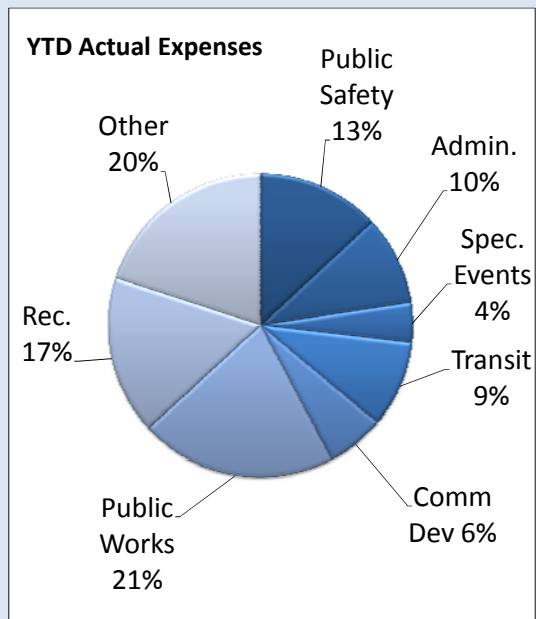
There are favorable expense variations in most departments due to wages/staff turnover.

Remaining budget for "Other" category rolled over to 2014

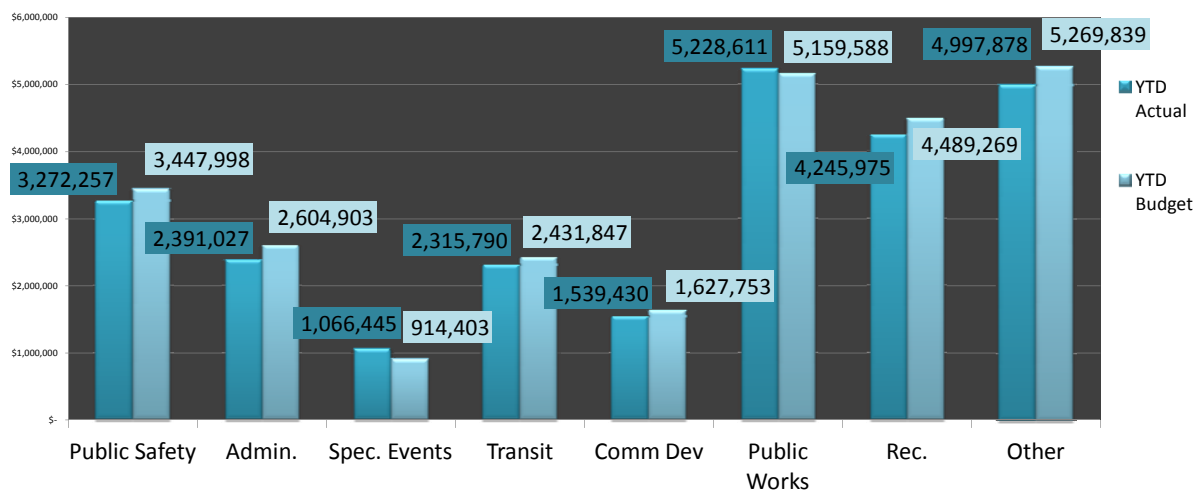
- a portion of the Nordic Center financing (retainage)
- Green Team budget for purchases of reuseable bags

Special Events: over budget due to BMF/NRO pass through.

Public Works slightly over budget due to sand purchases made at the end of the 2012-2013 winter due to late season snow.



Gen. Fund YTD Expenditures Act. vs. Bud. - by Program





## Combined Statement of Revenues and Expenditures All Funds December 31, 2013

REVENUE	YTD Actual	YTD Budget	% of YTD Bud.	Annual Bud.
<b>General Governmental</b>				
1 General and Excise Fund	\$ 33,257,009	\$ 29,448,639	113%	\$ 29,448,639
2 Special Revenue	5,676,605	5,141,167	110%	5,141,167
3 Internal Service	3,535,918	3,362,045	105%	3,362,045
<b>4 Subtotal General Governmental</b>	<b>\$ 42,469,533</b>	<b>\$ 37,951,851</b>	<b>112%</b>	<b>\$ 37,951,851</b>
5 Capital Projects	714,967	5,133,004	14%	5,133,004
<b>Enterprise Funds</b>				
6 Utility Fund	3,494,170	3,129,541	112%	3,129,541
7 Golf	2,080,225	2,097,780	99%	2,097,780
<b>8 Subtotal Enterprise Funds</b>	<b>\$ 5,574,395</b>	<b>\$ 5,227,321</b>	<b>107%</b>	<b>\$ 5,227,321</b>
<b>9 TOTAL REVENUE</b>	<b>48,758,895</b>	<b>48,312,176</b>	<b>101%</b>	<b>48,312,176</b>
10 Internal Transfers	28,240,616	28,294,266	100%	28,294,266
<b>11 TOTAL REVENUE incl. x-fers</b>	<b>\$ 76,999,511</b>	<b>\$ 76,606,442</b>	<b>101%</b>	<b>\$ 76,606,442</b>
<b>EXPENDITURES</b>				
	YTD Actual	YTD Budget	% of Bud.	Annual Bud.
<b>General Governmental</b>				
1 General and Excise Fund	\$ 26,131,143	\$ 27,423,192	95%	\$ 27,423,192
2 Special Revenue	12,925,922	15,863,731	81%	15,487,916
3 Internal Service	3,327,561	2,586,269	129%	10,235,569
<b>4 Subtotal General Governmental</b>	<b>\$ 42,384,626</b>	<b>\$ 45,873,192</b>	<b>92%</b>	<b>\$ 53,146,677</b>
5 Capital Projects	5,863,360	15,862,500	37%	15,862,500
<b>Enterprise Funds</b>				
6 Utility Fund	2,503,634	3,387,385	74%	3,387,385
7 Golf	2,153,637	2,296,912	94%	2,296,912
<b>8 Subtotal Enterprise Funds</b>	<b>\$ 4,657,271</b>	<b>\$ 5,684,297</b>	<b>82%</b>	<b>\$ 5,684,297</b>
<b>9 TOTAL EXPENDITURES</b>	<b>52,905,256</b>	<b>67,419,990</b>	<b>78%</b>	<b>74,693,475</b>
10 Internal Transfers	28,240,616	28,294,266	100%	28,294,266
<b>11 TOTAL EXPENDITURES incl. x-fers</b>	<b>\$ 81,145,872</b>	<b>\$ 95,714,256</b>	<b>85%</b>	<b>\$ 102,987,741</b>
<b>12 TOTAL REVENUE less EXPEND.</b>	<b>\$ (4,146,361)</b>	<b>\$ (19,107,814)</b>	<b>N/A</b>	<b>\$ (26,381,299)</b>

\*Decrease in actual fund balances primarily due to Corum Loan of \$7.2 million from the Affordable Housing Fund.

**General Governmental Funds** - General, Excise and Special Projects

**Special Revenue Funds** - Marketing, Affordable Housing, Open Space, Conservation Trust, and Medical Marijuana

**Internal Service Funds** - Garage, Information Technology (IT), and Facilities

## ALL FUNDS REPORT

December 31, 2013

As stated in the Executive Summary section of this month's report, tax revenues performed ahead of budget for the entire 2013 year.

Budgets have been supplemented for items in the September 24th and February 11th Resolutions.

### **Special Revenue Funds:**

- Revenues at 110% of YTD budget due to Tax revenues in excess of budget.
- Corum Loan expenditure included in Affordable Housing budget.
- Expenditures at 81% of budget. Affordable Housing budgeted for acquisitions which did not take place.

### **Internal Service Funds:**

- Revenues ahead of budget due to insurance recoveries and grants.
- Expenditures at 131% of budget. These funds are fully appropriated during the budget process. The Garage Fund budgeted the purchase of three low-floor buses in 2012 but the receipt was delayed until 2013 due to hurricane Sandy. One Gillig bus scheduled for purchase in 2013 was received in September.

### **Capital Fund:**

- Revenue: under budget due to County contribution budgeted for Harris Street building (timing).
- Expense: under budget due to timing of capital expenditures.
- The Capital Fund is the primary cause of the gap in YTD budget vs. actual expenses in the graph at right.

### **Utility:**

- Revenue: over budget due to PIF's
- Expense: under budget due to timing of capital expenditures.

### **Fund Descriptions:**

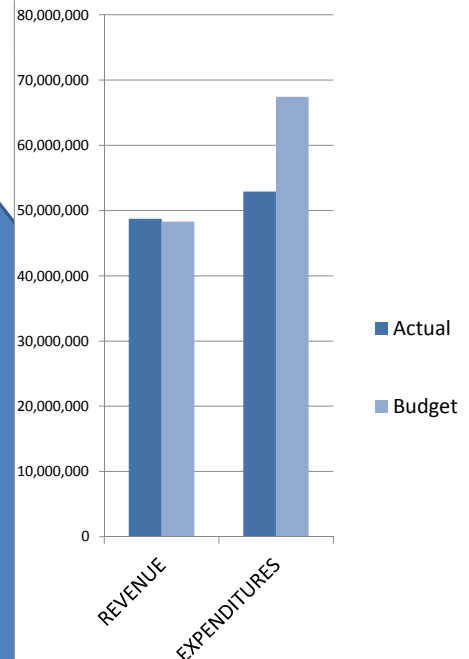
General Governmental -  
General, Excise and Special  
Projects

Special Revenue Funds -  
Marketing, Affordable Housing,  
Open Space, Conservation Trust,  
and Medical Marijuana

Enterprise Funds: Golf, Utility

Internal Service Funds - Garage,  
Information Technology (IT), and  
Facilities

YTD Actual Revenues and Expenditures vs.  
Budget

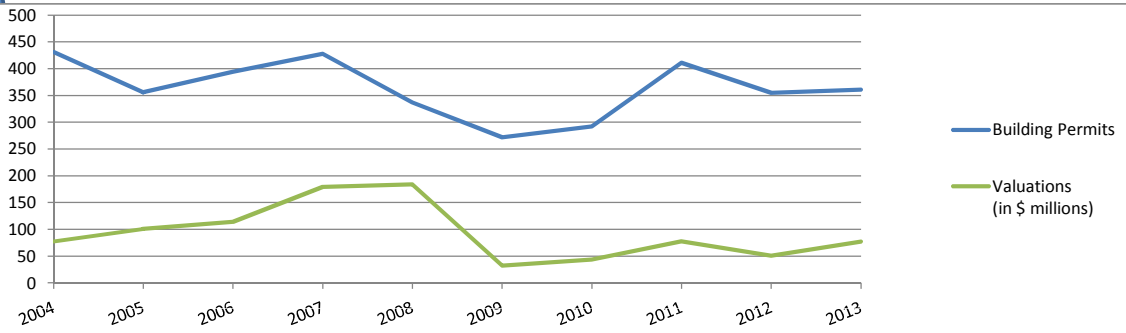


## Construction Industry Detail

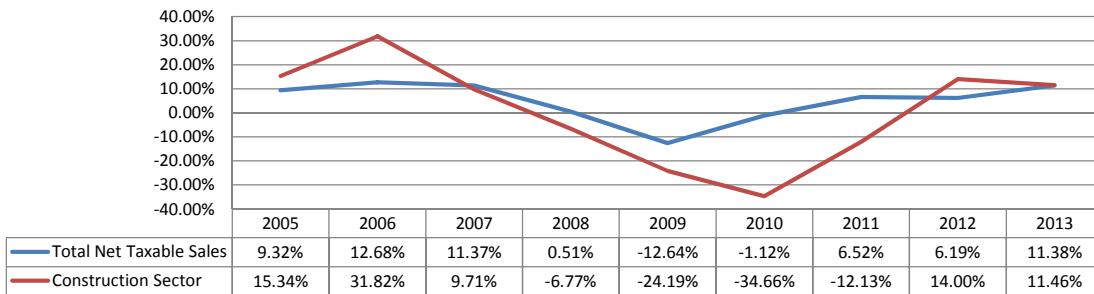
The purpose of this month's "Other Information" section is to report on the activities of the construction industry. The information below reflects category trends and compares the overall decline/recovery trends to overall net taxable sales. Analysis of the data indicates that the decline in this sector was greater than the local economy as a whole. While we saw a jump in building activity in 2011 (which related to supply sales in 2011-2012), the overall recovery lagged behind the recovery of other sectors and has yet to exceed our pre-recession all time highs. Beginning in 2011 through 2013, the increases in sales of construction supplies over prior year did begin to surpass net taxable sales as a whole.

**Yearly Comparisons For Building Permits & Valuations**

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Building Permits	431	356	394	428	337	272	292	411	355	361
Valuations (in \$ millions)	77.26	100.87	113.94	179.20	183.87	32.20	43.26	77.88	50.46	76.82

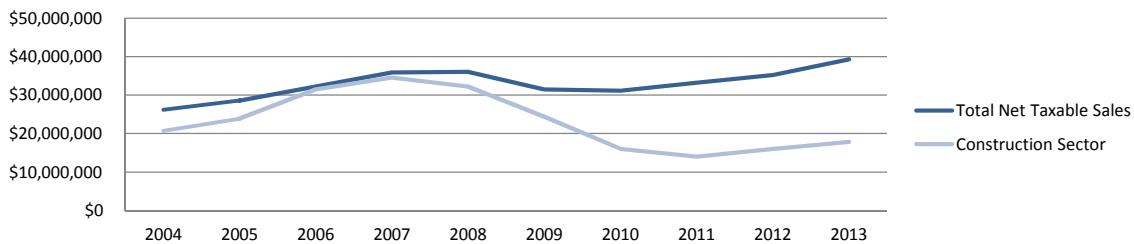


**% Change in Net Taxable Sales Over Prior Year**



**Net Taxable Sales Comparison**

*\*Note that Total Net Taxable Sales has been divided by 10 for the sake of comparison*





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## MEMORANDUM

To: Town Council  
From: Peter Grosshuesch, Director of Community Development  
Subject: Water Conservation  
Date: February 16, 2014

Members of the Sustainability Task Force met on October 18 and discussed the topic of future water conservation in the Town. As a result of that meeting the Task Force made the following recommendations to the full Council for their consideration at the October 28 retreat, and then at the Task Force's more recent meeting held on February 14, they added a fourth recommendation as noted below.

The first element is to make permanent the watering restrictions we have been implementing in drought years, with some modifications. The message accompanying the change will focus on the fact that our system will be more expensive to operate in the future due to the 2<sup>nd</sup> plant expansion and redundancy measures being built into the system, and for watershed protection actions we will be taking to make the system less vulnerable to wild fire shutdowns.

Recommendations from the Task Force's most recent meeting of February 14 include the following:

- They expressed concern about the provision contained in the year-round water restrictions ordinance prohibiting the use of water to wash driveways, parking lots, and sidewalks, and asked that we seek more public comment on the effects of implementing that provision. More specifically, they recommend that we review it with the Sustainable Breck Business Task Force and other business owners, and that we develop an Engage Breckenridge topic for community feedback.
- The Task Force also is seeking feedback from the full Town Council regarding the ordinance provisions and the program outreach elements more fully described in the Education and Billing Information section contained in the last two pages of this memo. Task Force members are wanting to know more specifics about the obstacles to be overcome in order to create an enhanced water bill messaging capability. Another issue they are seeking direction from the full Council on is the fee structure for excessive water consumption.
- Charging out of Town water customers 1.5 times the excessive water use rates was also endorsed by the Task Force. This is consistent with other water regulations that apply to out of Town customers.

The second element of the strategy is to review the current rate structure with an eye toward repricing the resource that water is, in a way that further discourages excessive use.

The third element is education based and includes developing enhanced billing information and related messaging directly to water customers. The enhanced billing information might include year over year consumption comparisons, previous month comparisons, etc. The message will focus less on what their additional costs might be, but more on there is something inefficient about how they are using water. The excessive users will be a particular focus for this education effort.

The fourth component that the Task Force added at its February 14<sup>th</sup> meeting, is to have the Town take a more credible leadership position on the issue of water conservation by upgrading all of its water consumption practices through such measures as the already budgeted irrigation system audits and related improvements for watering Town fields and grounds scheduled for 2014. An additional measure is to replace our indoor plumbing fixtures with those that would comply with “Water Sense” standards.

Based on the Task Force’s recommendation following its review of numerous water conservation strategies being implemented by water providers throughout the state, the Council agreed that rather than developing a series of incentive and regulatory based program elements, that we educate consumers about water conservation measures that they can implement on their own initiative. The thought being that once the repricing of excessive water consumption occurs, people will be seeking ways to reduce their costs and therefore reduce their consumption.

### Outdoor Watering Restrictions

Staff has drafted an ordinance (attached), requiring that most of the outdoor watering restrictions that are invoked during drought years be made permanent (the new normal).

Those restrictions include:

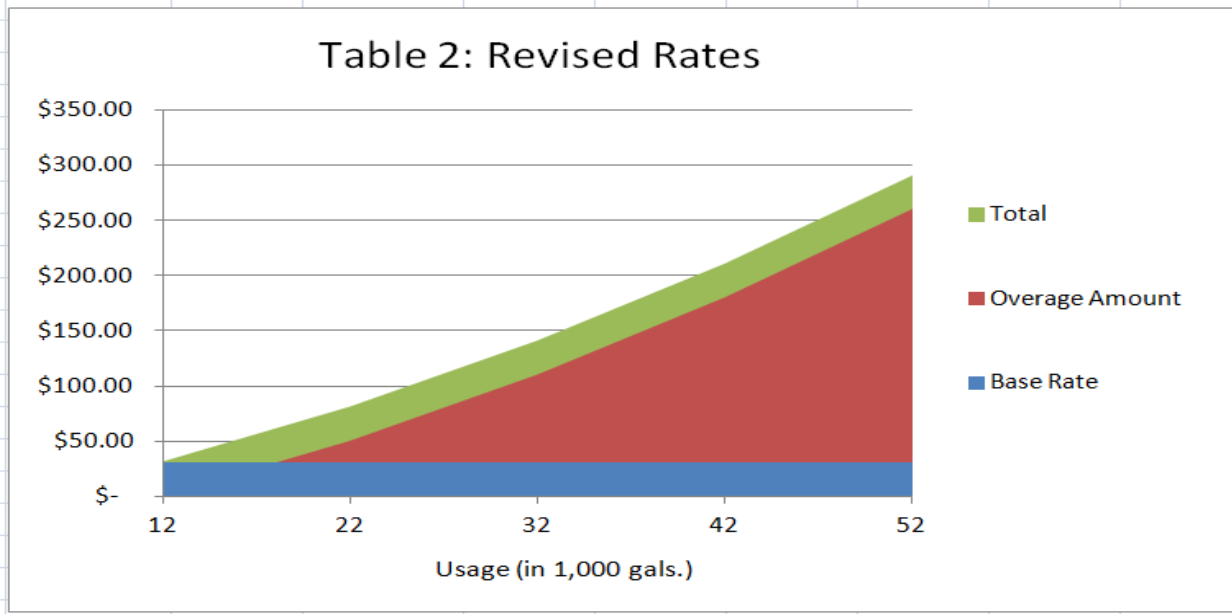
- Three day per week watering between the hours of 5:00 PM and 9:00 AM. Hand watering and drip irrigation systems would be exempted from the policy. Newly installed landscape areas would also be exempted for the first two years following their installation. High traffic areas and ball fields maintained by the Summit School District and the Town would be exempt as well.
- The use of water to clean sidewalks, driveways or parking lots would be prohibited. Bulk water sales for the purpose of cleaning exterior surfaces would no longer be allowed.
- Restaurants however, will be permitted to serve water to all guests whether they request it or not.
- Penalty Structure –
  - The first offense will carry a warning and will be a teaching opportunity for Town staff. We will be distributing water conservation suggestions with each of the warning tickets (e.g. irrigation system audits, interior fixture audits, etc).
  - The second offense will result in a \$250 fine
  - The third offense will result in a \$500 fine
  - The fourth and all subsequent offenses will result in a \$750 fine. Failure to pay the fines would result in a water “shut off”.

### Water Rates

The rates for excessive water consumption will be adjusted to higher levels in an effort to drive

users to use less water through audits, appliance upgrades, improved irrigation practices, etc. The following table and graph illustrates how that rate structure might be implemented.

Usage (1,000 gals)	Base Rate	Overage (1,000 gals)	Overage Rate	Overage Amount	Total
12	\$ 31.25	0	\$ 3.11	\$ -	\$ 31.25
22	\$ 31.25	10	\$ 5.00	\$ 50.00	\$ 81.25
32	\$ 31.25	20	\$ 5.50	\$ 110.00	\$ 141.25
42	\$ 31.25	30	\$ 6.00	\$ 180.00	\$ 211.25
52	\$ 31.25	40	\$ 6.50	\$ 260.00	\$ 291.25



The following table represents the current penalty rate structure for excessive consumption.

Usage (1,000 gals)	Base Rate	Overage (1,000 gals)	Overage Rate	Overage Amount	Total
12	\$ 31.25	0	\$ 3.11	0	\$ 31.25
22	31.25	10	3.11	31.1	62.35
32	31.25	20	3.11	62.2	93.45
42	31.25	30	3.11	93.3	124.55
52	\$ 31.25	40	\$ 3.11	124.4	\$ 155.65

The internal discussion on this penalty rate structure has been whether it will actually reach the “pain” threshold for excessive users. Many of those users probably have the means, and would rather pay the price to keep their properties looking lush and green. Councils’ thoughts on this would be appreciated.

### Education and Billing Information

**Billing Information** - The Town currently uses Express Bill Pay, which is the software program that is compatible with our Cassel accounting software platform. Express Bill Pay is very limited in the amount of information we can insert into the bills. Other billing software is not feasible to use with our system, therefore we will be exploring other forms of direct messaging to our water customers.

Consequently, we are recommending that we target four different user categories with messages customized for each group.

### General Message

A General message to all users would announce the changes that are in store that would be implemented prior to the summer time, high consumption season. Those changes include: permanent year round outdoor watering restrictions; higher rates for excessive consumption; and providing a more robust customer assistance resource for water conservation measures the rate payers can access.

### Excessive Users

In addition to the general message described above, excessive users from previous years would be targeted for individualized messages illustrating how the new rates for excessive use will affect their water bills if they do not change their consumption habits. These customers would also be advised of the water conservation measures available to them through the Town or other sources.

### Multi-family

The multi-family properties typically have professional maintenance companies caring for the property grounds. Many single family properties do as well, however, there are a lot of them that are cared for by the individual home owners. We can reach the professional maintenance companies through annual meetings between contractors and Town staff, much like we do with the tree cutters in our Forest Management program. Individual home owners will not be so easy to round up. For them, we will have to reach out with direct mailings, limited water bill messages (to the extent we can), web site based information, and public service announcements.

With both groups, the educational messaging will be to:

- Limit the amount of water intensive landscape material
- Use drip irrigation
- Professionally audit sprinkler systems for efficiency improvements
- Audit interior plumbing fixtures for leaks and out of date and inefficient water consuming appliances. (Prioritizing outdoor irrigation systems is important, as they are the single biggest user category on our system). We could potentially offer rebates for the cost of the audits for our water customers.

### Commercial Users

The biggest non-residential users are restaurants and commercial laundries. We would target them through direct mailing and potentially with site visits. For both groups, the main culprits are out of date water appliances. Restaurants should also be migrating to low flow pre rinse valves.

Commercial users would be encouraged to conduct water audits, and to upgrade their water appliances to water sense certified quality. We would include comparison data for older models vs. newer model consumption volumes for them to contemplate potential savings.

Staff is seeking feedback from the Town Council Members as to whether you agree with the direction outlined above, and whether you have additional thoughts or direction for us to implement.

Attachments:

Draft excessive water consumption billing rates ordinance

1 ***DRAFT January 21, 2014 DRAFT***

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

5  
6 COUNCIL BILL NO. \_\_\_\_

7  
8 Series 2014

9  
10 AN ORDINANCE AMENDING TITLE 12 OF THE BRECKENRIDGE TOWN CODE,  
11 KNOWN AS THE “TOWN OF BRECKENRIDGE WATER ORDINANCE”, BY ADOPTING  
12 PERMANENT RESTRICTIONS ON THE USE OF WATER FOR OUTDOOR WATERING  
13 AND OTHER SPECIFIED USES OF WATER FROM THE TOWN’S WATER SYSTEM;  
14 PROVIDING EXEMPTIONS FROM SUCH RESTRICTIONS; AND PROVIDING  
15 PROCEDURES AND PENALTIES FOR THE VIOLATION OF SUCH RESTRICTIONS  
16

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

19  
20 Section 1. Section 12-1-14-1 of the Breckenridge Town Code is amended to read as  
21 follows:

22  
23 12-1-14-1: TEMPORARY RESTRICTIONS ON USE OF WATER  
24 SYSTEM: ~~A.~~ At such time as the Town Council shall find and determine that a  
25 shortage exists in the supply of water to the Town’s Water System, or that a  
26 shortage is imminent, such as to require the implementation of **additional**  
27 restrictions on the use of water from Town’s Water System, the Town Council  
28 may, by resolution, declare the existence of a water shortage and implement  
29 mandatory restrictions on the use of water by customers of the Town’s Water  
30 System **in addition to those permanent restrictions provided for in Section**  
31 **12-1-21.B.** ~~Any **additional** restrictions on the use of water from the Town’s~~  
32 ~~Water System which are implemented by the Town Council pursuant to~~  
33 ~~Subsection A of this Section may contain: (i) restrictions on outdoor watering or~~  
34 ~~irrigation; (ii) exceptions from outdoor watering or irrigation restrictions for new~~  
35 ~~lawns and landscaping, and playgrounds and athletic fields owned and operated~~  
36 ~~by governmental entities; (iii) restrictions on the non-commercial washing of~~  
37 ~~motor vehicles; (iv) restrictions on the serving of water by restaurants; (v) a~~  
38 ~~provision requiring the giving of a warning before a water surcharge for the~~  
39 ~~violation of the restrictions is imposed; (vi) a method of determining whether~~  
40 ~~violations of the restrictions have occurred; (vii) an administrative water~~  
41 ~~surcharge, which may include graduated surcharge amounts based upon the~~  
42 ~~number of violations which occur within a twelve month period, for persons~~  
43 ~~determined to have violated the restrictions; and (viii) such **additional** other~~  
44 restrictions or limitations on the use of water from the Town’s Water System, or



1 procedures related to the enforcement of such restrictions, as the Town Council  
2 shall determine to be necessary to adequately protect the Town's Water System  
3 and the public health, safety and welfare.  
4

5 Section 2. Chapter 1 of Title 12 of the Breckenridge Town Code is amended by the  
6 addition of a new Section 12-1-21 to read as follows:  
7

8 **12-1-21: PERMANENT RESTRICTIONS ON THE USE OF WATER**  
9 **FROM THE TOWN'S WATER SYSTEM; EXEMPTIONS; PROCEDURES**  
10 **AND PENALTIES:**  
11

12 **A. As used in this Section the following terms have the following meanings:**  
13

**OUTDOOR**  
**WATERING:**

**Means the watering of any plant, lawn,**  
**garden, tree, landscaping, flower, shrub,**  
**bush, or any other vegetation that occurs**  
**outside of the exterior walls of any**  
**structure.**

**STRUCTURE:**

**Has the meaning provided in Section 9-1-5**  
**of this Code.**

14  
15 **B. It is an unlawful and an infraction for any person to use water from the**  
16 **Water System for any of the following purposes:**  
17

- 18 **1. To engage in outdoor watering, except when done in accordance with the**  
19 **requirements of Subsections C(1) through C(6) of this Section;**  
20  
21 **2. To wash any motor vehicle, except when done in accordance with the**  
**requirements of Subsection C(7) of this Section; and**  
22  
23 **3. To wash off or clean any parking lot, driveway, parking area, or other**  
**exterior paved or hardscaped surface.**

24 **C. Subsection B(1) of this Section shall not apply to the following uses of**  
25 **water from the Water System:**  
26

27 **1. Outdoor watering when done in accordance with the following**  
28 **restrictions:**

- 29 **(a) outdoor watering is permitted only three days each calendar week**  
30 **(Monday through the next Sunday) as described in Subsections**  
31 **C(1)(b) and C(1)(c) of this Subsection.**

1 (b) outdoor watering on properties located east of the centerline of: (i)  
2 Main Street; or (ii) Colorado Highway 9 north of Park Avenue and  
3 Colorado Highway 9 south of Park Avenue, whichever is applicable,  
4 may lawfully occur only on Sundays, Wednesdays, and Fridays of  
5 each week.

6 (c) outdoor watering on properties located west of the centerline of: (i)  
7 Main Street; or (ii) Colorado Highway 9 north of Park Avenue and  
8 Colorado Highway 9 south of Park Avenue, whichever is applicable,  
9 may lawfully occur only on Tuesdays, Thursdays, and Saturdays of  
10 each week.

11 (d) no outdoor watering is permitted on any property within the Town on  
12 Mondays of each week.

13 (e) on days when outdoor watering is permitted, it may occur only  
14 between the hours of 5:00 P.M. and 9:00 A.M. of the following day.

15 2. Outdoor watering by drip irrigation, or by hand using only a watering  
16 can or a hose with a shut-off nozzle.

17 3. Outdoor watering of new lawns and landscaping for the first two years  
18 after installation.

19 4. Outdoor watering of public school property (including, but not limited to,  
20 public school athletic fields).

21 5. Outdoor watering within the Town's public parks.

22 6. Outdoor watering at the Town's municipal golf course.

23 7. The non-commercial outdoor washing of a personal motor vehicle if the  
24 vehicle is washed using only a bucket or a hose with a shut-off nozzle.

25 D. Nothing in this Section prohibits the use of water from the Water System  
26 to clean the concrete areas of street medians.

27  
28 E. Any person found to have violated any provision of Subsection B of this  
29 Section shall be punished as follows:

30  
31 1. First violation – warning only (no fine);

32 2. Second violation - \$250.00 fine;

33 3. Third violation - \$500.00 fine; and

1           **4. Fourth and each subsequent violation - \$750.00 fine**

2           **F. Each day during any portion of which a violation of Subsection B of this**  
3           **Section occurs shall be a separate violation.**

4  
5           **G. Any fine imposed for a violation of Subsection B of this Section that is not**  
6           **paid within 45 days of the date of imposition of the fine shall be a “water**  
7           **charge” within the meaning of Section 12-1-6, and the collection**  
8           **procedures of Chapter 6 of the Title, including, but not limited to, the**  
9           **discontinuance of water service provision of Section 12-6-4, shall apply to**  
10           **the collection of such unpaid fine.**

11  
12           **H. Except as provided in Subsection H(10) with respect to a fourth or**  
13           **subsequent violation, at the time a person is charged with a violation of**  
14           **Subsection B of this Section the defendant shall be issued or tendered a**  
15           **penalty assessment notice in accordance with the following procedures:**

16  
17           **1. A penalty assessment notice shall be signed and served on or tendered to**  
18           **the defendant and shall contain the information required to be contained**  
19           **in a municipal summons and complaint by Rule 204 of the Colorado**  
20           **Municipal Court Rules of Procedure; the amount of the prescribed fine**  
21           **for the alleged violation; and the date the penalty assessment notice is**  
22           **served on the defendant. The notice shall direct the defendant to appear**  
23           **in the Municipal Court on a specified date, time, and place in the event**  
24           **the prescribed penalty is not paid. The notice shall also contain any**  
25           **additional information that is required to convert the penalty assessment**  
26           **notice into a summons and complaint should the penalty not be paid**  
27           **within the time allowed.**

28           **2. The time specified in the penalty assessment notice for an appearance if**  
29           **the defendant fails to pay the penalty shall be at least thirty (30) days and**  
30           **not more than ninety (90) days after the date the penalty assessment**  
31           **notice is issued.**

32           **3. One copy of the penalty assessment notice shall be served upon the**  
33           **defendant, and the remaining copy shall be filed with the Clerk of the**  
34           **Municipal Court.**

35           **4. The fine specified in the penalty assessment notice may be paid at the**  
36           **office of the Clerk of the Municipal Court in person on or before the**  
37           **appearance date; or by postmarking such payment not less than ten (10)**  
38           **days before the appearance date.**

39           **5. If the defendant fails to pay the penalty on the penalty assessment notice**  
40           **on or before the appearance date, then the defendant shall appear at the**

1 Municipal Court on the date and time specified in the notice and answer  
2 the complaint against him or her.

3 6. If the defendant fails to appear on the date and time specified in the  
4 penalty assessment notice and answer the complaint against him or her,  
5 or if the defendant appears and answers that he or she is liable for the  
6 alleged violation, judgment shall be entered against the defendant.

7 7. If the defendant denies the allegations in the penalty assessment notice or  
8 complaint, a final hearing shall be held before the Municipal Court.

9 8. If judgment is entered against a defendant, he or she shall be assessed the  
10 fine specified in the penalty assessment notice, plus any applicable  
11 surcharge, court costs, and other applicable fees.

12 9. In no event shall a bench warrant issue for the arrest of any person who  
13 fails to appear for a final hearing on an infraction charged under this  
14 Subsection B of this Section. Subject to the provisions of Chapter 6 of this  
15 Title, entry of judgment and assessment of the fine, costs, and applicable  
16 fees as provided herein shall constitute the sole penalties for failure to  
17 appear for the final hearing, or for being found liable for the violation.

18 10. Penalty assessment procedures shall not apply when it appears that the  
19 offense is a fourth or any subsequent alleged violation of any provision of  
20 Subsection B of this Section. A person charged with a fourth or  
21 subsequent violation of any provision of Subsection B of this Section shall  
22 be issued a summons and complaint in accordance with the Colorado  
23 Municipal Court Rules of Procedure, and shall be required to appear in  
24 court to answer the charges against him or her.

25 Section 3. Chapter 1 of Title 12 of the Breckenridge Town Code is amended by the  
26 addition of a new Section 12-1-22 to read as follows:

27  
28 12-1-22: RESTRICTION ON THE SALE OF BULK WATER: Bulk water  
29 may not be sold by the Town for the purpose of providing water to wash off  
30 or clean any parking lot, driveway, parking area, or other exterior paved or  
31 hardscaped surface.

32  
33 Section 4. Chapter 5 of Title 12 of the Breckenridge Town Code is amended by the  
34 addition of a new Section 12-5-12 as follows:

35  
36 12-5-12: SURCHARGE FOR OUT-OF-TOWN VIOLATION OF  
37 PERMANENT RESTRICTIONS ON USE OF WATER SYSTEM:

38 A. Any out of town water user found to have violated the permanent  
39

1 restrictions on the use of water from the Town's Water System described  
2 in Section 12-1-21 shall be subject to a water surcharge of one and one-  
3 half times the amount of the fine for such a violation as described in  
4 Section 12-1-21. Water surcharges imposed pursuant to this Subsection A  
5 may be collected in the manner set forth in Chapter 6 of this Title.  
6

7 **B. It shall be a term and condition of each out of town water service contract**  
8 **that the water user shall comply with the permanent restrictions on the**  
9 **use of water from the Town's Water System described in Section 12-1-21.**  
10 **The fourth instance of noncompliance with the permanent restrictions on**  
11 **the use of water from the Town's Water System described in Section 12-**  
12 **1-21 shall be grounds for the discontinuance of water service.**  
13

14 Section 5. Section 12-6-10(A) of the Breckenridge Town Code is amended to read as  
15 follows:  
16

17 A. **Except as provided in Section 12-1-21,** Every person convicted of a  
18 violation of any provision of this Title shall be punished as provided in Section  
19 1-4-1 of this Code.  
20

21 Section 6. Except as specifically amended hereby, the Breckenridge Town Code, and the  
22 various secondary codes adopted by reference therein, shall continue in full force and effect.  
23

24 Section 7. The Town Council hereby finds, determines and declares that this ordinance is  
25 necessary and proper to provide for the safety, preserve the health, promote the prosperity, and  
26 improve the order, comfort and convenience of the Town of Breckenridge and the inhabitants  
27 thereof.  
28

29 Section 8. The Town Council hereby finds, determines and declares that it has the power  
30 to adopt this ordinance pursuant: (i) Section 31-35-402(1)(f), C.R.S. (concerning municipal  
31 water systems); (ii) Section 31-15-103, C.R.S. (concerning municipal police powers); (iii)  
32 Section 31-15-401, C.R.S.(concerning municipal police powers); (iv) the authority granted to  
33 home rule municipalities by Article XX of the Colorado Constitution; and (v) the powers  
34 contained in the *Breckenridge Town Charter*.  
35

36 Section 9. This ordinance shall be published and become effective as provided by Section  
37 5.9 of the *Breckenridge Town Charter*.  
38

39 INTRODUCED, READ ON FIRST READING, APPROVED AND ORDERED  
40 PUBLISHED IN FULL this \_\_\_\_ day of \_\_\_\_\_, 2014. A Public Hearing shall be held at the  
41 regular meeting of the Town Council of the Town of Breckenridge, Colorado on the \_\_\_\_ day of  
42 \_\_\_\_\_, 2014, at 7:30 P.M., or as soon thereafter as possible in the Municipal Building of the  
43 Town.  
44

TOWN OF BRECKENRIDGE, a Colorado  
municipal corporation

By \_\_\_\_\_  
John G. Warner, Mayor

ATTEST:

\_\_\_\_\_  
Helen Cospolich  
Town Clerk

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